



IN THE HIGH COURT OF ORISSA AT CUTTACK

ADMLS No. 2 of 2025

ALPHARD MARITIME LTD. Plaintiff

-Versus-

**OCEAN JADE (IMO:9660750) Defendants
and another.**

Advocates appeared in this case:

For Plaintiff : Mr. D.P. Nanda, Sr. Advocate
 along with Mr. Samvit Mohanty, Advocate
 Mr. Anurag Pati, Advocate
 Mr. Adwitiya Satpathy, Advocate
 Ms. Jimisha Dalal, Advocate
 Ms. Nitansha Nema, Advocate
 Mr. Aryan Sharma, Advocate
 Ms. Shivani Das, Advocate

For Defendants : Mr. Gautam Mukherji, Sr. Advocate
 along with Mr. S.S. Mohanty, Advocate
 Ms. Arusmita Acharya, Advocate
 Ms. Ankita Mukherji, Advocate
 Mr. Amlan Mishra, Advocate
 Mr. S.S. Moharana, Advocate
 Ms. Deepsha Dhal, Advocate

For Intervenors: Mr. S.K. Padhi, Sr. Advocate
 along with Mr. Ipsit Aurobindo Acharya,
 Advocate
 Mr. Nitesh Jain, Advocate
 Mr. Atul Jain, Advocate
 Ms. Juhi Mathur, Advocate
 Mr. Piyush Panda, Advocate



CORAM:
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO
J U D G M E N T

Dates of hearing : 1st May, 2025, 2nd May, 2025,
6th May, 2025, 7th May, 2025 and 8th May, 2025
Date of judgment : 9th July, 2025

MRUGANKA SEKHAR SAHOO, J.

**ADMLS No.2 of 2025 along with I.A. Nos.15, 16, 8, 11
and 9 of 2025**

1. The suit has been filed under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 as amended by the Admiralty jurisdiction and Settlement of the Maritime Claims (Removal of Difficulties) Order, 2017 along with the interlocutory applications filed by the plaintiff-petitioner.

2. I.A. No.7 of 2025 was filed by the plaintiff for extension of time to pay the deficit of court fees while filing the suit as reported in stamp report. The I.A. was disposed of by order dated 19.03.2025 granting four weeks' time. By ex-parte interim order dated 19.03.2025, the then assigned Bench issued directions to keep the vessels under arrest at the Paradip Port within the Indian territorial waters by the Port Officer and Custom Authorities or any other competent authority and keep the vessels under arrest until further orders that may be passed by this Court.



I.A. No.9 of 2025 has been filed by the intending intervenor-petitioner to intervene in the suit and seeking a direction accordingly.

I.A. No.11 of 2025 has been filed by the defendants seeking relief under Order VII Rule 11(c) of the CPC, 1908 for rejection of the plaint in the suit.

Thereafter, I.A. No.15 of 2025 has been filed by the plaintiff seeking amendment of the pleadings invoking provisions of the Code of Civil Procedure, 1908, Order VI Rule 17.

I.A. No.16 of 2025 has also been filed on 17.04.2025 by the plaintiff under Chapter VI Rule 27(a) of the Orissa High Court Rules, 1948 read with Section 149 of the Code of Civil Procedure, 1908 read with Section 151 of the CPC, 1908, inter alia, seeking a direction for deferment of payment of court fees.

3. By order dated 30.04.2025 the following order was passed by this Bench :

“The matter has been listed before this Bench being assignment of the roster ‘Admiralty Suit.’ The matter was heard listed yesterday. The submissions of the learned Senior Counsel for the appearing parties have been noted in the order dated 29.04.2025.

I.A. No.8 of 2025 filed by the defendants for vacating interim order dated 19.03.2025 passed in I.A. No.6 of 2025 directing arrest of the vessels.



I.A. No.11 of 2025 has been filed by the defendants for rejection of the plaint under Order 7, Rule 11(c) of the Code of Civil Procedure, 1908 read with Section 151 of the CPC.

