
(2003) 01 BOM CK 0020
In the Bombay High Court
Case No : Notice of Motion No. 126 of 2003

Sierra International Shipping Corpn.

APPELLANT

Vs

M.V. Umka and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Colonial Courts of Admiralty (India) Act, 1891 — Section 2

Citation : AIR 2003 Bom 265 : (2003) 2 ALLMR 37 : (2003) 6 BomCR 723

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : G.A. Rebello, V. Seth and A. Shankar, instructed by R.A. Fernandes, for the Appellant; V.C. Kotwal and Kunal Shah, instructed by Bhatt and Saldanha for Defendants 1 and 3, for the Respondent

Judgement

R.I. Rebello, J.—The plaintiffs had moved this Court for an ex parte warrant of arrest against the 1st defendant and for some other consequential reliefs. An order came to be passed on 8th January 2003 in terms of the Judge's Order. Defendant No. 3 the owner of the 1st defendant vessel has moved this Court for vacating the said order on the ground that there is no cause of action.

2. A few facts may be set out which would enable this Court to resolve the issue in controversy.

The issue : Can a ship be caused to be arrested by a party to a charter party which has been terminated or come to an end, in an action in rem, without such party having a maritime lien and without the despondent owner being a demise charterer.

The plaintiffs are a company organized under foreign laws. The 1st defendant vessel is a tug flying a Russian flag and at the time of arrest was within the jurisdiction of this Court. The 2nd and 3rd Defendant's have been described merely as foreign organizations, having their addresses as shown in the cause title. The case of the plaintiffs is that a contract was entered into between the

plaintiffs as charterers and the 2nd defendant as despondent owners on 1st June 2002 for charter of the 1st defendant tug on the basis of Supply Time 89 standard format. The period and terms are set out in the charter party contract. On the basis of said contract, the 1st defendant-vessel was delivered to the plaintiffs on 11th June 2002 at 0800 hours. The first firm period of 90 days expired on 9th September 2002 and, an extension was granted for a further period of 60 days which was confirmed vide request e-mail dated 10th September 2002 and confirmation e-mail also dated 10th September 2002. The charter party also provided that in the event of early termination, a five days notice was required to be given. The plaintiffs had paid charter hire up to and inclusive of 9th September 2002 which is beyond the time period of 90 days. The further case of the plaintiffs is that on 12th September 2002 they were informed that the 1st defendant had abandoned the tow at Jebel Ali on 11th September 2002 and had sailed to an unknown destination. This action on the part of the 1st defendant in abandoning the contract and the tow, and intimation amounted to breach of contract. It is their case that the defendants have obtained employment with ONGC and, consequently are enriching themselves and have ignored the fact that the plaintiffs have been put into losses. The losses are in the nature of payment of advance hire, costs of bunkers, additional costs for towage of abandoned Shin Vo and release costs of Shin Vo from Regales Ship Services, a company in Jebel Ali and other expenses in the nature of port dues, etc.

The claims have further been specifically set out in para 10. The amount has been quantified as US Dollars 208.616.00. The plaintiffs also claim interest at the rate of 12% thereon. It is further averred that the plaintiffs have maritime claim and maritime lien on the 1st defendant vessel for breach of contract and, as such she is deemed offending vessel and consequently a maritime action is maintainable under the conventions and various enactments in force. It is also averred that the plaintiffs are entitled to proceed against the 2nd and 3rd defendants in personam who have been responsible for the 1st defendant vessel. Though the charter party provides for arbitration, this Court yet would have jurisdiction to arrest the 1st defendant vessel as security and seek the adjudication of their claim by this Court.

3. On the motion being taken out appearances have been put up on behalf of defendant Nos. 1 and 3. They have prayed for setting aside the ex parte warrant of arrest dated 8th January 2003 and for release of the 1st defendant Tug and, for further declaration that the arrest was wrongful and the plaintiff is liable to pay damages to the 1st defendant in respect of the undertaking given by the plaintiffs under Rule 941 of the High Court Original side Rules and, also prayed that the plaintiffs suit be dismissed in limine, inter alia for want of cause of action against the 1st defendant Tug and her owners. The relief by way of furnishing security and damages has also been prayed for.

