

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2025**



**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

**THE HON'BLE MR. JUSTICE VENKATESH NAIK T**

**ORIGINAL SIDE APPEAL NO. 4 OF 2025**

**BETWEEN:**

ZURBAGAN SHIPPING LLC  
A COMPANY INCORPORATED UNDER  
THE LAWS OF UNITED ARAB EMIRATES (UAE)  
WITH ITS REGISTERED OFFICE AT 1501.03  
GALLERIA INVESTMENTS LLC, BUR DUBAI  
FIRST TRADE CENTER, UAE  
REPRESENTED BY ITS CONSTITUTED ATTORNEY  
DR. SHRIKANT PARESHNATH HATHI

...APPELLANT



(BY SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W  
MS. MYTHREYI BHAT, ADVOCATE FOR  
SRI ARJUN RAO, ADVOCATE)

**AND:**

1. C.S. FLOURISH (IMO NO.9438365)  
A FOREIGN VESSEL FLYING THE  
FLAG OF PANAMA AND  
HER OWNER AND ALL OTHER PERSONS  
CONNECTED AND/OR INTERESTED IN HER  
A CHEMICAL/OIL TANKER FLYING  
TOGETHER WITH HER HULL, TACKLE,  
BOATS, MACHINERY, EQUIPMENT,  
APPURTENANCES, AND ALL OTHER  
PARAPHERNALIA

PRESENTLY AT THE PORT AND HARBOR OF  
NEW MANGALORE, WITHIN THE TERRITORIAL

WATERS OVER WHICH THIS HON'BLE  
COURT EXERCISES JURISDICTION

2. NEW MANGALORE PORT TRUST  
PANAMBUR, MANGALORE-575 010  
D.K. DISTRICT, KARNATAKA  
REPRESENTED BY ITS CHAIRMAN
  
3. CONTINENTAL DRY BULK LIMITED  
A COMPANY INCORPORATED UNDER  
THE LAWS OF MARSHALL ISLANDS  
WITH ITS OFFICE AT  
TRUST COMPANY COMPLEX  
AJELTAKE ROAD  
AJELTAKE ISLAND MAJURO  
MARSHALL ISLANDS MH 96960

...RESPONDENTS

(BY SRI PRATHAMESH KAMAT, SMT. ANKITA SEN, ADVOCATES  
FOR SMT. DHANYA T. MALLAR, ADVOCATE FOR R-1)

THIS ORIGINAL SIDE APPEAL IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 A/W SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 AND SECTION 14 OF THE ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017 PRAYING TO CALL FOR RECORDS OF CIVIL PETITION NO.282/2024 AND PASS AN ORDER TO SET ASIDE THE ORDER DATED 23.07.2025 PASSED BY THE LEARNED SINGLE JUDGE ON I.A. NO.1/2025 BY WHICH THE ORDER FOR VACATING OF THE ARREST OF THE SHIP WAS ALLOWED PRODUCED AT ANNEXURE-A.

THIS ORIGINAL SIDE APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, **D K SINGH J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH  
AND  
HON'BLE MR. JUSTICE VENKATESH NAIK T

**CAV JUDGMENT**

(PER: HON'BLE MR. JUSTICE D K SINGH)

Respondent No.1- Vessel<sup>1</sup> is a general cargo ship. The registered ownership of the said Vessel vests in C.S. Flourish Limited (hereinafter referred to as the 'registered owner'). The petitioner/appellant instituted a petition under Section 5 read with Section 3 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter referred to as 'the Admiralty Act') seeking for arrest of respondent No.1-Vessel (ship) as the security for satisfaction of the petitioner/appellant's claim pending in arbitration proceedings amounting to USD 1,615,290.26 and EUR 158,918.87 totalling approximately Rs.14,96,50,036/- as also the cost of USD 20,000 approximately Rs.16,75,000/- together with interest at the rate of 18% per annum and for other reliefs. Respondent No.3-Continental Dry Bulk Limited is the entity with which the petitioner/appellant has

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<sup>1</sup> "Vessel" includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

entered into a Time Charter Party on 06.01.2023. As an interim prayer, the application-I.A.No.1/2024 was filed for arrest of respondent No.1-Vessel. The learned Single Judge, vide order dated 24.07.2024, ordered for arrest of respondent No.1-Vessel.

2. Respondent No.1 entered appearance and filed I.A.No.4/2024 seeking release of the Vessel in lieu of security of a sum of Rs.15,13,25,036/- being furnished to secure the petitioner/appellant's claim.

3. The learned Single Judge, vide order dated 05.08.2024, allowed I.A.No.4/2024 filed by respondent No.1 and directed the release of respondent No.1-Vessel subject to security amount of Rs.15,13,25,036/- to be deposited before this Court, without prejudice to the rights and contentions of the parties.

