



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

In the High Court of Judicature at Madras

WEB COPY

Reserved on 02.2.2026	Delivered on: 06.2.2026
---------------------------------	-----------------------------------

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Application Nos.6081 of 2025 & 155 of 2026
in C.S.(Comm.Div.) No.314 of 2025

Om Freight Forwarders Limited,
a company incorporated under the
laws of India having its regd. office
at 101, Jayant Apartments, 'A' Wing,
Opp Sahar Cargo Complex, Sahar
Andheri E, Mumbai-400099,
Maharashtra, India, through its
Authorised Signatory
Mr.Raj Ashwin Joshi

...Applicant in A.No.
6081/2025 &
Respondent in A.No.
155 of 2026 &
Plaintiff in CS

Vs

Owners and Parties interested in
M.V.Nereus Progress [IMO 9170913],
a Motor Vessel flying the flag of
St.Kitts and Nevis, lying at the
V.O.Chidambaranar Port and



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY rep. by her Master

...Respondent in
A.No.6081/2025 &
Applicant in A.No.
155/2026 &
Defendant in CS

CIVIL SUIT filed under ORDER VII Rule 1 of the Civil Procedure Code read with ORDER IV Rule 1 of the Madras High Court Original Side Rules and Section 16 of the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 and Rules 2 & 3 of the Rules for Regulating the Procedure and Practice in Cases brought before the High Court of Judicature at Madras in exercise of its Admiralty Jurisdiction framed by the High Court praying for a judgment and decree against the defendant vessel for a sum of RS.8,82,42,636.70 Ps (comprising of principal amount of US\$ 73,550.06 (equivalent to Rs.66,10,679.39 Ps) and Rs.6,90,18,750.20 Ps plus interest of US\$ 20,069.03 (equivalent to Rs.18,03,804.42 Ps) and Rs.55,09,402.66 Ps plus legal costs of Rs.53,00,000/- along with contractual rate of interest at 18 percent per annum on the principal outstanding sum of Rs.7,55,97,802/- from the date of this plaint till the date of realization' for arrest and sale of the defendant vessel m.v. NEREUS PROGRESS in as is where is condition together with the engines, tackles, cranes, paraphernalia, fixtures, furniture and fittings presently in Indian waters at V.O.Chidambaranar Port, Tuticorin, Tamil Nadu State, India within the jurisdiction of this Court and territorial waters of



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY India; for a direction to adjust the sale proceeds of the defendant vessel m.v. NEREUS PROGRESS against the suit claim; and for costs of this suit;

APPLICATION No.6081 of 2025 filed under Order XIV Rule 8 of Original Side Rules read with Sections 4 and 5 of the Admiralty (Jurisdiction and Settlement of Maritimes) Act, 2017 and Section 151 of the Code of Civil Procedure, 1908 praying to grant an interim arrest of the Vessel mv NEREUS PROGRESS, flying a flag St.Kitts and Nevis and having IMO No.9170913 together with engines, tackles, cranes, derricks, machinery and other paraphernalia and articles on board the said vessel, presently flying in the V.O.Chidambaranar Port or wherever she is found within the territorial waters of India pending disposal of the above suit; and

APPLICATION No.155 of 2026 praying to vacate the ex-parte order of arrest dated 04.12.2025 passed in Application No.6081 of 2025 in C.S.(Comm.Div.) No.314 of 2025 and order immediate release of the vessel M.V. NEREUS PROGRESS IMO No. 9170913 from arrest.

For Applicant in
A.No.6081 of 2025 &
Respondent in
A.No.155 of 2026 &
Plaintiff in CS

: Mr.Aswin Shankar
Mr.P.Giridharan
Mr.H.Siddharth &
Mr.Sunand Subramanian



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

For Respondent in
A.No.6081 of 2025 &
Applicant in
A.No.155 of 2026 &
Defendant in CS

: Mr.Dhruva Gandhi
Ms.Deepika Murali
Mr.R.Anila
Mr.K.Harinarayanan &
Mr.Naishad Bharia

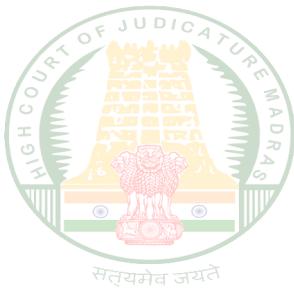
COMMON ORDER

In this common order, the parties will be referred to as they are arrayed in the civil suit.

2. A.No.6081 of 2025 has been filed by the plaintiff seeking for arrest of the vessel lying at V.O.Chidambaranar Port, Tuticorin pending disposal of C.S.(C.D.) No.314 of 2025.

3. When A.No.6081 of 2025 came up for hearing on 04.12.2025, this Court passed the following order:

"This application has been filed for arrest of the vessel MV NEREUS PROGRESS, flying a flag of St.Kitts and Nevis and having IMO No.9170913 together with engines, tackles,



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

cranes, derricks, machinery and other paraphernalia and articles on board the said vessel, presently lying in the V.O.Chidambaranar Port or wherever she is found within the territorial waters of India, pending disposal of the above suit.