In support of this motion on behalf of defendant Nos. 1 and 3, Mr. Santosh

Manjrekar--the Constituted Attorney of the 1st defendant, has filed his affidavit. It is set out that Mbasu-Murmansk Is the owner of the 1st defendant tug. It is further set out therein that on 17th October 2001 the owner chartered the said tug to the 2nd defendant vide a Time Charter party which was for a period of six months with two-three extensions at charterers" option. Clause 34 of the said charter party stated as under :--

"34 Nothing herein contained shall be construed as creating a demise of the vessel to the Charterer."

Leave has been sought to rely on the said charter party. There are some disputes between the owner and the 2nd defendant as set out in para 5 of the said affidavit. Reference is then made to the charter party between the plaintiffs and the 2nd defendant and to Clause 34 of the agreement which also reads as under :--

"34 Nothing herein contained shall be construed as creating a demise of the vessel to the charterer,"

Reference is then made to Clause 9 of the charter party which reads as under :--

"9..... The Charterers upon delivery and the Owners upon redelivery shall take over and pay for the Bunkers and Lubricants on board at the prices prevailing at the times and Ports of delivery and redelivery."

It is then set out therein that the plaintiffs have not averred any cause of action against the owner though averments made in the plaint would disclose disputes between the 2nd defendant and the plaintiffs. The claim as pleaded is only against the 2nd defendant and based on the charter party dated 1st June 2002. The action of the plaintiffs in seeking to recover the amount from the 1st defendant tug in action in rem and for a purported maritime lien against the said tug is wrongful and unlawful. It is set out that there is no contract of understanding between the 1st defendant nor the owner and the plaintiffs for recovery of any amount towards the alleged claim as pleaded by the plaintiffs. The documents annexed also do not disclose any action in personam. It is then set out that it is now settled law that for a suit in rem against the 1st defendant tug, then there must be a cause of action against the owners. The plaintiffs have failed to establish any cause of action against the owners to proceed against the 1st defendant as there is no privity of contract between the parties. In these circumstances it is prayed that the relief as sought for be granted.

4. Opposing this motion, the plaintiffs have relied on the affidavit of Mr. Cesar Pereira yet to be affirmed. The learned counsel for the plaintiffs has given an undertaking to this Court that the same will be done In the course of the week. A signed copy of the affidavit by the advocate for the plaintiffs is placed on record. It is in these circumstances that the affidavit, though not affirmed, with consent of parties is taken on record and is being considered. It is the case of the plaintiffs that the fact that the 1st defendant vessel received bunkers belonging

to the plaintiffs on board has been admitted by Marine Management services, the Managers of the owners of the vessel. The plaintiffs have not been paid for the bunkers. The bunkers were supplied by the plaintiffs to the 1st defendant vessel in order to achieve their contractual obligations under the charter party with the knowledge of 3rd defendant. Other averment as to why the charter party was not extended is not relevant for the purpose of present motion. It is pointed out that at any rate the plaint discloses the cause of action. The issue which arises would require evidence to be adduced and, therefore, strictly would not fall under Order VII, Rule 11 of the Code of Civil Procedure. It is then pointed out that the present suit is founded on the basis that the defendant vessel has derived benefits and that she is the offending vessel and, as such liable to be arrested in an action commenced in rem irrespective and inconsequential of any relationship that may or may not exist either between the plaintiffs and the 2nd defendants or between the plaintiffs and the 3rd defendant. It is then sought to be contended that the 2nd and 3rd defendants appear to be the same entity who have devised this stratagem of allegedly entering into charter party terms between themselves inter se in order to defeat the bona fide and lawful entitlements of 3rd parties such as plaintiffs. It is then pointed out that the plaintiffs are unaware to the nature of the agreement which existed between the owners of the vessel and the 2nd defendant. It is further set out that, the issue as to the ownership can only be ascertained after the evidence has been led by the parties and therefore, the plaintiffs cannot be non-suited at this interim stage. The relief by the plaintiffs is for recovery of bunkers and expenditure incurred by them as a result of unlawful abandonment. It is pointed out that the offending vessel can be proceeded directing for recovery of the amount as the offending vessel steamed utilizing the bunkers belonging to the plaintiffs on board thereby committing breach of the contract. For the aforesaid reasons, it is contended that the motion taken out be dismissed.

