



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/ADMIRALTY SUIT NO. 19 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Sd./-

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====

PRIVILLION MANAGEMENT LIMITED

Versus

MT KELSIE (IMO NO 9016923)

=====

Appearance:

MR ANSHIN DESAI, SR. ADVOCATE, MR. PARTH CONTRACTOR(7150)
for the Plaintiff(s) No. 1

MR SN SOPARKAR, SR. ADVOCATE, MR MANAV MEHTA,
DS AFF.NOT FILED (N) for the Defendant(s) No. 1

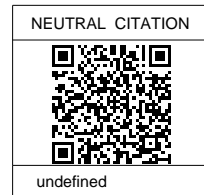
=====

CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 08/05/2024

ORAL JUDGMENT

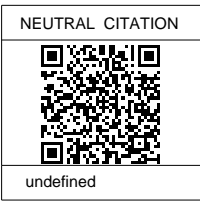
1. By way of this Admiralty Suit, the plaintiff has prayed for the following reliefs;



“a. That the Defendant be ordered and decreed to pay to the Plaintiff a sum of USD 780,386.96/- being the amounts paid by the Plaintiff for the Defendant Vessel’s maintenance, repair and crew wages, along with interest @ 5% p.a. on the said amount, being an amount of USD 30,574.06 (i.e. from 21.07.2023 which is the date of institution of the proceedings in Malaysia until 01.05.2024) and further interest pendente lite till the actual payment of the said amounts;

b. That the Defendant be ordered and decreed to pay to the Plaintiff a sum of USD 87,074.57 being the costs and expenses incurred by the Plaintiff at the High Court of Malaya and thereafter incurred by the Plaintiff pursuant to the Defendant Vessel breaking arrest, along with interest @ 5% p.a. on the said amount, being an amount of USD 3,411.41 (i.e. from 21.07.2023 which is the date of institution of the proceedings in Malaysia until 01.05.2024) and further interest pendente lite till the actual payment of the said amounts;

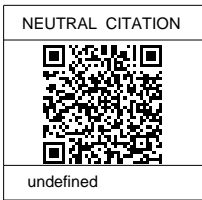
c. This Hon'ble Court may be pleased to order and direct the arrest of the Defendant Vessel MT KELSIE (IMO 9016923), along with its hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant & machinery



which is presently in the territorial waters within the jurisdiction of this Hon'ble Court and at outer anchorage at Alang, Bhavnagar, within the territorial waters of India for satisfaction of the Plaintiff's claims and also be committed for sale and the same be sold under the orders and directions of this Hon'ble Court and the sale proceeds thereof be utilized towards the security of the Plaintiff' claim, costs and poundage;

d. Pending hearing and disposal of the present proceedings, be pleased to arrest of the Defendant Vessel MT KELSIE (IMO 9016923), along with its hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant & machinery which is presently in the territorial waters within the jurisdiction of this Hon'ble Court and at outer anchorage at Alang, Bhavnagar, within the territorial waters of India, until the satisfaction of the Plaintiff's claim as per the Particulars and also be committed for sale and the same be sold under the order and directions of this Hon'ble Court and the sale proceeds thereof be utilised in satisfaction of the Plaintiff's claim herein;

e. For interim and ad-interim reliefs in terms of prayer clauses (d) above;



f. For costs of this Suit;

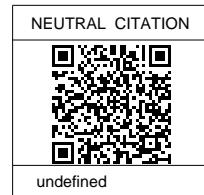
g. For such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the”

2. Heard, learned Sr. Advocate, Mr. Desai, appearing with learned Advocate, Mr. Contractor, for the plaintiff and learned Sr. Advocate, Mr. Soparkar, appearing with learned Advocate, Mr. Mehta, for M/s. Unique Ship Breaking Corporation (in brief, 'USBC'), who has allegedly purchased the vessel in question for ship breaking purpose.

3. In view of the prayers made in the present Suit and reproduced herein above, this Court had issued notice on 03.05.2024, making the same returnable today, i.e. on 08.05.2024.

3.1 Today, when the matter was taken-up for hearing, no one appeared for the defendant-vessel, but, this Court was appraised of the fact that the vessel in question has already been purchased by the USBC, who has now become the owner of the said vessel. Learned Advocate, Mr. Mehta, appearing on behalf of the USBC produced on record a detailed affidavit-in-reply, describing the events that took place in the interregnum.

3.2 The aforesaid affidavit is ordered to be taken on record.

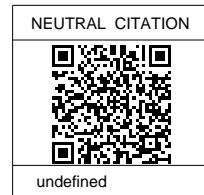


4. The brief facts, which has given rise to the present Suit, are as under;

The plaintiff is a Company incorporated in the Marshall Islands, having its registered address at Singapore, whereas, the defendant is a vessel within the meaning of Section 2(1)(I) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ('Admiralty Act', herein after) and is being identified with IMO No. 9016923 and according to the plaintiff, it is currently known as MT Kelsie. Earlier, the defendant-vessel was known as MT Heng Yang and it was flying the flag of Sierra Leone.

4.1 According to the plaintiff, it has a deed of acknowledgment of debt dated 28.06.2023 in its favour, which is executed by the owner of the defendant-vessel in relation to the amounts paid by the plaintiff for the repair works, salary of crew, maintenance and bunker fuel, so also the expenses qua the defendant-vessel to the tune of USD 780,386.95/-.