4. Subsequently, respondent No.1 filed, *inter alia*, I.A.No.1/2025 for vacating the order of arrest dated 24.07.2024 as also I.A.No.2/2025 for a direction to the petitioner/appellant to furnish the costs. Respondent No.1 contended that the petitioner/appellant had no maritime claim<sup>2</sup> against respondent

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<sup>2</sup> "Maritime claim" means a claim referred to in Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

No.1-Vessel as respondent No.1 was not a party to the Time Charter Party dated 06.01.2023. The said Time Charter Party dated 06.01.2023 was between the petitioner/appellant and respondent No.3. The liability under the said Time Charter Party dated 06.01.2023, if any, was of respondent No.3 and not of the registered owner of respondent No.1. As respondent No.1-Vessel was not a party to the Time Charter Party dated 06.01.2023, respondent No.1-Vessel could not have been arrested for the alleged claim of the petitioner/appellant against respondent No.3. It was further contended that the petitioner/appellant's claim against respondent No.1 does not constitute a maritime lien.

5. The learned Single Judge, having considered the submissions advanced by the parties, allowed I.A.No.1/2025 and permitted respondent No.1-Vessel to withdraw the security amount of Rs.15,13,25,036/- deposited as security having regard to the order dated 05.08.2024, however, did not pass any order on I.A.No.2/2025 in view of the admitted situation that the relief sought for in I.A.No.2/2025 is more in the nature of an alternate

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relief to I.A.No.1/2025. The said order passed by the learned Single Judge is under challenge in this appeal.

6. Mr. Dhyan Chinnappa, learned Senior Counsel appearing for the petitioner/appellant has submitted that the Time Charter Party dated 06.01.2023 between respondent No.1 and respondent No.3, in essence and effect, is a demise charter<sup>3</sup>. He also submitted that the Time Charter Party dated 06.01.2023 between respondent No.1 and respondent No.3 having been produced at a belated stage was not liable to be looked into at the time of considering the application-I.A.No.1/2025. The rights of the parties are to be decided during the course of the trial.

7. It is further submitted that respondent No.3, being a demise charterer/disponent owner<sup>4</sup> having entered into the Time Charter Party dated 06.01.2023 with the petitioner/appellant, the petitioner/appellant was entitled to seek the arrest of respondent

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<sup>3</sup> In 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 the owner's instructions but under the charterer's directions. ([2003]1 SCC 305)

<sup>4</sup> Disponent owners, meaning thereby a person or a company who controls the commercial operation of a ship, responsible for deciding the ports of call and the cargoes to be carried. Very often, the disponent owner is a shipping line which time charters a ship and issues its owner liner bills of lading. (2003 [4] Mh.L.J. 708)

No.1-Vessel in respect of the claim made by the petitioner/appellant against respondent No.3. It is further contended that the claim made by the petitioner/appellant is a maritime claim and the petitioner/appellant is entitled to invoke Section 5(b) of the Admiralty Act seeking suitable reliefs. The submission on behalf of the petitioner/appellant is that the learned Single Judge has not considered the Time Charter Party dated 06.01.2023 correctly, and if one reads the said agreement, it would be clear that respondent No.3 is a disponent owner of the Vessel by way of Time Charter Party Agreement from the original owner. As respondent No.3 had failed to deliver the Vessel on time, the petitioner/appellant sustained loss/damages, for which the petitioner/appellant would have a maritime claim. For the said purpose, the petition was filed before the learned Single Judge.

8. It is further submitted that the charter from respondent No.1 to respondent No.3 is a demise charter and for that reason only, respondent No.3 could have entered into a Time Charter with the petitioner/appellant.

9. The submission is that the learned Single Judge has failed to consider the agreement between respondent No.1 and respondent No.3 in the correct perspective inasmuch as the control of the crew would be with respondent No.3 and therefore, the Time Charter Party dated 06.01.2023 between respondent No.1 and respondent No.3 was a demise charter and under these circumstances, the petitioner/appellant would have maritime claim against respondent No.1.

10. The learned counsel for respondent No.1 has submitted that the petitioner/appellant was aware that respondent No.3 was not the registered owner of the Vessel and respondent No.3 had merely obtained the right to use the Vessel under the Time Charter Party dated 06.01.2023 entered into between respondent No.1 and respondent No.3. The petitioner/appellant had instituted an action *in rem* for an *in personam* liability of respondent No.3, who is not admittedly the registered owner of the Vessel. Respondent No.3 is only a Time Charterer of the Vessel, which is evident from the Time Charter Party dated 06.01.2023 entered into between respondent No.1 and respondent No.3 which was valid only for a period of 6 month 15

days. Respondent No.3 was not a demise charterer of the Vessel. So there was no privity of contract between the petitioner/appellant and respondent No.1. Neither respondent No.1 nor its owner is a party in the arbitration proceedings instituted by the petitioner/appellant, claiming damages for Rs.14,96,50,036/-.