2. Heard the learned counsel for the applicant/plaintiff and carefully perused the materials available on record.

3. The applicant is the registered owner of the vessel MV NEREUS PROGRESS, The respondent/defendant is the motor vessel NEREUS PROGRESS. The respondent vessel registered owner is HK Shipping Limited.

4. The applicant has obtained the respondent Vessel's Transcript, as of 27.11.2025 from St.Kitts and Nevis International Ship Registry. The further case of the applicant is that Nereides Marine Services is nothing but the Bareboard Charterer of HK Shipping Limited and it continues to be a Bareboat Charterer of the Vessel and the present Voyage for which the respondent vessel is calling at V.O.Chidambaranar Port, is based on the instructions of the Nereides Marine Services.

5. The case of the applicant is that on 24.7.2024, the applicant as the owner of the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

vessel MV.Bharadwaj Bareboard Chartered MV. Bharadwaj to Nareides Marine Services, UAE for a period of 4 years. The parties were governed by the terms of the Charterparty. Between September 2024 and August 2025, the Bareboard Charterer delayed in making payments of certain hire payment to the applicant under the Charterparty. Hence, on 26.8.2024, Nereus Marine Private Limited which is an affiliate Company of the Bareboard Charterer, agreed to act as a guarantor of the Bareboat Charterers' obligations under the Charterparty. Pursuant to the guarantee undertaking, the applicant raised invoices upon the Bareboard Charterer to the total tune of USD353,293.92 and there was an outstanding of USD73,550.06. Insofar the invoices that was raised on the guarantor, it was for the total amount to the tune of Rs.7,92,52,462.20 out of which there was a total outstanding of Rs.6,90,18,750.20.

6. According to the applicant, as of 30.11.2025, a principal sum of USD73,550.06 and Rs.6,90,18,750.20 which approximately aggregates to Rs.7,56,29,429.59 is due and payable by the Bareboard Charterer to the applicant. The demand that was raised by the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

applicant upon the Bareboard Charterer and the guarantor did not evoke any response. In fact, the cheques issued in this regard were dishonored due to insufficient funds/closed account.

7. It is under these circumstances, the present suit has been filed for recovery of money and for arrest and sale of the Vessel belonging to the defendant.

8. The learned counsel for the applicant submitted that the applicant has a maritime claim against the respondent Vessel under Section 4(1)(h) r/w Section 5(1)(b) and 5(2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and therefore is entitled to assert its maritime claim for the recovery of the amounts due and payable to the applicant.

*9. This Court is of the considered view that a *prima facie* case has been made out by the plaintiff for grant of arrest. The balance of convenience and irreparable hardship has also been established by the plaintiff.*

10. For the foregoing reasons, this Court is of the considered view that to protect the interest of the plaintiff suit claim, this Court is inclined to grant an order of arrest of the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

defendant vessel, which is now lying at the V.O.Chidambaranar Post, Tuticorin, which is within the Admiralty jurisdiction of this Court. Accordingly, there shall be an order of arrest of the defendant vessel MV NEREUS PROGRESS, as prayed for in this application.

11. Notice to the respondent/defendant returnable by 8.01.2026. Registry is directed to issue Warrant of Arrest as per the Admiralty Rules of this Court forthwith. The learned counsel for the plaintiff is permitted to communicate this order to all the authorities including the Master of the defendant vessel, through all modes of service including by email. On receipt of such communication, the Authorities shall act upon the same immediately.”

4. After service of notice, the respondent/defendant filed A.No.155 of 2026 seeking to vacate the interim order granted on 04.12.2025 in A.No.6081 of 2025 and consequently for immediate release of the vessel.

5. Heard the learned counsel appearing on either side.

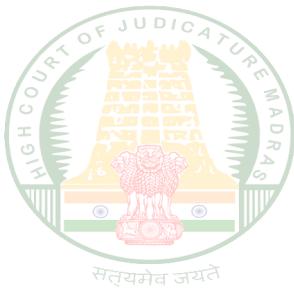


*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY 6. A.No.155 of 2026 has been filed by the defendant to vacate the interim order granted on 04.12.2025 in A.No.6081 of 2025 by taking the following stand:

(i) The defendant entered into a bareboat charter-party dated 03.10.2024 with one M/s.Nereides Marine Services, which is the bareboat charterer in respect of the vessel for a period of three years. The said charter-party, under Clause 31, provides for termination and the owners are entitled to terminate the charter-party *inter alia* for non payment of hire as stipulated under Clause 15 of the charter-party.