4.2 It is the case of the plaintiff that it brought an action *in rem*, against the defendant-vessel in the High Court of Malaya, being High Court of Malaya Admiralty Action In Rem No. WA-27NCC-33-07/2023. Pursuant to a warrant issued by the High Court of Malaya, the defendant-vessel came to be arrested on 21.07.2023. Further, the High Court of Malaya also passed a judgment and decree in favour of the plaintiff and against the defendant-vessel and directed the defendant-vessel to make the payment in respect



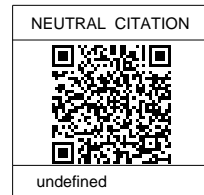
of the dues stated in the said judgment dated 29.09.2023.

4.2.1 It is, further, the case of the plaintiff that on 07.11.2023, the defendant-vessel breached the arrest warrant and sailed out of the territorial water of Malaysia. According to the plaintiff, with a view to avoid being tracked, the defendant-vessel kept its AIS tracking system off. However, the plaintiff was able to locate the defendant-vessel, through searches via the Marine Traffic website, around 22.04.2024 and by that time the defendant-vessel had already entered the Straits of Malacca.

4.3 Now, according to the plaintiff, it has come to know that the defendant-vessel is heading to Bhavnagar for being scrapped with an intention to avoid any payment of the judgment debt to the plaintiff. It is, further, the case of the plaintiff that it apprehends that on arrival of the defendant-vessel at Bhavnagar, the process of bill of entry shall be expedited and the radar system of the defendant-vessel shall be destructed, so as to render it non-seaworthy and that would left the plaintiff remedy less.

4.4 It is in this background that the present Suit is filed and when the same was listed before this Court for hearing on 03.05.2024, this Court issued notice, making the same returnable on 08.05.2024, i.e. today.

4.4.1 Today, when the matter was taken-up for hearing, an affidavit is tendered on behalf of USBC by learned Advocate, Mr.

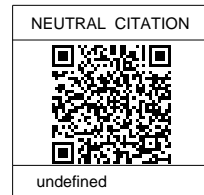


Mehta, who claimed to be the owner of the defendant-vessel, on the basis of an agreement on the basis of a Memorandum of Agreement executed on 11.04.2024 in favour of USBC by the erst-while owner of the defendant-vessel, namely Care Cabotage.

4.4.2 It is the case of the USBC that after the defendant-vessel broke the arrest, the owners of the defendant-vessel were changed from time-to-time. According to the affidavit and more particularly Paragraph-5 thereof, upto 05.04.2024, the defendant-vessel was owned by one Elay Marine Limited. Then, on 05.04.2024, Jennifer Shipping Inc. became owner of the defendant-vessel, who, in turn, sold the same to Care Cabotage on 08.04.2024. Thereafter, the said Care Cabotage sold the defendant vessel to the present owner of the defendant-vessel, i.e. USBC.

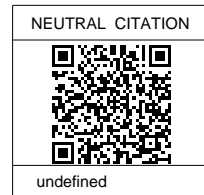
4.5 It was also pointed out by way of the affidavit filed on behalf of USBC that in view of the payment terms of Memorandum-of-Agreement dated 11.04.2024, the USBC had to open a Letter of Credit in favour of Care Cabotage. Thereafter, on being satisfied that the Letter of Credit has already been opened in its favour, the Care Cabotage issued a Bill of Sale in favour of the USBC on 29.04.2024, wherein, it is stated that 100 percent shares of the defendant-vessel have been transferred in favour of the owner, i.e. USBC.

4.5.1 According to USBC, it has purchased the defendant-



vessel for the purpose of demolition or breaking and hence, the defendant-vessel has now become goods for the import to its owner, i.e. USBC, in India and the same has ceased to be a vessel, as defined under Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (in brief, 'Admiralty Act'). As per the affidavit, the new owner, i.e. USBC, has already paid the appropriate Customs Duty for the import of the defendant-vessel into India for the purpose of breaking on 01.05.2024 and it arrived at Alang anchorage on 02.05.2024 and tendered its Notice of Readiness for physical delivery of the possession to the owner-USBC.

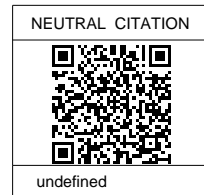
4.5.2 In the meantime, the owner-USBC took over physical possession of the defendant-vessel on 03.05.2024 and thereafter, on completing the necessary formalities, the USBC made a request for beaching of the defendant-vessel for the purpose of breaking / demolishing the same, after obtaining necessary permissions from the Gujarat Pollution Control Board ('GPCB' herein after), Office of the Superintendent of Customs, Bhavnagar, and Gujarat Maritime Board (in short, 'GMB') and the defendant-vessel is beached at USBC's ship re-cycling yard at Alang on 04.05.2024 for recycling / demolition / scrapping purpose and the USBC has obtained a beaching certificate from the GMB, certifying that the beaching has taken-place at midnight at 00:01 hours on 04.05.2024. According to the affidavit, the owner-USBC was served with the order of this Court dated 03.05.2024, on 04.05.2024, at 11:24 a.m. Singapore time.



4.5.3 The above facts were not disputed by the learned Advocate, Mr. Contractor, appearing for the plaintiff by filing any rejoinder. The affidavit, which is presented before this Court today, during the course of hearing, was served on him yesterday, i.e. on 07.05.2024, evening at 07:30 p.m. in the form of soft-copy, whereas, the physical copy was received to learned Advocate, Mr. Contractor, today morning, i.e. on 08.05.2024. This Court repeatedly put the question to the learned Sr. Advocate, Mr. Desai, for the plaintiff, as to whether, he would like to file an affidavit-in-rejoinder to the aforesaid affidavit, but, learned Sr. Advocate, Mr. Desai, politely refused to file any rejoinder and submitted that the defendant being owner of the vessel may be put to terms and they may be directed to provide some security and unless, such an order is passed, the plaintiff shall not be in a position to file any rejoinder and controvert the averments made in the affidavit.