I.A. No.16 of 2025 is at the instance of the plaintiff for modification of the order dated 19.03.2025 passed by the Bench then having assignment of the admiralty suit, disposing of I.A.No.7 of 2025.

I.A. No.15 of 2025 has been filed by the plaintiff for amendment of the plaint.

The prayers made in the I.As mentioned above are entwined to the extent that the prayer for modification of order dated 19.03.2025 disposing of I.A. No.7 of 2025 depends on the amendment being allowed. The prayer for rejection of the plaint arises out of the fact that the direction in the order dated 19.03.2025 disposing of I.A. No.7 of 2025 having not been complied with regarding payment of court fee.

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In such view of the matter, the suit and I.A.(s) be placed in the administrative side before Hon'ble the Chief Justice for assignment.

3.1 The matter was placed before Hon'ble the Chief Justice for nomination of appropriate Bench to take up all the I.As: I.A.No.8 of 2025, I.A. No.11 of 2025, I.A. No.16 of 2025 and I.A. No.15 of 2025 arising out of Admiralty Suit. As per the endorsement of Hon'ble the Chief Justice dated 01.05.2025 the matter was assigned and listed before this Bench.

4. Defendant nos.1 and 2, vessels are presently at the Port of Paradip, Odisha. The plaintiff is seeking order and decree in favour of the plaintiff against the defendants



vessels jointly and/or severally, her owner, and all persons interested in her, to pay the plaintiff a sum of US\$49,268,902.45 (INR428,76,87,464.30) along with applicable interest.

The further prayer is to arrest, detain, condemn and sell both the vessels together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery through Bailiff under order and direction of this Court and to apply the sale proceeds towards the satisfaction of the plaintiff's claim in the suit.

Facts

5. As pleaded by the parties to the suit, the facts and the connected I.A.s (s) are summarized herein:

5.1. On 16.09.2024, purportedly, "Settlement Agreement" was executed between the petitioner-Alphard Maritime Limited ("Alphard"), Samson Maritime Limited ("SML"), and Underwater Services Company Limited ("USCL"). SML is the registered owner of the Defendant vessels. USCL is a wholly owned subsidiary of SML.

5.2. Alphard invoked arbitration under Clause 10 of the purported Settlement Agreement, against SML and USCL under the rules of Singapore Chamber of Maritime Arbitration seeking, inter alia, indemnity under Clause 3.3 of the Settlement Agreement for its purported "losses,



including loss of revenue and profit” on account of SML’s and USCL’ purported failure to execute the MOA under Clause 3.1.

5.3. On 06.03.2025 Alphard filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, before the Bombay High Court seeking, among others, injunctive reliefs relating to SML’s shares in USCL.

5.4. On 11.03.2025 Alphard filed an admiralty suit before the Gujarat High Court for an order and decree against 4 of SML’s vessels (Ocean Opal, Ocean Citrine, Ocean Coral and Ocean Ammolite) and 1 vessel Chartered by USCL (SwissCO Pearl) jointly and/or severally to pay the same Claim Amount (i.e. USD 49 Million) to Alphard as indemnity for the alleged breach of the Settlement Agreement.

The Gujarat High Court ordered the ex-parte arrest of only 1 out of 5 vessels-SwissCo Pearl-vessel chartered by USCL.

5.5. On 12.03.2025 Alphard filed the Admiralty Suit No.2 of 2025 before this Court against the Defendant vessels (owned by SML) to pay the Claim Amount (i.e. USD 49 Million) to Alphard.

Alphard filed I.A. No.6 of 2025 in the Suit, seeking an ex-parte arrest of the Defendants.