(ii) Clause 15 of the charter-party pertaining to hire has been substituted by rider clauses to Barecon-2017 and more specifically Clause 6. In view of the same, since there was a default in payment of hire, the defendant, through their solicitors, issued a demand notice dated 22.9.2025 to the bareboat charterer, which failed to pay the outstanding sum of USD 695,500. Thereafter, it was followed up with another letter dated 24.9.2025 by informing that the defendant was considering termination of the charter-party in terms of Clause 31.



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY (iii) In spite of receipt of the demand notice/letter, there was no response and hence, another notice was issued on 27.10.2025 through the solicitors, by which, it was made clear that the charter-party would be terminated in case of default. As a follow up measure, on 06.11.2025, the defendant issued an anti technicality notice to the bareboat charterer wherein it was stated that if the payment was not received during the grace period, the defendant would terminate the charter-party.

(iv) In spite of receipt of the said notice, the payment was not forthcoming and therefore, the defendant issued a termination notice dated 13.11.2025 and thereby lawfully terminated the bareboat charter-party with immediate effect under Clause 31(a)(i) for being in breach of the terms of hire. In the light of the above development, the defendant took a stand that with effect from 13.11.2025, the bareboat charter's relationship with the defendant vessel stood completely severed.

(v) The possession in the hands of the charterer, at best, can only be in its capacity as a gratuitous bailee pending repossession by the owner. Therefore, the order of arrest passed by this Court on



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COP 04.12.2025 subsequent to the termination notice dated 13.11.2025

is unsustainable since the entire foundation of arrest under Section 5(1)(b) of the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 (for short, the Act) is not satisfied.

(vi) Apart from the above, the defendant has also raised certain other issues to the effect that the claim made by the plaintiff is unsubstantiated and is based on bald allegations. Hence, the defendant sought for vacating the interim order dated 04.12.2025 passed by this Court in A.No.6081 of 2025.

7. The learned counsel appearing for the plaintiff submitted that the purported termination notice does not reduce the status of the said M/s.Nereides Marine Services (bareboat charterer) as a gratuitous bailee since the defendant has not taken any steps to repossess the vessel after allegedly terminating the charter-party, that apart from that, the defendant has not even taken any steps to recover the amount due and payable from the bareboat charterer, that therefore, the issue as to whether there was a valid termination of the charter-party looms large and that it becomes a triable issue.



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

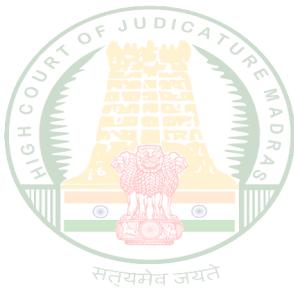
WEB COPY 8. It was further submitted on the side of the plaintiff that the charter-party produced by the defendant would describe the owner as M/s.H&K Shipping Limited and not as M/s.HK Shipping Limited, which was shown to be the owner of the vessel, that in the charter-party, at S.No.30, M/s.H&K Shipping Limited was shown to be under the care of one M/s.Gulf Maritime Shipbrokers & Consultants whereas in the equasis, M/s.HK Shipping Limited was shown to be under the care of the bareboat charterer, that these discrepancies in the very description of the owner entity is again a triable issue, which can be decided only in the suit and that since the defendant has not come forward to offer security and as such, no security is available with the plaintiff to recover the amount, the interim order passed by this Court has to be made absolute.

9. The learned counsel for the plaintiff, in order to substantiate their submissions, relied upon the following judgments:

"(i) of the Hon'ble Supreme Court in

Videsh Sanchar Nigam Ltd. Vs. M.V.

Kapitan Kud [reported in 1996 (7) SCC



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

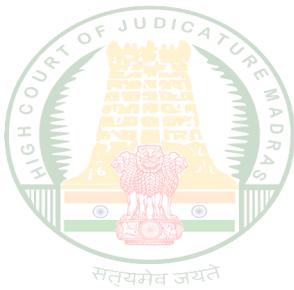
WEB COPY

127];

(ii) of a learned Single Judge of this Court in **Value Shipping Limited Vs. Owners & Parties interested in the Vessel MV Nadhenu Purna [Application Nos.138 & 479 of 2024 in C.S. (Comm.Div.) No.4 of 2024 dated 08.2.2024];**

(iii) of a Division Bench of this Court in **Owners & Parties interested in the Vessel TINA Vs. STX Corporation, Seoul, Korea rep. by its Authorized Signatory Mr.S. Senthil [O.S.A.No.256 of 2016 dated 24.10.2018];**

(iv) of a learned Single Judge of the Bombay High Court in **Siem Offshore Redri AS Vs. Altus Uber [reported in 2018 SCC OnLine Bombay 2730];**



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

(v) of a Division Bench of the Bombay

High Court in ***Altus Uber Vs. Siem Offshore Redri AS [reported in 2019 SCC OnLine Bombay 1327];***

(vi) of the Hon'ble Supreme Court in

Great Eastern Shipping Company Limited Vs. State of Karnataka [reported in 2020 (3) SCC 354];