4.5.4 ***In view of the above specific, refusal to file affidavit-in-rejoinder and even at the time, when this order was being dictated, at this juncture, the very same question was posed to learned Advocate, Mr. Contractor, and again, learned Advocate, Mr. Contractor, refused to file rejoinder.***

4.6 Thus, this Court has considered this matter, in absence of there being any rejoinder from the plaintiff and therefore, this matter is being heard and decided only on the basis of the submissions made by the learned Sr. Advocates and on the basis



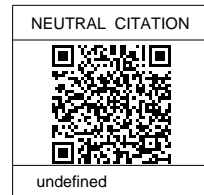
of facts, which are available on record, as today is the returnable date.

5. Learned Sr. Advocate, Mr. Anshin Desai, appearing with learned Advocate, Mr. Contractor, for the plaintiff made the following submissions;

(1) The plaintiff is a decree holder against the defendant-vessel, which is a decree *in rem*, and therefore, irrespective of the change of owners, the plaintiff can file this Suit, as Section 4, read with Section 9, of the Admiralty Act would indicate that the plaintiff is having maritime claim as well as maritime lien over the defendant-vessel;

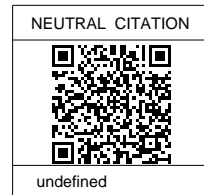
(2) It was submitted that the ground situation has changed after the issuance of notice by this Court on 03.05.2024, which is nothing but an act to over-reach the process of law by the defendant-vessel and what is required to be seen by the Court is the situation prevailing at the time of institution of the Suit and not the situation, which is prevailing, at the time, when the question of arrest of the defendant-vessel is being considered.

(3) It was, further, submitted that as far as the intention to purchase the ship for scrapping is concerned, the aspect that the owner of the ship-USBC has already paid the Customs Duty and has also submitted Bill of Entry, prior to the



institution of the Suit and the fact that the radar system of the defendant-vessel has already been destroyed and the ship is beached in the midnight of 04.05.2024, are not the significant factors, to suggest that this Court would not have maritime jurisdiction, as far as the Admiralty Suit is concerned, in view of the aspect of intention of beaching of the vessel.

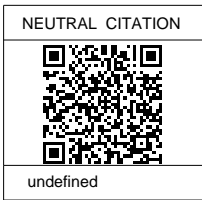
(4) The submissions were also made with regard to the conduct of the defendant and it was submitted that looking to the conduct of the defendant, just with a view to see that the plaintiff is unable to recover any amount in the form of maritime claim, the ownership of the defendant-vessel is changed. It was also submitted that in view of Section 2(1)(I) of the Admiralty Act, which defines the term 'Vessel'. As per the above definition, the conditions of the explanation to the above definition are not satisfied. Merely because the navigation system is destroyed, it would not make a vessel scrape, as there is a condition stated in the explanation that there must be a certificate issued by the surveyor that the vessel is broken or destroyed to the extent that it cannot be used for the navigation purpose. It was, further, submitted that the defendant-vessel has neither sunk, stranded nor abandoned and therefore, what is being projected as scrape is still a vessel. Therefore, this Court may exercise its admiralty jurisdiction and may grant the reliefs, as prayed for.



(5) It was, further, submitted that on the date of institution of the present Suit, i.e. on 02.05.2024, the defendant-vessel was very much in the territorial jurisdiction of this Court and therefore, this Court may entertain this Suit and grant reliefs as prayed for.

5.1 In support of the above submissions, learned Sr. Advocate, Mr. Desai, placed reliance on the decision of the Apex Court, rendered in the case of '**Rajender Bansal and Others Vs. Bhuru (Dead) through legal representatives and others**', reported in (2017) 4 SCC 202, and more particularly the observations made at Paragraph-18 thereof, and submitted that in respect of an admiralty suit, while considering the aspect of grant of relief, what is to be seen, is the situation prevailing at the time of institution of the Suit and not the situation that has taken place, subsequently.

5.2. Learned Sr. Advocate, Mr. Desai, next placed reliance on the decision in the case of '**Videsh Sanchar Nigam Limited Vs. M.V. Kapitan Kud and Other**', reported in (1996) 7 SCC 127 and more particular the observations made at Paragraph-14 thereof and submitted that the Court should stay the action on the ground, when hopelessness of the claim of the plaintiff is beyond doubt. It was submitted that, in the instant case, the plaintiff has a good arguable case, as there is a decree in favour of the plaintiff in respect of maritime claim and maritime lien and in view of the conduct of the defendant, first, jumping the arrest and thereafter, frequently changing the ownership of the defendant-vessel, it can



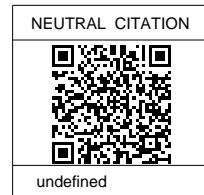
be seen beyond doubt that the intention of the defendant is to dupe the plaintiff by not paying the amount claimed by the plaintiff, towards its maritime claim and maritime lien.

5.3 It was, further, submitted that when the plaintiff came to know about the fact that the defendant-vessel is sailing toward India's western coast, i.e. Bhavnagar, the Suit was filed. The plaintiff does not have any control over intention and whatever happened behind its back and therefore, even if the affidavit indicates that with the intention of scrapping of the vessel, the same is purchased by the USBC and even before the Suit could be instituted, stamp duty and the bill of entry was paid, such aspects are of no relevance in view of the fact that the plaintiff had no information or knowledge about the same and therefore, the same would not be a relevant factor, while considering the claim of the petitioner.