5.6 I.A. No.7 of 2025

On 17.03.2025 Alphard filed IA No.7 of 2025 seeking permission to pay only partial court fee of INR 75,000/- in order to admit the plaint in the Suit; and in the alternative, seeking additional time to furnish the deficit court fee while keeping this issue open until the Hon'ble Supreme Court decided the transfer petition (that they would be filing) and the conclusion of the SCMA Arbitration.

5.7. This Court passed an *ex-parte* order directing that the Defendants be arrested at Paradip Port.

5.8. I.A. No.8 of 2025

On 24.03.2025 SML filed I.A.No.8 of 2025 on behalf of the Defendants in the Suit seeking to vacate the 19 March Order.

5.9. On 28.03.2025 Alphard filed a Transfer Petition No.906-907 of 2025 under Section 15 of the Admiralty Act before the Supreme Court seeking the transfer of the Gujarat Proceedings and those before this Court to the Bombay High Court. In the alternative, the plaintiff sought a transfer of this Suit to the Hon'ble Gujarat High Court.

5.10. On 07.04.2025 the Supreme Court dismissed the Transfer Petition.



5.11. I.A. No.10 of 2025

On 08.04.2025 Alphard filed I.A. No.10 of 2025 for sale of the Defendants on the terms that the sale proceeds thereof be deposited with the Admiralty Registrar ***to the credit of the present suit*** and be ***held as security for the satisfaction of Alphard's claim in the Suit.***

5.12. I.A. No.11 of 2025

On 09.04.2025 SML filed an application under Order VII Rule 11 (c) of the Code of Civil Procedure, 1908 for rejection of Alphard's plaint in the Suit on ground that Alphard has failed to pay the prescribed ad-valorem court fee on the reliefs sought in the plaint.

5.13. Time period granted by this Hon'ble Court under the 19 March Order to make payment of the deficit court fee expired on 16th April, 2025.

Neither did Alphard make payment of the deficit court fee nor did Alphard file any application seeking extension of time to pay the court fee, till 16 April, 2025.

5.14. I.A. No.16 of 2025

On 17.04.2025 Alphard filed I.A. No.16 of 2025 for modification of the 19th March Order to seek deferment in payment of deficit court fee.



The present suit

6. The plaintiff alleges that they have a maritime claim falling U/s.4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 under a 'Settlement Agreement' (Annexure-6 to the suit). The agreement has been alleged to be executed between the plaintiff-petitioner Alphard Maritime Limited ("Alphard") with Samson Maritime Limited ("Samson"), and Under Water Services Company Limited ("Under Water"). The plaintiff's claim indemnity of ₹428,76,87,464.30 (equivalent to US\$ 49,268,902.454) adding to the said cost the plaintiffs have determined the litigation cost to be US\$ 50,000. The aggregate of claims has been stated to be US\$ 49,288,902.45. The plaintiffs valued their suit at ₹ 428,76,87,464.30 and ad-valorem court fee payable has been valued by the Stamp Reporter and also stated by the plaintiff at ₹12,86,31, 885/- as indicated in the plaint.

7. The plaintiffs did not pay the court fee, filed I.A. No.7 of 2025. The I.A. was considered and disposed of by the then assigned Bench by order dated 19.03.2025 granting four weeks' time. It was further directed the Registry shall report with regard to its filing and sufficiency before the next date. Considering the prayer in the I.A. No.6 of 2025 the then assigned co-ordinate Bench passed order of arrest against the two vessels. The defendants upon notice appeared, filed I.A. No.11 of 2025.



8. The interveners have stated that vessels have been hypothecated to them. They have further stated that they are interested in view of Rule-17 of the Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020 filed I.A. No.9 of 2025.

I.A. No.8 of 2025 was filed by the defendants for release of the vessels.

9. In the background facts as indicted above the I.A. No.15 of 2025 is taken up for adjudication and consideration of prayer therein as in the emerging scenario, **the question** that has to be answered first in the suit: whether the amendment to the plaint is to be allowed or not?