(vii) of a learned Single Judge of the Singapore High Court in ***the Chem Orchid [reported in 2015 SGHC 50];***

(viii) of a learned Single Judge of the Kuala Lampur High Court in ***New World P&I Service Co.Ltd. Vs. the Disponent Owner and/or the Demise Charterer of the Ship and/or Vessel 'Es Valor' of the Port of Monrovia, Liberia [Huihong (Tianjin) Shipping Lease Co.Ltd. Intervener] [reported in 2024 Malayan***



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

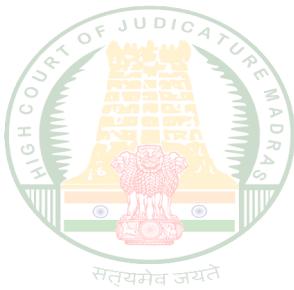
Law Journal Unreported 3653];

(ix) of the Court of Appeal (Civil Division) of England and Wales in ***Bridge Oil Ltd. Vs. Owners and/or Demise Charterers of the ship Giuseppe de Vittorio [reported in 1998 (3) LRC 214];***

(x) of the Court of Appeal of the Democratic Socialist Republic of Sri Lanka in ***Navi Bunkering Crop Vs. M.V.Evangeli [reported in CA/REM/02/2018];***

(xi) of the Court of Appeal (Civil Division) of England and Wales in ***Songa Product & Chemical Tankers III AS Vs. Kairos Shipping II LLC [reported in 2025 EWCA Civ 1227];*** and

(xii) of the Court of Appeal (Civil Division) of England and Wales in ***Ark Shipping Company LLC Vs. Sil Verburn Shipping (IOM) Ltd. [reported in 2019***



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

EWCA Civ 1161J."

10. Per contra, the learned counsel for the defendant submitted that there is an undisputed claim made by the owner of the vessel, that the liability has been acknowledged by the bareboat charterer, that on the admitted amount not being repaid back to the defendant, the charter-party agreement provides for termination of the agreement, that accordingly, the agreement stood terminated through the termination notice dated 13.11.2025 with immediate effect, that the defendant had also sought for the vessel's location to enable repossession of the same, that even thereafter, the defendant took active steps to effect repossession by e-mail dated 15.11.2025 and communication dated 19.11.2025, that the requirement of the defendant is only to take effective steps to repossess the vessel pursuant to the termination notice and that the said requisite has been sufficiently fulfilled in the case in hand.

11. The learned counsel appearing for the defendant further submitted that the bareboat charterer is holding the vessel in



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY possession as a gratuitous bailee solely for the benefit of the owner,

that therefore, the order of arrest passed on 04.12.2025 after the issuance of the termination notice dated 13.11.2025 is unsustainable in law, that the claim made by the plaintiff arising in connection with the charter-party with that of the bareboat charterer cannot be fastened on to the vessel of the defendant and that it goes beyond the scope and ambit of Section 5(1)(b) of the Act.

12. The learned counsel for the defendant also submitted that the plaintiff is a complete stranger to the charter-party and does not have the *locus standi* to dispute or question the recourse taken by the defendant and that the plaintiff cannot question the validity of the termination of the charter-party undertaken by the defendant.

13. In so far as the alleged discrepancy in the name of the owner of the vessel is concerned, it was contended on the side of the defendant that the bareboat charter was between M/s.HK Shipping Limited and the bareboat charterer, that just because it



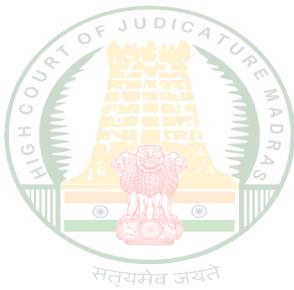
A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY has been shown as M/s.HK Shipping Limited in some of the documents, that, by itself, would not create any doubt as was contended by the plaintiff and that the company's seal that was affixed in those documents clearly established the name of the entity as M/s.HK Shipping Limited, Marshal Islands.

14. The learned counsel appearing for the defendant also relied upon the decision of the Court of Appeal of England and Wales in ***Songa Project & Chemical Tankers III AS*** and the decision of the Federal Court of Australia in ***the Ships Hako Endeavour etc. Vs. Programmed Total Marine Services Pty Ltd. [reported in 2013 FCAFC 21].***

15. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

16. At the outset, before dealing with the issues that have been raised in these applications, this Court must bear in mind the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY factors to be considered for the release of a vessel arrested pursuant to a claim made by filing an admiralty suit.

17. The oft quoted judgment of the Hon'ble Apex Court in ***Videsh Sanchar Nigam Limited*** must be borne in mind wherein it has been held that the crucial question is as to whether the plaintiff has made out a *prima facie* case.