5.4 Learned Sr. Advocate, Mr. Desai, further, submitted that in view of the provisions of Section 9(2) of the Admiralty Act, the maritime lien will remain in force, notwithstanding change of the ownership of the vessel.

6. *Per contra*, learned Sr. Advocate, Mr. Soparkar, appearing with learned Advocate, Mr. Mehta, for the USBC made following submissions;

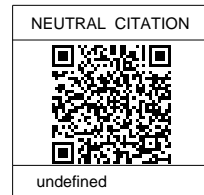
- (1) The present owner of the defendant-vessel, namely the



USBC, is the *bona fide* purchaser, who has purchased the same for the purpose of breaking or scrapping it and for which bill of entry, customs duty, were paid on 01.05.2024, pursuant to the sale agreement executed on 11.04.2024 and the entire amount was paid and 100 percent shares were acquired on 29.04.2024.

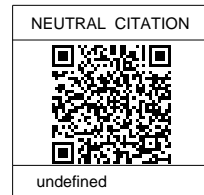
(2) Learned Sr. Advocate, Mr. Soparkar, took this Court through the documents produced on the record along with the affidavit, in the form of annexures, which indicates that various letters were written and the permission of the local authorities were sought, right from 22.04.2024 and all the authorities, namely GPCB, GMB and the Customs, have granted permission. Accordingly, all the formalities were completed on, or before, 01.05.2024 and thereafter, the permission for beaching the defendant-vessel was also sought, which was granted, and ultimately the beaching of the defendant-vessel took place on 04.05.2024, at 00:01 hours. It was submitted that, had the beaching taken place before about two minutes earlier, it could have been said that the beaching has taken place on 03.05.2024.

(3) It was submitted that the time, till the beaching was done on 04.05.2024, no notice, which was issued by this Court, was served on the defendant-vessel. Learned Sr. Advocate, Mr. Soparkar, referred to the photocopy of an E-mail, which was tendered by the learned Sr. Advocate, Mr.



Desai, during the course of argument, which also indicates that for the first time, the plaintiff had called the defendant on phone on 05.04.2024, at 07:42 India time or 10:12 a.m. Singapore time, which was after the beaching had taken place.

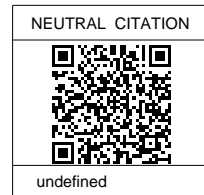
According to learned Sr. Advocate, Mr. Soparkar, once the beaching has taken place and the vessel has come to the land mass, in view of the language of Section 3 of the Admiralty Act, the territorial jurisdiction of this Court to exercise powers under the Admiralty Act would come to an end and therefore, as per the decision of this Court in the case of '**Destel Marine Limited Vs. M.V. Star 7**', rendered on 11.05.2011 in Admiralty Suit No. 1 of 2011 and the allied matters, once beaching takes place and the authorities have undertaken and completed all procedural formalities of beaching the vessel, including payment of customs duty etc., legally the owners become dis-entitled to navigate the vessel and therefore, from that moment the vessel, ceases to be a ship. Therefore, once the vessel is beached, it was no more in the territorial waters and the jurisdiction would be only of a Civil Court, as per the local law, and no admiralty jurisdiction can be invoked. It was submitted that the aforesaid view taken by the learned Single Judge of this Court is confirmed by the Division Bench of this Court vide order dated 14.06.2011, when the same was challenged before it by way of O.J. Appeal No. 36 of 2011 in Admiralty Suit No. 1 of 2011



and the allied matters, wherein, the Division Bench observed that once a ship is beached, it would be no more in the territorial waters and consequently, no admiralty jurisdiction can be invoked.

Learned Sr. Advocate, Mr. Soparkar, by relying on the aforesaid two decisions, submitted that in view of the aforesaid facts, when the GMB has issued a certificate on 06.05.2024, indicating that the ship was beached in the midnight of 04.05.2024, even before the notice issued by this Court could be served and therefore, this Court would have no powers to exercise admiralty jurisdiction in the case on hand and therefore, this Court may not entertain this Suit on the ground of jurisdiction, itself.

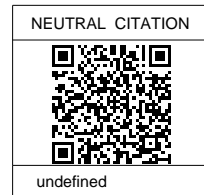
(4) It was, further, submitted that as the owner, i.e. the USBC, had shown its intention by writing letters to various authorities, i.e. GPCB, GMB, Customs Department, much before the present Suit could be instituted in the month of April, 2024, itself, that would show the intention of the owner that the defendant-vessel is purchased by it for the purpose of ship-breaking as well as considering the fact that the bill of entry as well as the relevant customs duty was also paid on 01.05.2024, which is prior to the date of institution of the present Suit, this Court may consider the aforesaid facts, coupled with the fact that the permission for beaching was granted on 03.05.2024 and the beaching took place in the



midnight of 04.05.2024, at 00:01 hours, i.e. before the notice issued by this Court could be served on the owner of the defendant-vessel and therefore, apart from the fact that this Court may not exercise admiralty jurisdiction in respect of the issue on hand, the same would also indicate that there was no intention on the part of the owner, the USBC, to overreach the process of law, as all the aforesaid formalities were completed, much before the notice, issued by this Court, could be served on the USBC.