5. On behalf of defendant Nos. 1 and 3 their learned counsel has specifically contended firstly, that none of the claims amounts to a maritime lien and, secondly, the charter party would clearly show that there was no demise in favour of the 2nd defendant. Merely because there is a time charter party would not give ground for the plaintiffs to maintain an action for arrest of the vessel. Reliance is placed on the authorities in support of this contention.

On the other hand, on behalf of the plaintiffs their learned counsel contends that there is no statutory provision or definition of maritime Hen in this country and considering that the bunkers were delivered and used by the vessel, the action was maintainable. There is no material to show as to the nature of the transaction in the charter party agreement between the 2nd defendant and 3rd defendant and, as such the issue as to whether there is a demise cannot be concluded at this stage. The learned counsel appearing for the plaintiffs has also placed reliance on some judgments in support of this proposition and, further contended that at the motion stage, what the plaintiffs must establish is that they have reasonably arguable best case in admiralty matter. In these

circumstances it is pointed out that this Court should not recall or vacate its earlier order.

6. To my mind, if the judgments of this Court, the Apex Court, as also of Courts in other jurisdictions, commentaries on the subject and the ratio of those judgments on maritime lien, are taken into consideration as to what amounts to a maritime lien, it is no longer *res integra*. The Apex Court to say has concluded the issue by the judgment in the case of *Epoch Enterrepots Vs. M.V. WON FU*, . My attention was also invited to various conventions, on maritime claims, including International Convention on Arrest of Ships, 1999. That convention, it is pointed out can now be effected by Municipal Courts in this country at least within the jurisdiction of this Court, considering the judgment of the Division Bench of this Court in *M.V. "Sea Success I" Vs. Liverpool and London Steamship Protection and Indemnity Association Ltd. and Another*, . Though the convention has not been ratified nor is India a signatory a Division Bench of this Court took note of the same in the case of *Islamic Republic of Iran Vs. M.V. Mehrab and Others*, holding that the 1999 Convention could be enforced. Reliance for that is based on the nature of admiralty jurisdiction exercised by Adhralty Courts in this country and relying on the judgment in case of *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, .

It is no doubt pointed out by the learned counsel for the plaintiffs that special leave has been granted by the Apex Court in the judgment arising from this Court in the case of *M. V. Sea Success*. The correctness of the preposition, therefore, is in issue before the Apex Court in the matter of what constitute a maritime claim and the sister ship concerned. In that case Insurance Premium has been hold to be a maritime claim. It is no doubt true that in the case of *M. V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd. Goa*, the Apex Court has considered the nature, scope and extent of admiralty jurisdiction of the Courts in this country. On behalf of the plaintiffs their learned counsel has drawn my attention to the following paragraph which may be quoted for better appreciation.

"Para 45.--"..... In admiralty the vessel has a juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from those of the owner) which may be enforced by process and decree against the vessel, binding upon all interested in her and conclusive upon the world, for admiralty in appropriate cases administers remedies in rem, i.e., against the property, as well as remedies in personam, i.e. against the party personally....."

"Para 46.--Admiralty Law confers upon the claimant a right in rem to proceed against the ship or "cargo as distinguished from a right in personam to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment. A successful plaintiff in an action in rem has a right to recover damages against the property of the defendant. The liability of the shipowner is not limited to the value of the res primarily proceeded against.... An action..... though originally commenced in rem, becomes a

personal action against a defendant upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability."

"Para 65.--Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the Court to devise procedural rules by analogy and expediency. Actions in rem, as seen above, was resorted to by Courts as a device to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnishing security for the release of the res or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the Courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversions or negligence occurring in connection with the carriage of goods, where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the Court to devise procedure by drawing analogy from other systems of law and practice. To the Courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam."