The defendants raised preliminary objection regarding maintainability of the amendment petition in view of the fact that they have filed petition for rejection of the plaint under Order VII Rule 11 (c) of the C.P.C., Mr. Mukherji, learned Senior Counsel on behalf of defendants made his submission on the preliminary objection. Mr. Mukherji made his submissions opposing the submissions of the learned Senior Counsel, Mr. Nanda on merits.

In support of the prayer for amendment filed under Order VI Rule 17 of the CPC, learned Senior Counsel Mr. Nanda made extensive submissions. Mr. Nanda also made his submissions on merits of the amendment petition and also his submissions in response to the submissions of



Mr. Mukherji, learned Senior Counsel on preliminary objections.

10. For convenience of presentation and analysis by the Court the submissions of the learned Senior Counsel, Mr. Nanda for the plaintiff-petitioner are collated and discussed. Similarly the submissions of the learned Senior Counsel, Mr. Mukherji appearing for the defendants-opposite parties are collated and discussed together.

It would be apt to observe that the extensive hearing afforded to the learned counsel appearing in the matter may be said to be not required as the matter boiled down to a narrow compass for determination, as the ultimate analysis and conclusions would indicate. The research done and the labour put by the learned counsel inspired such indulgence.

Submissions on behalf of the plaintiff

11. It is submitted by Mr. Nanda, learned Senior Counsel that Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 refers to arrest of vessel in rem. The said provision is quoted herein:

“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; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.

4. Maritime Claim-*(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any xxx xxx (r) dispute arising out of a contract for the sale of the vessel."*

12. The learned Senior Counsel elaborates that the prayer for amendment of the plaint in the suit is for indemnification and for securing the maritime claim. It is a suit *in rem* as defined under the statute. He submits that such I.A. is maintainable under Section 12 of the Act, 2017 and Rule 3 of the Orissa High Court Admiralty (Jurisdiction and



Settlement of Maritime Claims) Rules, 2020. He refers to the decision rendered by the Hon'ble Supreme Court in **A. Nawab John and others v. V.N. Subramaniam**¹ decided on 3rd July, 2012 to contend that the Court has power to exercise the jurisdiction under Section 149 of the CPC for granting further time for deposit of the deficit court fees. It is submitted that though the defendants heavily rely on **A. Nawab John** (*supra*) regarding limits and contours of Court's power and exercise of discretion as prescribed under O.7, R.11 for rejection of the plaint there is also a scope for the plaintiff to seek exercise of discretion by the Court for extension of time.

13. Regarding the prayer made in the petition for amendment (I.A. No.15 of 2025) it is submitted by the learned Senior Counsel that the plaintiff relies on the decision of the High Court of Hyderabad in **Umrao Devi Bantia and others vrs. Union of India and others**² wherein it is held that the Court has power to allow the prayer of the plaintiff even if, in effect, it amounts to reduction of the quantum of claim resulting in reduction in court fee calculated thereupon. Supporting the prayer for amendment he submits that the amendment is necessitated in view of the pendency of the admiralty suit at Gujarat and due to pendency of the arbitration proceeding initiated at Singapore at the instance of the plaintiff. It is submitted that

¹ [2012] 6 SCR 369

² 2015 SCC OnLine Hyd 694: (2015) 5 ALT 11



in view of Section 5 of the Act, 2017, for the purpose of providing security against maritime claim, pending before Gujarat High Court and in the arbitration proceeding at Singapore in lieu of the vessels now within the jurisdiction of this Court the amendment needs to be allowed. Such proposed amendment does not change the nature and character of the suit.

14. The learned Senior Counsel refers to the paragraphs-15, 16,17,18 and 23 of the plaint to submit that the amendment sought for will not change the nature and character of the suit inasmuch as the relief sought for remains to be 'injunctive' and 'declaratory'. By the proposed amendment the plaintiff seeks to enforce his right for securing and indemnifying his claim in the suit pending before the Gujarat High Court as well as the claim in an International Commercial Arbitral proceeding initiated at Singapore.