(5) Thereafter, it was submitted that even the navigation system of the defendant-vessel has already been destroyed and a Panch Rojkam, to that effect, was also carried out on 04.05.2024, between 13:30 hours to 14:20 hours, which would indicate that, now, the defendant-vessel has not remained operational and the same is turned into scrap and therefore, the same can be termed as 'Goods' and not as a 'Vessel' and therefore also, this Court may not exercise its admiralty jurisdiction in respect of the issue on hand.

(6) It was also submitted that, as per the requirements of Sections 3.6.8, 3.6.9 and 3.22 of the Ship Breaking Code, 2013, once a ship is beached, the first and foremost requirement would be to destroy its navigation system and therefore, the owner - USBC has acted in accordance with the said Code.

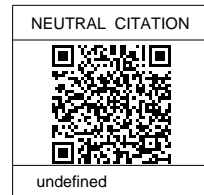


(7) It was submitted that the decree, which is held by the plaintiff, is not a decree *in rem*, but, it is a decree *in personam*, as the same is against the owner of the vessel. It was submitted that by way of the present Suit, the plaintiff is trying to execute the aforesaid decree issued by the High Court of Malaysia against the present owner – USBC , which is not permissible. It was submitted that with the change of the owners, such a decree or admiralty claim or admiralty lien cannot be claimed, when the owner of the ship has changed, in view of the clear language of Section 5 of the Admiralty Act.

In support of his submission, learned Sr. Advocate, Mr. Soparkar, placed reliance on the decision of the Apex Court, rendered in the case of '**Chrisomar Corporation Vs. MJR Steels Pvt. Ltd. and Another**', reported in (2018) 16 SCC 117 and more particularly, the observations made in Paragraphs- 30 and 32 thereof and submitted that the relevant date on which ownership of the vessel is to be determined is the date of arrest and not the date of the institution of the Suit.

6.1 By making the above submissions, learned Sr. Advocate, Mr. Soparkar, submitted that the Suit is required to be dismissed on more than one ground, i.e.

(1) This Court does not have jurisdiction to entertain this

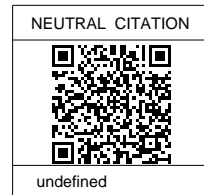


Suit, as the ship is beached and the relevant duties of the local authorities and the custom duties, GPCB etc. were obtained and bill of entry amount is also paid and therefore, in view of the decision of this Court in the case of '**Destel Marine Limited**' (Supra) and as the ship is already beached, this Court cannot exercise its admiralty jurisdiction in the case on hand.

(2) As the vessel has already been converted to goods, in view of the fact that the navigation system of the vessel has already been destroyed and therefore, the original character of the vessel is not retained, the dispute would be out of the purview of the admiralty jurisdiction;

(3) Since, the plaintiff is not ready to file affidavit-in-rejoinder and to controvert the affidavit filed by the owner – USBC, the same may be treated as admitted and in view of the fact that there is an implied admission of the contents of the affidavit filed by the owner of the vessel – USBC, the Suit has become infructuos in view of the fact that the navigation system of the vessel has already been destroyed and the original character of the vessel is lost and now, the vessel is converted into goods;

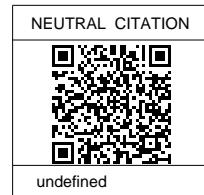
6.2 So far as the decision relied upon by the learned Sr. Advocate, Mr. Desai, in the case of '**Videsh Sanchar Nigam Limited**' (Supra) and more particularly the observations made in



Paragraph-14 thereof are concerned, learned Sr. Advocate, Mr. Soparkar, placed reliance on the CAV order dated 03.05.2019, passed by the Coordinate Bench of this Court in the case of '**M.V. Global Diamond (IMO No. 9145774) Vs. Siva Bulk DMCC**' in Civil Application (for Vacating Interim Relief) No. 1 of 2019 in Admiralty Suit No. 6 of 2019 , and more particularly, the observations made in Paragraphs- 36 and 37 thereof and it was submitted that even when the claim of the plaintiff is not vexatious, but, are against the vessel, which does not belong to the persons, against whom the claim is raised, the decision of the Hon'ble Apex Court in the case of '**Videsh Sanchar Nigam Limited**' (Supra) shall not be applicable.

6.3 By making the aforesaid submission, learned Sr. Advocate, Mr. Soparkar, prayed that this Suit may be dismissed.

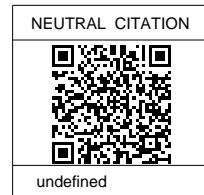
7. In rejoinder, learned Sr. Advocate, Mr. Desai, submitted that the plaintiff was not having knowledge about the intentions of the owner, as the owner – USBC was never in the picture, until the Suit was filed and the notice was served. It was, further, submitted that there are triable issues, as regards ownership of the defendant-vessel is concerned, as the same has changed hands frequently. It was submitted that, in view of the fact that at the time, when the Suit was instituted on 02.05.2024, the vessel was very much within the territorial waters of this Court and therefore, the Suit may not be dismissed on the ground of jurisdiction.



7.1 It was also submitted that the decision relied upon by the learned Sr. Advocate, Mr. Soparkar, in the case of '***M.V. Global Diamond (IMO No. 9145774)***' (Supra) shall not apply in the facts of the present case, as the aforesaid view was taken by the Coordinate Bench of this Court in view of the peculiar facts of that case.

7.2 It was also submitted that, so far as the judgment relied on by the learned Sr. Advocate, Mr. Soparkar, in the case of '***Chrisomar Corporation***' (Supra) is concerned, the same is in respect of issue of ownership and considering the fact that today, the issue before this Court is not with regard to the ownership, aforesaid judgment shall not apply to the facts of the case on hand. Therefore, he prayed that the owner of the defendant-vessel, i.e. the USBC, may be put to terms and may be directed to furnish security to defend the Suit and that the owner of the defendant-vessel may be directed to maintain status quo in respect of the vessel, as is prevailing today.