18. When the interim order has been passed by this Court on 04.12.2025, this Court, on considering the entire materials, was satisfied that the plaintiff, in fact, made out a *prima facie* case. As a corollary, it must also be held that the proceedings initiated by the plaintiff was not vexatious or frivolous so as to halt the proceedings in limine.

19. The Court must always bear in mind that where a strong triable case has been made out by the plaintiff, the Court has to be circumspect in releasing the ship that has been arrested in the absence of any other security since, if a foreign ship leaves the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

shores of the Indian territorial waters, it will be very difficult to get hold of it and it may not return to the jurisdiction of the Indian Courts and thereby the plaintiff will lose their right for ever to initiate proceedings in *rem* in this country. These principles laid down in the said judgment of the Hon'ble Apex Court must be borne in mind while dealing with the application filed by the defendant for vacating the interim order.

20. The said judgment of the Hon'ble Apex Court was taken into consideration by a learned Single Judge of this Court in **Value Shipping Limited** wherein this Court applied the test as to whether the plaintiff has '**a reasonably arguable best case**'.

21. The most crucial and important issue that has been raised on the side of the defendant is that the bareboat charter-party dated 03.10.2024 was validly and lawfully terminated through the termination notice dated 13.11.2025, that thereafter, the interim order of arrest has been passed by this Court on 04.12.2025, that therefore, the requirements under Section 5(1)(b) of the Act are not



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY satisfied and that consequently, the interim order of arrest needs to be vacated by this Court.

22. On a careful reading of Section 5(1)(b) of the Act, it is seen that the Court must be satisfied that the demise charterer of the vessel is liable for maritime claim at the time when the claim arose and such demise charterer is, indeed, the demise charterer or the owner of the vessel **at the time when the arrest is effected.**

(emphasis supplied)

23. In order to deal with the above issue, this Court has to take into consideration the sequence of events as narrated by the defendant.

24. The defendant claims to be the owner of the vessel since 20.2.2014. The bareboat charterer was appointed by the defendant for the defendant's vessel pursuant to a charter-party dated 03.10.2024 with effect from 11.11.2024. Due to the alleged failure on the part of the bareboat charterer to remit the hire charges,



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY demand notices were issued by the defendant on 22.9.2025, 24.9.2025 and 27.10.2025 followed by the anti technicality notice dated 06.11.2025. Since the bareboat charterer failed to cure the defects within the stipulated period, the termination notice dated 13.11.2025 came to be issued thereby terminating the bareboat charter-party.

25. On a careful reading of the charter-party, it is seen that Clause 31(a)(i) provides for terminating the bareboat charter-party for the breach of the terms of hire.

26. Thus, according to the defendant, on such termination, the bareboat charter-party ceased to have any right, control, possession or interest in the vessel and even if the bareboat charter-party continues to hold possession illegally, it can only be held to be in their capacity as a gratuitous bailee holding the vessel to the owner's order. The specific case of the defendant is that as per the bareboat charter-party dated 03.10.2024, the parties have agreed that English Law will govern them, that hence, the English Maritime



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY Law only imposes a condition that the owner of the vessel must take

all reasonable efforts to repossess the vessel and that the said requirement had been fulfilled in this case.

27. To substantiate the above stand taken by the defendant, heavy reliance was placed on the judgment of the Federal Court of Australia in ***the Ships Hako Endeavour etc.***, wherein in the opinion of ***Rares, J***, it was held as follows:

"63. I am of opinion that as a matter of principle the terms of cl 28 and 29 of the Barecon 2001 form of charterparty can operate as they were intended without requiring the owners, first, to physically retake possession of the ship following her withdrawal and the termination of the charterparty: Reardon-Smith Line [1976] 1 WLR at 998D-G. The charterer becomes entitled to possession of the ship under and by virtue of the contractual rights that the owners confer on it by the terms of the demise. But that right to possession and control can be affected by another of the terms of the Barecon 2001 form. Thus, cl 29 provides that upon withdrawal of the ship and termination of the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

charter, the nature of the charterer's possession changes from possession for the charterer's use and benefit to possession as a gratuitous bailee for the owners. Possession of the latter kind is substantively different in character to the plenary right to possession and use of the ship formerly enjoyed by the charterer while the charter remained on foot.

.....

67. Accordingly, after following Hako Offshore's receipt of the notice of termination on 5 March 2012, it held Hako Fortress from then on as a gratuitous bailee and not as a demise charterer. It follows that the requirement of s 18 (b) of the Act, that Hako Offshore be a demise charterer of Hako Fortress on 2 April 2012 when the writ against her was filed, was not satisfied. The proceeding below against Hako Fortress must be dismissed and the security provided for her release from arrest must be returned to Dolphin 2."