"Para 85.--No Indian statute defines a maritime claim. The Supreme Court Act, 1981 of England has catalogued maritime claims with reference to the unified rules adopted by the Brussels Convention of 1952 on the Arrest of Seagoing ships. Although India has not adopted the various Brussels Conventions (See the Conventions listed above), the provisions of these Conventions are the result of international unification and development of the maritime laws of the world and can, therefore, be regarded as the International common law or transactional law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, can be adopted and adopted by Courts to supplement and complement national statutes on the subject. In the absence of a general maritime code, these principles aid the Courts in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping, "Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities."

"Para 89.--Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior Court of record administering justice in relation to persons and things within its jurisdiction. However, to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships

while they are within the jurisdiction of the High Court by arresting and detaining them."

"Para 93.--Once a foreign ship is arrested in Indian waters by an order of the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a Court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceedings must continue against the owner as in any other suit. The arrest, of the vessel while in Indian waters by an order of the concerned High Court, as defined under the Merchant Shipping Act, 1958 (Section 3(15)) attracts the jurisdiction of the competent Court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel."

Even considering that, the extent of Municipal Law in so far as admiralty jurisdiction is concerned, considering the power conferred on the Indian Courts has also been subject matter of the same judgment and to that extent the following observations in para 26 of the judgment are material :--

"Assuming that the admiralty powers of the High Courts in India are limited to what had been derived from the Colonial Courts of Admiralty Act, 1890, that Act having equated certain Indian High Courts to the High Court of England in regard to admiralty jurisdiction, must be considered to have conferred on the former all such powers which the latter enjoyed in 1890 and thereafter during the period preceding the Indian Independence Act, 1947....."

There is reiteration of the same view in the subsequent paragraph 27 where the Apex Court again has observed as under :--

"Para 27 :--What emerges is that the Apex Court accepted that the powers of the English Courts as and up to the Indian Independence Act, 1947 would be the powers also of the Indian Courts,"

It is no doubt true that even having so said the Apex Court also proceeded to consider Maritime Conventions even after 1947, The Law in respect of international Convention and its applicability to the Municipal Law for the sake of discussion may be set out. In case of Jolly George Varghese and Another Vs. The Bank of Cochin, while considering Article 11 of the International Covenant on Civil and Political rights to which India is a signatory, the Apex Court has observed as under :

".....India is now a signatory to this Covenant and Article 51(c) of the Constitution obligates the State to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another". Even so, until the municipal law is changed to accommodate the Covenant what binds the Court is the former, not the latter. A. H. Robertson in Human Rights in National

and International Law rightly points out that International conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law."

This is reflected in Article 253 of the Constitution which reads as under :

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

In spite of Article 253 the Courts in India have accepted some conventions as part of Municipal Law. There is however a rider. In *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI)* and Another, the Apex Court held that where a treaty or agreement can be enforced by the executive, In that event there is no requirement of law being made to give effect to it. Secondly and most important in the matter of Part III of the Constitution of giving effect to the Fundamental rights, the Apex Court has read into them the Directive Principles. In those cases where the conventions or treaty were to give effect to the directive principles set out in the Constitution or could be read into Article 21 or other fundamental rights, those conventions and treaty have been given effect to even without there being a municipal law. In one of the first such Judgments in the case of *Jolly George Varghese and Another Vs. The Bank of Cochin*, Itself the Apex Court held that a man unable to pay his civil debts could not be Jailed considering the International Convention to which India was a party, This issue has been considered in depth by the Apex Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the Apex Court held that it is the fundamental right of a child to education without there being an enactment of law by Parliament, Though that Judgment was in issue before the Apex Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, the proposition of law on fundamental right of the child to education has not been differed from nor was it made an issue in the issue arising there. Therefore, it can be now said that considering the judgments of the Apex Court that it is only those conventions ratified by India and which can be read into the directive principles and/or on the fundamental rights, which can be enforced because they form a part of that right itself and do not require any positive enactment by the State. These essential requirements must be borne in mind, while considering whether the International convention or treaty to which India is not a signatory and which treaty has not come into force as it has not been ratified by minimum number of countries required to do so to bring it in force could be relied upon by municipal Courts. The Apex Court in addition in Admiralty jurisdiction has also stated that international conventions, which are the result of international unification and development of the maritime laws of the world, can be regarded as the international common law or transactional law rooted in and evolved out of the general principles of national laws. The international conventions must

therefore be recognized meaning thereby at least ratified. With that the matter in so far as Convention on International Convention on Arrest of Ships 1999 need not be further addressed as the matter is in issue before the Apex Court.