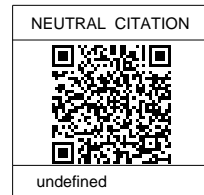
7.3 Learned Sr. Advocate, Mr. Desai, lastly, submitted that the decision relied in respect of beaching and jurisdiction of this Court under the Admiralty Act is concerned, those decisions are of the year 2011, i.e. before the Admiralty Act of 2017 came into force, and therefore, now, once the act is codified, the aforesaid decisions, prior to the act came into force are not applicable in the facts of this case. Further, it was also pointed out that the aspect of beaching or bill of entry or intention are not the part of statute and



therefore, those considerations, while exercising the admiralty jurisdiction, cannot be said to be relevant consideration in light of fact that, now, the Admiralty Act of 2017 is in force.

7.3.1 In respect of the aforesaid submission, it was clarified by learned Sr. Advocate, Mr. Soparkar, that, though, before 2017 the act was not in force, but, even Section 3 of the Act of 2017 refers to the fact that the jurisdiction could be exercised, only in respect of waters, up to and including, territorial waters of the respective jurisdiction of the High Court in accordance with the provisions contained in the Act. It was, further, submitted that in view of the observations made by the Division Bench as well as the Coordinate Bench of this Court, as well as considering the fact that the emphasis is put in Section 3 of the Act is on the term 'water' and therefore, once the beaching is done and the vessel is kept on the land mass, the Court can exercise the jurisdiction over the vessel only till it is within the waters and once, it is beached or is kept on the land mass, this Court may not exercise jurisdiction, as is held by the Division Bench as well as the Learned Single Judge of this Court.

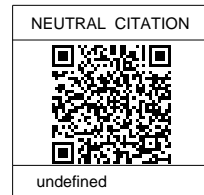
7.3.2 It was also submitted that the aforesaid situation has not changed, after the act was codified and the same came into force and therefore, though, aforesaid were not the considerations in the year 2017, considering the definition of Section 3, read with Section 5, of the Act along with the observations made by the Division Bench and the learned Single Judge of this Court in the



case of '**Destel Marine Limited**' (Supra), this Court may not exercise the jurisdiction in the case on hand. It was, therefore, prayed that this Suit may be dismissed.

8. I have heard the learned Sr. Advocates for the parties and perused the material on record. Considering the fact that both the learned Sr. Advocates have made submissions with regard to the exercise of Admiralty jurisdiction by this Court as well, I will, first, deal with the aforesaid aspect and if, I find that this Court has admiralty jurisdiction over the issue on hand, I will deem it appropriate to deal with the other submissions made by them.

8.1 While dealing with the submissions made by the learned Sr. Advocates for the parties, I have kept in mind the fact that this Court had repeatedly asked the learned Sr. Advocate, Mr. Desai, for the plaintiff about his willingness to file rejoinder and since, no willingness was shown to file the rejoinder or the conditional willingness was shown and the matter was argued for about four hours and coupled with the fact that the affidavit was served on the learned Advocate for the plaintiff yesterday, i.e. on 07.05.2024, and the said fact is not disputed by the learned Advocate, Mr. Contractor, and today also no request for time was made to file rejoinder and that even at the time of argument and even at the time of dictation of this judgment no willingness was shown, I have considered the submissions made by both the learned Sr. Advocates, keeping the aforesaid aspects in mind.



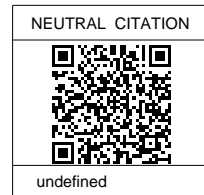
8.2 In view of the fact that, no rejoinder is filed and the contents of the affidavit are not controverted, coupled with the fact that, at one point of time, this Court also suggested to learned Sr. Advocate, Mr. Desai, that if, he has any doubt about the certificates issued by the government authorities, i.e. GPCB, GMB, Customs authorities, this Court was ready and willing to adjourn this matter upto tomorrow with a condition to join all the aforesaid three authorities as the defendants in the Suit, so as to verify the genuineness of the documents and in the meantime parties would be directed to maintain *status quo* qua the condition of the vessel, but, as the aforesaid suggestion was not accepted by the learned Sr. Advocate, Mr. Desai, the Court proceeded with the matter, with the limited material, which is available on the record.

8.3 On perusal of the material on record, I found that the Suit was instituted on 02.05.2024 and before 02.04.2024 following events have already taken place;

(1) On 05.04.2024, Jennifer Shipping INC was the owner of the defendant-vessel;

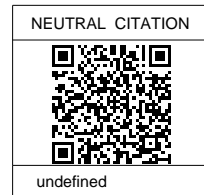
(2) Then, by virtue of an agreement dated 08.04.2024, executed between Jennifer Shipping INC and Care Cabotage, the Care Cabotage became the owner of the defendant-vessel;

(3) By virtue of the agreement executed between



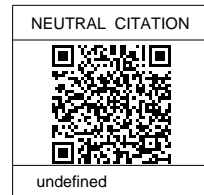
Care Cabotage and the USBC on 11.04.2024, the USBC became the owner of the defendant-vessel on 29.04.2024, upon making the payment of full amount of consideration and by acquiring 100 per cent shares thereof;