In the same judgment, in the opinion of **Buchanan, J**, it was held as follows:

"159. It is clear from the terms of clauses 28 and 29 of the charterparty that a distinction is made (and made clearly) between termination



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

of the charter and recovering physical possession of the chartered vessel. The right to repossess the vessel depended upon the event of termination. It was not co-terminus with it. The charterparty clearly stated that between those two events the charterer would hold the vessel as "bailee only". Similar provisions were held by *Moore J in CMC (Australia) Pty Ltd v Ship "Socofl Stream"* (1999) 95 FCR 403 ("Socofl Stream") to be effective to bring a demise charter to an end from the time of termination. The consequence, his Honour found in that case, was that a demise charterer had ceased to have that status for the purpose of S 18(b) of the Admiralty Act. His Honour said (at [30]):

30. Even accepting that a broad interpretation should be given to the expression "demise charterer" in S 18(b), is [sic] difficult to avoid a conclusion that if a charterparty expressly provided for its termination and the power to terminate was exercised, then the charterer ceased to be a demise charterer from the time of termination at least in the absence of provisions in the charterparty that suggested some other result. The effect of the telex notice of 18 December 1998 was, in my opinion, that at least at the expiry of the seven days in which



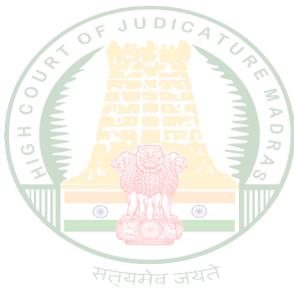
A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

payment could be made of the amount demanded by Sovcomflot, Kamchatka no longer had an unqualified right to possession and control and thus was no longer a demise charterer for the purpose of s. 18(b) on 5 February 1999.

.....

161. Presumably, the terms "withdraws" and "withdrawn" as used in these passages were intended to signify an act of repossession rather than to refer to a right of the kind given by clause 28 of the charterparty in the present case to withdraw a vessel from the service of a charterer in a formal way. In my respectful view the observations of Finkelstein, J should not be preferred to the conclusions of Moore, J in Socofl Stream. Like Moore, J in that case, it seems to me that the charterparty in the present case permits a formal withdrawal of a vessel from the service of charterers and termination of the charter at the same time with immediate effect, followed by a right to reclaim possession in any of the ways identified in clause 29."



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY 28. It is also relevant to take note of the judgment of the Court of Appeal (Civil Division) of England and Wales in **Songa Product & Chemical Tankers III AS** wherein the relevant portions read thus:

"43. In my judgment the legal and commercial features of a bareboat charter are indeed highly relevant to understanding the meaning of the provisions of clause 29, but in a different way. In each of sub-clauses 28(a), (b) and (d) the termination is expressed to be "with immediate effect by written notice" (termination being deemed when the Vessel is an actual or constructive loss under clause 28(c)). The result of such termination, whichever of those sub-clauses is triggered, is that the Vessel ceases to be at the disposal of the Charterers and they cease to be under any obligation to pay hire to the Owners, or to operate, maintain or insure the Vessel. Neither are the Charterers liable to indemnify the Owners for loss, damage or expense in relation to the Vessel. In those circumstances it is a legal and commercial imperative that the Owners, whose Vessel is no longer on hire and is without the benefit of the Charterers' obligations to operate, maintain,



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

insure and indemnify, should have the right to repossess it at the first opportunity, namely, at its current port (or its next port of call, if at sea) and that the Charterers should have a minimum obligation to care for the Vessel as gratuitous bailee in the interim. The quid pro quo for that obligation of the Charterers must be that the Owners should repossess the Vessel as soon as reasonably practicable so as to relieve them of that unremunerated burden."

29. The learned counsel for the defendant, by relying upon the above judgment, submitted that the owner of the vessel is only expected to take necessary steps for repossessing the vessel and that if the same is done, it satisfies the requirement of the law of the United Kingdom.

30. It was contended that the demand notices dated 22.9.2025, 24.9.2025 and 27.10.2025 and the anti technicality notice dated 06.11.2025 make it clear that the defendant was taking effective steps to repossess the vessel.



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY 31. The Court of Appeal of Sri Lanka, in the case of ***Navi Bunkering Crop***, had an occasion to take into consideration the various judgments of the New Zealand, Australian and Singapore High Courts wherein the relevant portions read thus:

"This decision was reversed by Steven Chong,J, who held that the charter had not been validly terminated, but even if it had, there was no concept of constructive delivery applicable to the termination of bareboat charters which continue until physical redelivery as 'the complete transfer of possession and control from the ship-owner to the charterer is the very quintessence of a bareboat charter. Thus, physical redelivery (which effects a reversion of the transfer of possession and control) is necessary for its termination.'

Therefore, at the time the in rem writs were issued by the bunker suppliers and the cargo claimants, the vessel was still in the possession of the demise charterers.