The learned Senior Counsel to support his submissions relies on the decision rendered by the Bombay High Court (Full Bench) in **J.S. Ocean Liner LLC vrs. M.V. Golden Progress**³ decided on 25.01.2007 in Admiralty Suit No.11 of 2005. Paragraphs 2, 3, 30, 35, 36, 45, 48, 55, 56, 57, 60, 61, 64, 68, 72, 73, 77 and 78 of the said decision (SCC OnLine print) are relied on. The conclusions as recorded by the Full Bench of three learned Judges of the said High Court at paragraph 78 of SCC OnLine, is relied upon by the

³ 2007 SCC OnLine Bom 69: 2007 AIHC 1933 (FB)



learned counsel. Relied upon paragraph is reproduced herein:

“78. We shall, accordingly, articulate our conclusions thus:

(i) An application under [Section 9](#) of the Arbitration and Conciliation Act, 1996 is not maintainable for the arrest of the vessel for obtaining security of an Award that may be made in arbitration proceedings. The view to the contrary in m.v. Indurva Valley, to that extent is overruled.

(ii) An action in rem (in admiralty jurisdiction) for recovery of the claim and arrest of the vessel where the parties have agreed to submit the dispute to arbitration can be maintained and in such case if by way of an interim measure, the vessel is arrested or the security provided to obtain the release of the vessel, matter shall proceed in accord with Article 7 of the International Convention on Arrest of Ships, 1999.

(iii) If the proceedings are brought within the time so ordered by the Court before the arbitral tribunal, any final decision resulting therefrom shall be recognised and given effect with respect to the arrested ship or to the security provided in order to obtain its release provided that the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for defence and in accord with the provisions contained in Arbitration and Conciliation Act, 1996.

(iv) With regard to clauses (ii) and (iii), it is, however, clarified that retention of security shall remain a matter of discretion and it shall be for the court to pass appropriate order in that regard after taking into consideration all relevant circumstances. Let the notices of motion No. 2780 of 2005 and 3287 of



2005 be posted before the Admiralty Judge for disposal in the light of our answer to the reference.”

15. The next decision relied on is also of the Bombay High Court rendered by learned Single Judge in ***Siem Offshore Redri AS vrs. Altus Uber***⁴, the learned Senior Counsel refers to paragraphs-2, 3, 4, 5, 35, 39, 52 to 56 of the SCC OnLine report to buttress his submissions. The conclusions as reflected in paragraphs 66 to 69 are relied on and are reproduced herein:

“66. The above reasoning equally applies when considering in rem arrest for the purpose of obtaining security in a case where arbitration proceedings had already been commenced, applying the procedure devised by the Full Bench in Golden Progress. It matters not whether arbitration has been invoked or is yet to be invoked.

67. Any other interpretation would not only defeat the interest of justice but would be contrary to the avowed objective of Courts and Parliament to promote alternative dispute resolution by way of arbitration or mediation. If a party agrees to arbitration it cannot be that he is to be deprived of his right in rem to obtain security in respect of his maritime claim. Just as a party who agrees to arbitration with the seat of arbitration outside India (after 2015 amendment) can apply for interim measures to a Court in India under [Section 9](#) of the Arbitration Act, 1996, irrespective of the fact that arbitration may have already been invoked before any such application is made, so also a party should not be deprived of his right in rem to invoke admiralty jurisdiction and obtain arrest of a ship to secure his maritime claim even if arbitration may

⁴ 2018 SCC OnLine Bom 2730



have already been invoked. As noted earlier also, after 2015 amendment, under [Section 9](#) read with [Section 2](#) of the Arbitration Act, 1996, a party can approach this Court for securing the amount in dispute in the arbitration even in the arbitration. Just because the party cannot maintain an admiralty action in rem under [Section 9](#), can such a party be deprived of a chance to secure its claim in arbitration? In *Golden progress* (Supra) the Full Bench has in paragraph 78 held that the Court has to devise a procedure to permit a party who has agreed to submit disputes to arbitration and as noted earlier, there is no explicit legislation barring such security.