8.4 The documentary evidence submitted by the USBC, along with the affidavit-in-reply filed by it, indicates that some correspondence had taken place pursuant to various application made by the Demo Shipping Services, who is the agent of the present owner, i.e. the USBC, of the defendant vessel, with various authorities, like GPCB, GMB, Customs department etc. and all the three authorities had issued communications on 22.04.2024 and on 23.04.2024, in respect of anchorage permission to the MT KEL, which is the defendant in this case. Further, the bill of entry was submitted to the authorities on 01.05.2024 and even the customs duty was paid on 01.05.2024. Both these documents indicate that the formalities of seeking necessary permission as well as payment of customs duty and bill of entry was over, even before the Suit could be instituted. Aforesaid aspect, though, was orally questioned, when it came to verify the same by impleading those authorities as party respondents, learned Sr. Advocate appearing for the plaintiff was not ready to do so and on account of such denial, suspicion over the genuineness of the documents cannot be believed. However, upon verification of the documents I find that the notice for readiness in respect of the defendant-vessel was issued on



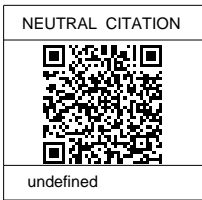
03.05.2024 and the physical delivery thereof was made to the present owner – USBC on 03.05.2024, at 14:20 hours and necessary charges were also paid and a request was made to issue ‘No Objection Certificate’ to the Superintendent of Customs, Bhavnagar, on 03.05.2024 for which the payment was also made on 03.05.2024 and ultimately, on 03.04.2024, GPCB, Customs Department and GMB granted NOC to the defendant-vessel, for beaching as well as for completing the remaining formalities, and accordingly, the beaching of the defendant-vessel took place on midnight of 04.05.2024, at 00:01 hours. Thereafter, a Panch Rojkam, to that effect, was also done on 04.05.2024, between 13:30 hours to 14:20 hours, which would go to show that, now, the defendant-vessel has become non-operational, i.e. even before the notice issued by this Court on 03.04.2024 could be served on the defendant-vessel, as the same was served in the morning of 04.05.2024, at about 07:42 a.m., as is stated by the learned Advocate, Mr. Contractor, on the basis of a copy of the email submitted by him and by that time all the formalities had been completed and the beaching had already taken place, which is much prior to the time when the notice issued by this Court could be served on the defendant-vessel. Therefore, the submission made by the learned Sr. Advocate, Mr. Desai, that the defendant has tried to over-reach the process of law, cannot be accepted, in view of the aforesaid factual scenario.

8.5 Secondly, while dealing with the question about the exercise of the jurisdiction under the Admiralty Act, the Coordinate Bench of



this Court in the case of '**Destel Marine Limited**' (Supra), observed as under at Paragraph-8 thereof;

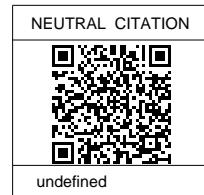
“8. In the admiralty jurisdiction of this Court, this Court can entertain an action in rem against a ship. The General Clauses Act also defines the term "Ship" but it also gives inclusive definition. Therefore, so far as the meaning of the term "Ship" is concerned, we will have to go back to the meaning attached to the term in common parlance. Dictionary meaning of the term "Ship" is a vessel employed in navigation. Thus navigability of the vessel is a dominant factor in deciding whether it is a ship or not. The navigability of a vessel will depend not only on its mechanical navigability but also on its legal navigability. Once the Authorities have undertaken and completed all the procedural formalities of beaching of the vessel, including payment of customs duty, etc., legally, the owners became disentitled to navigate the vessel, and therefore, from that moment the vessel ceased to be a ship. The defendant vessel was making final voyage for shipbreaking and when it was imported into India it was definitely a ship but the moment the buyers declared their intention to discontinue its use as ship or a vessel and not only declared their intention but acted pursuant to that intention and made declarations before the authorities and paid amounts, customs duty, etc., the intention was manifest to discontinue the use of the defendant vessel as a



ship. In any case, when in the early morning at 4.30 a.m. on 5th January 2011 as per the certificate issued by the Gujarat Maritime Board, the vessel was beached for the purpose of demolition or breaking up, it could not have been described as a ship or a vessel. In my opinion, therefore, the defendant-vessel was not amenable to an action in rem on 5.1.2011 and, therefore, obviously it could not have been arrested. Once the vessel was beached, it was no more in the territorial waters and the jurisdiction would be only of Civil Court as per the local law and no admiralty jurisdiction could have been invoked. Further, once the vessel was beached, it was no more in the territorial waters and the jurisdiction would be only of Civil Court as per the local law and no admiralty jurisdiction could have been invoked. In view of the law laid down by this Court in the case of Western Ship Breaking Industry vs. Laiki Bank (Helias) S.A., Manu/GJ/8251, the present suit deserves to be dismissed.”

8.6 When the aforesaid decision was carried into appeal, by way of OJ Appeal No. 36 of 2011 and the allied matters, the Division Bench of this Court dismissed the appeals, while observing as under at Paragraphs- 12 to 13, thereof;

“10. It is also undisputed position that the admiralty suit has been entertained and interim orders came to be passed on 5.1.2011 during Court hours, which, in any



case, is after the beaching of the ship at 4.30 a.m., on 5.1.2011. We have gone through the reasons recorded by the learned Single Judge of this Court in the impugned judgement, including two views of Bombay High Court, one of the learned Single Judge and another of the learned Division Bench and it appears to us that the learned Single Judge of this Court has rightly found that the moment the buyer declared his intention to discontinue to use it as a ship, or as a vessel and further act upon the intention and has made declaration before the authorities and has paid the customs duty etc., the intention is further materialized. In any case, the ship has also been beached for demolition purpose and once the ship is beached, it was not amenable to the action in ram, which is a sine qua non for invoking the admiralty jurisdiction. Further, once the ship is beached and it would no more be in the territorial waters and consequently no admiralty jurisdiction could be invoked. Additionally, once a ship is beached and it is on the land mass, the jurisdiction would be of the Civil Court as per the local laws and no admiralty jurisdiction could be invoked.