The prime consideration that tilted the balance in favour of requiring physical redelivery of the vessel for termination was the interests of the third parties involved. As Steven Chong,J observed:



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

'It is pertinent to stress that third parties who provide services to or load cargo on vessels will often be unaware that the particular vessel is on bareboat charter. Previously, this placed them in an acutely vulnerable position because bareboat chartered vessels were insulated from arrest. Following legal reforms in many jurisdictions, this is no longer the case..... The consultation paper prepared by the Attorney-General's Chambers which preceded the 2004 Amendment in Singapore noted that, although allowing a bareboat chartered vessel to be arrested might, at first blush, appear rather 'startling' as it effectively allowed recovery against the shipowner for the liabilities of the charterer, this was nevertheless internationally acceptable and, on the whole, desirable because 'an effective admiralty regime should not cast the burden of determining ownership or other relationship with the vessel on the person dealing with the vessel'.....The legislative scheme in Singapore today - as it is the case across many leading maritime jurisdictions - therefore appears to have struck the balance in favour of third parties who can now deal with a vessel safe in the knowledge that, regardless of whether the party with whom they directly



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

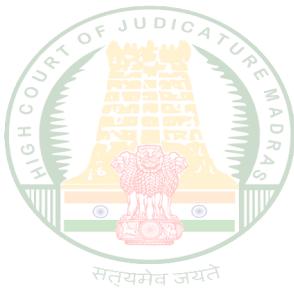
transact is the owner or bareboat charterer, they can arrest the vessel as security for their claims.

In my judgment, holding that a valid contractual termination suffices to bring a bareboat charter to an end in the absence of physical redelivery may upset the aforementioned balance. This is because third parties will find that it is no longer safe to assume that they have contracted with either the owner or bareboat charterer of a vessel in all circumstances. If they deal with the vessel after contractual termination but before redelivery, it is possible that they may have in fact dealt with neither - the owner certainly does not have control and possession of the vessel during this curious period where she is in "limbo" whereas the party in full possession and control is no longer the bareboat charterer following contractual termination. In that event, the third party will have no basis for arresting the vessel and is thus left without security for its claim.'

(emphasis added)

Other cases that subscribe to this school of thought include the following:

*The Australian case of *The Turakina* [1998] FCA 495, in which, the *Turakina* was sub-demise chartered by *South Pacific Shipping Ltd**

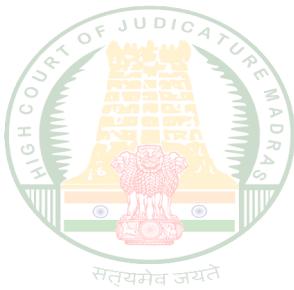


A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

from *Deil Shipowners BV*. *Deil* wrote to *South Pacific* stating that the charterparty was terminated with immediate effect. The charterparty provided that the vessel was to be in the full possession and complete control of *South Pacific* during the charter period. It also provided that *Deil* had, after default in payment of hire, a right to withdraw the vessel but that the hire of the vessel was to continue until redelivery. *Tamberlin, J* held,

'....there is a significant distinction between a time or voyage charter and a demise charter. This distinction resides in the fact that in a non-demise charter there is no requirement for delivery or transfer of possession to the charterer at the commencement of the charter. Accordingly, redelivery cannot require a transfer back of possession. In such a case, the services provided to the charterer are terminated upon notice of withdrawal. However, in the case of a demise charter the vessel itself is let and possession is taken by the charterer. Therefore, once the vessel is withdrawn from the service of the charterer, an obligation to redeliver possession arises because possession has been delivered at the commencement of the charter. Redelivery, in its natural and ordinary meaning,



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

denotes a delivery back of that which was originally delivered.....

.....As mentioned earlier in these reasons, a mere notification by the owner that redelivery is required does not itself amount to redelivery. Having regard both to the demise charter, and the indications in the authorities as to the different character of a demise charter which confers an interest in the vessel and possession my conclusion is that the notice of withdrawal in the present case did not operate to terminate the charter at the time arrest proceedings were instituted.'

[emphasis added]

Tamberlin,J's analysis was followed by the High Court of New Zealand in the case of 'The Rangiora', 'Ranginui and 'Takitimu' [2000] 1 Lloyd's Rep 36, which held that demise charter can only be terminated by repossessing the vessel; notice alone is insufficient.

In the Australian case of CMS (Aust) Pty Ltd v Ship Socofl Stream (1999) 95 FCR 403 Moore,J held,

'In my opinion, consistent with the approach of Tamberlin,J in 'The Turakina' and Evans LJ in 'The Guiseppe di Vittorio', it is necessary to ascertain from the terms of the



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

charterparty whether continuing physical possession of a vessel by the charterer (pending the taking of physical possession by the owner either by redelivery or some other means) is co-extensive with continuing possession and absolute control of the vessel of the type characteristic of a demise charter.'