11. Both the Time Charter Party Agreements between the petitioner/appellant and respondent No.3 as well as between respondent No.1 and respondent No.3 are dated 06.01.2023. The learned Single Judge, having compared both the agreements, has noted that both the Time Charters are in a standard printed form, but only certain details of the parties have been incorporated. The clauses under both the agreements are practically verbatim.

12. It is well settled that in a Time Charter, the owner will retain control over the crew whereas, for all other purposes of usage of Vessel, the charterer will have control over the Vessel; whereas, in a demise charter, the charterer will also have control over the crew.

13. The Supreme Court in the case of **EPOCH ENTERREPOTS vs M.V.WON FU ([2003] 1 SCC 305)** has held in paragraphs 9 and 16 as under:

*"9. The High Courts of these three Presidency Towns were conferred with the same jurisdiction as was vested in the High Court of England and the High Courts were declared to be otherwise competent to regulate their procedure and practice as would be deemed necessary corresponding to the Indian perspective in exercise of the admiralty jurisdiction by way of rules framed in that regard. There is no manner of doubt that there existed or is existing any fetter in regard to the exercise of admiralty jurisdiction insofar as the three High Courts at Calcutta, Bombay and Madras are concerned."*

*"16. In M.V. Al Quamar this Court spoke of two attributes of maritime lien as noticed hereinabove. The International Convention for Unification of Certain Rules Relating to Maritime Liens and Mortgages at Brussels in 1967 defined the maritime lien to be as below:*

*(a) wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel;*

*(b) port, canal and other waterways and pilotage dues;*

*(c) claims against the owner in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;*

*(d) claims against the owner based on tort and not capable of being based on contract,*

*in respect of loss of or damage to property occurring, whether on land or on water in direct connection with the operation of the vessel;*

*(e) claims for salvage, wreck removal and contribution in general average."*

14. It may also be noticed that the petitioner/appellant had initiated proceedings before the Courts in Russia with respect to arrest of the Vessel and those proceedings were not disclosed in the petition filed by the petitioner/appellant.

15. It would be apt to take note of Section 5(1)(a) and (b) of the Admiralty Act to consider whether the petitioner/appellant could be said to have satisfied the relevant requirements seeking arrest of the Vessel. Section 5(1)(a) and (b) read as under:

**"5. Arrest of vessel in rem.-** (1) *The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—*

*(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or*

*(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected."*

16. Under clause (a) of sub-section (1) of Section 5, the arrest can be ordered in a maritime claim, if the Court has reasons to believe that the owner of the Vessel would be liable for the claim. If the maritime claim is not against the owner of the Vessel then, arrest cannot be ordered under Section 5(1)(a) of the Admiralty Act. Under clause (b) of sub-section (1) of Section 5, the arrest of the Vessel can be ordered for a claim against the demise charterer of the Vessel at the time when the maritime claim arises and if the claim is against the owner of the Vessel, then against the owner of the Vessel. Thus, if there is a demise charter between the registered owner and the disponent owner of the Vessel, arrest can be ordered if the Charter against whom the maritime claim has been filed is either deemed charter or the owner of the Vessel.

17. The question which requires consideration in this appeal is whether the required criteria is satisfied in the present case seeking arrest of the Vessel or not?

18. The learned Single Judge, having considered all the relevant case laws, has been of the view that respondent No.3, the disponent owner, cannot be construed as demise charter of

the Vessel inasmuch as, under Clause 26 of the Time Charter Agreement entered into between respondent No.1 and respondent No.3, it has been provided that the owner shall remain responsible for "the navigation of the Vessel, insurance, crew, and all other matters".

19. The claim made by the petitioner/appellant in the arbitration proceedings is against respondent No.3 only for recovery of damages and not for handing over the Vessel in terms of the Time Charter Party dated 06.01.2023 between the petitioner/appellant and respondent No.3 and therefore, the question whether respondent No.1-Vessel could be arrested or the security paid in lieu of the same could be retained, is to be adjudicated in the trial. The learned Single Judge was, therefore, of the view that the petitioner/appellant had failed to demonstrate *prima facie* that by virtue of the contract between the petitioner/appellant and respondent No.3, the petitioner/appellant was entitled to seek arrest of respondent No.1-Vessel .

20. It may also be noted that nowhere in the petition filed by the petitioner/appellant, there was a claim made that respondent No.3 was a demise charterer of respondent No.1-Vessel. When

the petitioner/appellant has made only *in personam* claim against respondent No.3, the petitioner/appellant would not be entitled to seek for arrest of respondent No.1 as in case of a claim *in rem*.

21. Having considered the aforementioned judgments and the submissions made by the learned counsel appearing for the parties, we are of the view that there is no error in the impugned judgement passed by the learned Single Judge and therefore, we find no merit in the present appeal.

22. Accordingly, the appeal is dismissed.

In view of dismissal of the appeal, pending IAs, if any, do not survive for consideration and accordingly, they are disposed of.

**Sd/-  
(D K SINGH)  
JUDGE**

**Sd/-  
(VENKATESH NAIK T)  
JUDGE**