11. We may incidentally mention that another learned Single Judge of this Court in Civil Application No.6 of 2006 in Admiralty Suit No.1/2006 had also an occasion to consider the aspects of navigability of the vessel/ship and it was, inter alia, observed at paragraph 23 as under:-

“23. ... Navigability of a vessel is dominant factor in deciding whether it is a ship or not. Navigability of a vessel would not depend only on its mechanical navigability, but would also depend on its legal navigability. From the facts, it would clearly appear that the Intervener declared their intention to

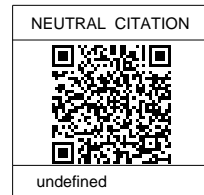


authorities in India that they were importing goods in India and they wanted to discontinue its use as a ship for carrying cargo or passengers and they accordingly paid the customs duty on the vessel as goods, the owners became disentitled to navigate the vessel, and therefore, the vessel ceased to be a ship on its import after payment of the custom duty for its home consumption. ...”

12. We may also record that in the above referred decision, the learned Single Judge of this Court did consider the view of the Bombay High Court, which has also been considered by the learned Single Judge of this Court in the impugned judgement.

13. Considering the facts and circumstances, we find that the views taken by the learned Single Judge in the impugned judgements do not call for interference.”

8.7 Considering the fact that the Division Bench of this Court, while reproducing the observations made at Paragraph-8 by the learned Single Judge, confirmed the view taken by the Coordinate Bench of this Court and it was categorically observed at Paragraph-10 thereof that once a ship is beached, it would not be in the territorial waters, coupled with the fact that, once ship is beached and it is placed on the land mass, the jurisdiction, which would be applicable, would be that of a Civil Court. Therefore, this Court is of the view that, in the instant case, as can be seen from the documents, which are not controverted by the learned Sr. Advocate appearing for the defendant-vessel, once the ship is beached and it is placed on the land mass, this Court cannot

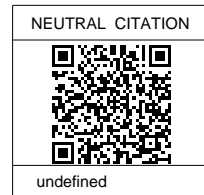


exercise its admiralty jurisdiction.

8.7.1 So far as the submission made by the learned Sr. Advocate, Mr. Desai, that the aforesaid decision is in respect of an era, i.e. prior to the year 2017, when the Admiralty Act was not enacted is concerned, considering the fact that, though, at the relevant point of time the Admiralty Act was not there and that the same has come into force in the year 2017, considering Section 3 of the Admiralty Act, which reads thus;

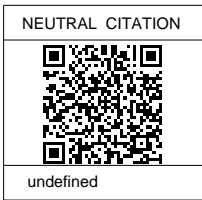
“3. Admiralty jurisdiction.—Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: Provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976).”

8.7.2 If, the language of Section 3 of the Admiralty Act is considered, it specifically provides that the admiralty jurisdiction can be exercised by respective High Courts over the waters, up to and including the territorial waters of their respective jurisdictions, in accordance with the provisions contained in this Act, which



would mean that even the language of Section 3 of the Admiralty Act does not state anything about the vessel, which is beached. Meaning thereby, the jurisdiction under the Admiralty Act cannot be exercised in respect of a vessel, which is on the land mass and the same can be exercised, only in respect of the vessels, which are in the territorial waters of the concerned High Court.

8.8 In the instant case, the documents produced on record, indicate that the defendant-vessel has already been beached and therefore, the same cannot be said within the territorial waters and hence, this Court would not exercise admiralty jurisdiction in respect of a vessel, which is already on the land mass. Further, considering the decision of the Division Bench as well as the Coordinate Bench of this Court rendered in the case of '**Destel Marine Limited**' (Supra), wherein, it is held that the 'intention' on the part of the owner to use the ship for breaking purpose, itself, is sufficient. In the instant case also, not only the navigation system of the ship is destroyed but also the owners has undertaken and completed all the formalities for beaching the vessel, including the payment of customs duty etc., and also considering the fact that the defendant-vessel is purchased for the purpose of scrapping or breaking it, the same has lost its significance as a vessel and therefore, the same would no longer remain a ship or vessel, in view of the fact that its navigation system has already been destroyed. Therefore, the present Suit cannot be entertained by this Court, in exercise of its power under the Admiralty Act, as the vessel has not remained vessel any more and it has turned into a



scrape.

8.9 In view of the above discussion, this Court finds that the defendant-vessel has already beached and as the same is purchased for the purpose of turning it into scrape and that for the said purpose, the navigation system of the defendant-vessel also has already been destroyed, the defendant-vessel no longer can be considered to be a vessel and therefore, maritime jurisdiction cannot be exercised in this case.

9. Accordingly, the present Suit does not deserve to be entertained for the reasons stated herein above and the same is ***DISMISSED***, on the ground of jurisdiction. However, it shall be open to the petitioner to avail, any other remedy, available under the law, as this Court has not gone into the merits of the matter.

9.1 In view of the dismissal of the present Suit on the ground of jurisdiction and not on merits, the Registry is directed to verify, as to whether, as per the rules, the plaintiff is entitled to refund of the court fees or not and if, it is found to be entitled for the refund, the same may be refunded to it.

UMESH/-

Sd./-
(NIRZAR S. DESAI,J)