Having considered the above authorities, this Court favours the view that a charter by demise can be terminated only by actual recovery of possession and control of the Vessel. An actual retaking of possession is seen when physical redelivery of the Vessel has been achieved. In the absence of actual retaking, such as in situations where it is impracticable to effect physical re-delivery there must be some overt act or active assertion of its rights on the part of the Owner/lessor of the Vessel to regain possession and control of the Vessel such as when the Owner's/lessor's agent attends onboard the Vessel to announce that it had retaken possession of the Vessel. A mere notice of termination, in the absence of an overt act to accompany that intention of termination, will not be sufficient to terminate a demise charter.

This is because as explained in length in Tamberlin,J's judgment in The Turakina (supra)



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY

demise charter unlike any other charter involves the grant of possession and control and thus requires a re delivery.

This Court is also swayed by the claims of innocent third parties who would otherwise be left without any redress, as explained in the judgment of Steven Chong,J, in the Chem Orchid, in the event the situation of the vessel is in limbo."

32. A careful reading of all the above judgments makes it clear that a charter by demise can be terminated effectively only by actual recovery of possession and control of the vessel. The only exception that can be carved out is in cases where it is impracticable to effect physical redelivery. In such cases, there must be some overt act or active assertion of rights on the part of the owner of the vessel. A mere notice of termination in the absence of any overt act to accompany the intention to possess the vessel will not be sufficient to terminate a demise charter.



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY 33. At this juncture, this Court must once again remind itself about the caution given by the Hon'ble Apex Court in the decision in **Videsh Sanchar Nigam Limited** to the effect that once a third party, which has a valid *prima facie* claim, loses its security by permitting the vessel to leave the shores of India, it may lead to losing their right for ever to entertain proceedings in *rem* in this country.

34. In the case in hand, the termination notice was issued on 13.11.2025 in line with Clause 31(a)(i) of the charter-party agreement. In this termination notice, the defendant inquired about the location of the vessel. The defendant was also aware of the fact that the vessel is available at V.O.Chidhambaranar Port, Tuticorin. Hence, as a prudent claimant, in order to establish the control over the vessel and to substantiate their intention to repossess the vessel, the overt act that was expected on the side of the defendant was to proceed against the bareboat charterer for the recovery of amount and seek for the arrest of the ship.



A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025

WEB COPY 35. Unfortunately, there is not even an averment in the affidavit filed by the defendant in support of A.No.155 of 2026 seeking to vacate the interim order dated 04.12.2025 nor in any of the documents relied upon by the defendant that they had taken any steps for the recovery of amount from the bareboat charterer. Apart from the fact that there is no material available to show that the defendant performed some overt act, there is also no material to *prima facie* conclude that the defendant actively asserted their right to regain possession and control of the vessel.

36. Under such circumstances, this Court is not able to come to a conclusion that the bareboat charterer is holding the vessel in their capacity as the gratuitous bailee for the owner of the vessel. This issue gains significance since the Court is dealing with the right of a third party, who otherwise would be left without any redress. It is also seen from the records that the bareboat charter-party describes the entity as M/s.H&K Shipping Limited whereas the certificate of incumbency shows the name as M/s.HK Shipping Limited.



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY 37. Apart from that, M/s.H&K Shipping Limited is under the control of M/s.Gulf Maritime Shipbrokers and Consultants as per the bareboat charter-party whereas as per the equasis, it has been found to be in the care and custody of M/s.Nereides Marine Services, which is the bareboat charterer. The equasis, which was last updated on 23.12.2025 as found in page 52 of the paper book filed on the side of the defendant, it is found in possession of the bareboat charterer. Hence, when the interim order was passed by this Court on 04.12.2025, the bareboat charterer continued to be in possession of the vessel. It is further seen that there is an entity called as M/s.HK Shipping Limited. There is also a separate entity called as M/s.H&K Shipping DMCC. Hence, the identity of the entity also becomes a triable issue.

38. In the light of the above discussions, considering the fact that the plaintiff has made out a *prima facie* case, as was indicated in the earlier order passed on 04.12.2025 and applying the reasonably arguable best case test and also taking into consideration the fact that the defendant has not come forward to



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY offer any other security, vacating the interim order granted on 04.12.2025 will virtually defeat the rights of the plaintiff. Hence, this Court finds that the balance of convenience and the test of irreparable loss and hardship are also in favour of the plaintiff. Further, this Court is inclined to make the interim order absolute.

39. In the result, A.No.6081 of 2025 stands allowed. The interim order granted on 04.12.2025 in A.No.6081 of 2025 is made absolute. Consequently, A.No.155 of 2026 stands dismissed. **Post the civil suit for filing written statement on 26.2.2026.**

06.2.2026

Index : Yes
Neutral Citation : Yes

RS



*A.Nos.6081 of 2025 & 155 of 2026
in C.S.(C.D.) No.314 of 2025*

WEB COPY

N.ANAND VENKATESH,J

RS

*A.Nos.6081 of 2025 &
155 of 2026 in
C.S.(C.D.) No.314 of 2025*

06.2.2026

40/40