68. Plaintiff had given their vessel Siem Marlin on bareboat charter to MEDS under a bareboat charter-party dated 13th May 2015. Thus MEDS was the demise charterer of plaintiff's vessel. Plaintiff has various claims for damages against MEDS for breach of charter-party. Plaintiff's claims are maritime claims under Section 4(h) of the Admiralty Act, 2017 because these are claims arising out of an agreement relating to the hire of the vessel.

69. As per [Section 5\(2\)](#) read with Section 5(1)(b) of the Admiralty Act, 2017, plaintiff is entitled to arrest a vessel which is either owned by or on demise charter to MEDS when the arrest is effected.”

16. The learned Senior Counsel relies on the observations of the Supreme Court in **Cuddalore Powergen Corporation Ltd. vrs. Chemplast Cuddalore Vinyls Limited and another**⁵. Reliance upon **Cuddalore Powergen** is regarding scope of Order II Rule 2 of the Code of Civil Procedure, 1908. The relied on paragraphs-34 and 38 are reproduced herein:

⁵ 2025 SCC OnLine SC 82



“34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is as follows: -

i. Whether in the facts & circumstances of the present case, the principles enumerated under [Order II Rule 2 CPC](#) would bar the institution of a second suit and warrant rejection of the plaint filed by the respondent no. 1 herein in O.S. No. 122 of 2008?

38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order



II Rules 2(2) and (3) [CPC](#) that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit.”

17. The learned Senior Counsel further refers to the decision rendered by the Supreme Court in ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another***⁶. The judgment is read at length as it deals with the scope of Court’s power to allow amendment of pleadings as available under Order 6 Rule 17 of CPC read with Order 2 Rule 2 of CPC. The relied on paragraphs-71 to 71.11 are reproduced herein:

“71. *Our final conclusions may be summed up thus:*

71.1. *Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under [Order 2 Rule 2 CPC](#) is, thus, misconceived and hence negated.*

71.2. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or*

⁶ (2022) 16 SCC 1



prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of [Order 6 Rule 17 of the CPC](#).

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side.

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is malafide, or

71.4.4. By the amendment, the other side loses a valid defence.



71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.6. *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As*



such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).”

18. It is submitted that the power to allow amendment of pleadings as provided in Order 6 Rule 17 of CPC should be exercised liberally. The defendant’s objection is of any relevance only when the proposed amendment takes away valuable accrued right and the claim of plaintiff is not barred by time. Otherwise amendment should be allowed by the Court. The power of the Court while considering the petition for amendment of pleadings under Order VI Rule 17 of the CPC is unfettered. It cannot be based on the evidence to be led by the defendants. The Court need not go beyond the pleadings of the plaintiff while considering the prayer for amendment of plaint.

19. Also replying to the contention raised by the defendants regarding plaintiff’s plaint to be rejected in terms of Order VII Rule 11 of CPC, he submits that for consideration of prayer of defendants for rejection of the plaint any material other than the plaint need not be looked into by the Court to arrive at a conclusion. Prayer to rely upon any material



other than the pleadings of the plaintiff has to result in rejection of prayer for 'rejection of plaintiff'.

19.1 It is submitted that the defendants in response to the I.A. for amendment have relied on materials and other annexures touching the merits of various issues whereas the Court has only to go through and refer to the pleadings in the plaintiff to arrive at a decision whether to reject the plaintiff or not. It is submitted that even the I.A. filed by the defendants seeking any such relief under Order VII Rule 11 need not be looked into. The only material before the Court for consideration would be the plaintiff filed by the plaintiff and its contents.