7. The question therefore is whether the plaintiffs herein were entitled to have the ship arrested by invoking the admiralty jurisdiction of this Court. The charter party was no longer in force between the plaintiff and 2nd defendant when this Court was moved for the arrest of the ship. The document produced before this Court does not show that there was a demise in favour of the second defendant by the third defendant. There was also no Clause creating a demise between the plaintiffs and the 2nd defendant. This would be a relevant aspect to consider the issue in issue before this Court. Even assuming it to be a maritime lien at least in so far as Item No. 1 as pleaded by the plaintiffs, could this Court, on the facts as have now emerged could have ordered the arrest of the vessel.

In Epoch Enterrepots Vs. M.V. WON FU, after considering the maritime liens on para 19 this is what the Apex Court has stated;--

"We have in this Judgment hereinbefore dealt with the attributes of maritime lien. But simply stated maritime Hen can be said to exist or restricted to in the event of (a) damage done by a ship;

(h) Salvage, (c) sea-men and master's wages; (d) master's disbursement, and (e) bottomry and in the event a maritime lien exists in the aforesaid five circumstances, a right in rem is said to exist. Otherwise, a right in personam exists for any claim that may arise out of a contract."

In the judgment in M. V. Won Fu (supra) there is extensive discussion of what would constitute a maritime Hen, it can be said, that the law as set out in para 19 of the judgment of Apex Court in M. V. Won Fu. can be said to be law in respect of maritime lien which can be enforced by municipal Courts in this country, even though, there is no Municipal Law to that effect, what is a maritime lien and its characteristics may be set out.

Thomas on Maritime Lien, has set out fundamental legal characteristics of a maritime Hen as under :--

- (1) a privileged claim or charge;
- (2) upon maritime property;
- (3) for service rendered to It or damage done by it;
- (4) accruing from the moment of the events out of which the cause of action arises;
- (5) travelling with the property secretively and unconditionally, and
- (6) enforced by an action in rem.

8. The plaintiffs in para 10 of its plaint have set out their claim under the

following Headings :--

- (1) Bunkers belonging to the plaintiffs which were on board the defendant vessel;
- (2) the costs involved In mobilization, a substitute tug SALVAGE QUEEN on 21st September 2002 to tow SHIN YO;
- (3) Amount paid to Regales Ship Services to obtain release of the barge SHIN YO being the tow;
- (4) The port related charges paid to the port authorities at Jebel Ali for berthing SHIN YO,

Considering what has been set out earlier on what constitutes a maritime lien prima facie, none of these claims would fall under the expression "Maritime Lien". Therefore, they would not be attached to the ship or carried with the ship for an Admiralty Court to exercise its jurisdiction in rem.

9. Even in case where there is a maritime lien, there is a further requirement viz. the plaintiff approaching the Court must have a demise in favour of the 2nd defendant. In the absence of such a demise the action would not be maintainable. For that purpose reliance was again placed on the judgment of Epoch Enterrepots Vs. M.V. WON FU, . It is pointed out that for the plaintiffs, the charterer to maintain an action in rem, the despondent/owner ought to be a demise charterer. If this not be the position, then an action in rem would not be maintainable. The Apex Court has observed as under :--

"Even, assuming that the agreement has in fact been entered into by the despondent owner, unless sufficient evidence is laid that the charter was by demise, whereby the possession and control of the vessel was given to the despondent owner, question of pursuing the cause of action against the vessel would not arise. The charter parties are of three kinds i.e.--

"(a) Demise Charter; (b) Voyage Charter; and (c) Time Charter," Whereas the demise charter, the vessel is given to the charterer who thereafter takes complete control of the vessel including manning the same, in both voyage charter and time charter, master and crew are engaged by the owner who act under owner's instructions but under the charterer's directions. Simply put, Voyage charter Is making available the vessel for use of carriage for a particular voyage and the time charter correspondingly is where the vessel is made available for carriage of cargo for a fixed period of time.

It is in that context that the pleading and documents on record to determine the nature of the charter party need to be ascertained. The plaintiffs have filed on record the Charter Party Agreement. In Box-2 Defendant No. 2 is described as despondent/owner. Clause 34 of the said Charter Party Agreement reads as under :--

"Demise :--

Nothing herein contained shall be construed as created a demise of the vessel to the Charterers."

In para 14 of the affidavit of Santosh Manjrekar the 3rd defendant has set out the Clause in the Charter Party between the owner and the 2nd defendant which reads as under :--

"Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterer."

In so far as the clause in Charter Party relied upon by 3rd defendant entered into with the 2nd defendant, the plaintiffs have disputed the same. Even though the dispute is at this prima facie stage in the absence of any strong material to the contrary there is no reason why this Court should not rely on the affidavit of Santosh Manjrekar. Therefore, at least the 3rd defendant has prima facie established the existence of Clause 34 of the Charter party Agreement between the 3rd defendant and the 2nd defendant, which does not create a demise of the vessel in favour of the 2nd defendant by the 3rd defendant. The clauses in the charter party between the plaintiffs and the 2nd defendant has been adverted to earlier. If this be the position, it is prima facie clear that the despondent/owner was not a demise charterer. At the highest there has been a breach of contract between the plaintiffs and the 2nd defendant. In such a case, the vessel being under the ownership and in possession of the 3rd defendant, liability of the vessel would not arise. Once that being the position in law the relief sought for by the plaintiffs for arrest of the ship was not maintainable. It was therefore not within the jurisdiction of this Court to grant such a relief on the claim as specified and on the plea as set out in the plaint. In these circumstances, the order dated 8th January 2003 will have to be recalled.

10. That leaves with the issue of the contention raised by the 3rd defendant that there is no cause of action against the 1st defendant and 3rd defendant and, as such the suit ought to be dismissed. The plaintiffs have not admitted the charter party agreement between the 3rd defendant and the 2nd defendant. It will therefore, be subject of proof. In these circumstances, at this stage, where the motion is taken out at the instance of the 1st defendant and 3rd defendant, it will not be possible for this Court unless the plaintiffs had admitted the charter party agreement between the 2nd defendant and the 3rd defendant to hold that the plaint does not disclose any cause of action. The pleadings are not frivolous or vexatious. In the light of that to my mind the relief sought by way of dismissal of suit against the 1st defendant and 3rd defendant on the material as it stands cannot be granted, even assuming that the 1st defendant and 3rd defendant, have been prima facie able to show that the claims as prayed for are not maritime liens. In so far as prayer Clause (o) Is concerned, the issue is left open for consideration in appropriate proceedings that defendant Nos. 1 and 3 may be advised or at any further stage in this suit considering that it will not be possible at this stage to grant a declaration sought for in terms of prayer Clause (b) which is in the nature of damages which will have to be quantified by evidence being

laid before this Court.

In so far as prayer Clause (d) is concerned, as no material has been placed before this Court in terms of Order XXV of the Code of Civil Procedure, it is left open for consideration in appropriate proceedings which may be taken out if defendant Nos. 1 and 3 are so advised to take.

"ORDER"

Notice of Motion is made absolute in terms of prayer Clause (a).

Ship M. V. Umka is released from arrest.

Search taken, no caveat found, Prothonotary Certificate and Instrument of Release dispensed with.

In the circumstances of the case, there shall be no order as to costs.

Prothonotary and Senior Master, Port and Custom Authorities and all other concerned Authorities to act on ordinary copy of this order, authenticated by Associate of this Court.

Liberty given to defendants advocate to communicate this order by fax.

Learned counsel for the plaintiffs seeks stay of the order, Considering the Judgment of the Apex Court in Epoch Enterrepots Vs. M.V. WON FU, and the issued discussed here, to my mind it would not be a proper case to grant stay, in the light of application, the stay is rejected.