19.2 It is submitted Order VI Rule 17 is intended to give the plaintiff a scope to provide amendment to its pleadings and such right of plaintiff can be exercised at any stage and it needs to be considered liberally irrespective of the other I.As. that may be pending initiated by the plaintiff or the defendants or an I.A. as has been in the present case filed for rejection of the plaintiff.

20. It is submitted that the application under Order VI Rule 17 for amendment should be heard first as has been held in several judicial pronouncements. He refers to the decision of the learned Single Judge of the High Court of Madhya Pradesh at Indore in ***Dr. Mumtaz Ali vs. M/s. Shri Mangal Associates through Partner Brajesh Pandya and***



others⁷ decided on **05.03.2025**. He refers to paragraph-3 of the said judgment that is reproduced herein :

“3. On such contentions, defendant No.1 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint. Therefore, the plaintiff filed an application under Order 6 Rule 17 of the CPC for amendment in the plaint to bring on record an authority having been issued by all the other partners in favour of the partner who has instituted the suit on behalf of the firm. Amendment in pleadings in that regard was also sought to be made. The applications filed by the parties were contested by the other side.”

21. He then refers to paragraph-6 where the learned Judge relied on earlier judgment of the Madhya Pradesh High Court in **Suchitra Dubey Vs. Sattar and Others**⁸ sub-para 10 and 11 of **Suchitra Dubey** are relied upon which are quotations from earlier judgments:

“10. In Dera Baba Bhumman Shah Sangar Sarista (supra) it was categorically held that the application under Order 6 Rule 17 of the CPC has to be decided before the decision of the application under Order 7 Rule 11 of the CPC. The order on application under Order 7 Rule 11 prior to decision of pending application under Order 6 Rule 17 is an illegality and that pending application ought to have been decided prior to decision on the application under Order 7 Rule 11. In Rajesh Kumar Mehlawat (supra) also it was held, though on the basis of concession, that the settled principle of law is that an application under Order 6 Rule 17 of the CPC even if filed after filing of

⁷ 2025: MPHC-IND-5859

⁸ 2023 SCC OnLine MP 1795



an application under Order 7 Rule 11 of the CPC or before the order on such an application is pronounced, has to be considered first.

11. In Gaganmal Ramchand (supra) it was held that the power of the Court to allow amendment of pleadings should not in any manner be restricted or controlled by the provisions contained in Order 7 Rule 11 of the CPC. Though it is incumbent upon the Court to reject the plaint that does not disclose a cause of action but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. The Court may prevent the operation of Order 7 Rule 11 of the CPC and save the plaint from being rejected by exercising its power under Order 6 Rule 17. It was held as under:—

“Mr. Seervai's argument is that when a plaint comes before the Court and that plaint does not disclose a cause of action, it is mandatory upon the Court to reject that plaint and dismiss the suit and the Court has no power to permit the plaint to be amended. In other words, Mr. Seervai's contention is that O. VI, r. 17, is controlled by O. VII, r. 11, and in cases falling under O. VII, r. 11, the Court has no jurisdiction to order the amendment of the plaint. I am unable to accept that contention. I see no reason whatever why the power of the Court to allow amendment of pleadings should be in any way restricted or controlled by the provisions contained in O. VII, r. 11. It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under O. VII,



r. 11. But the Court may prevent the operation of O VII, r. 11, and may save the plaint being rejected by exercising its power under O. VI, r. 17, and allowing the plaint to be amended. It would indeed be an extraordinary proposition to lay down that if various averments had to be made in the plaint which would go to constitute a cause of action, and by some oversight or some mistake the plaintiff failed to make one of the averments, then in that case the plaint must be dismissed and the plaintiff could not apply for an amendment and make the necessary averment.”

22. It is submitted by the learned Senior Counsel Mr. Nanda that the plaintiff has indefeasible right as far as the right to amend the pleadings is concerned as provided in Order VI Rule 17 of the CPC. In support he cites the decision of the Supreme Court in ***Geetha vrs. Nanjundaswamy and others***⁹. The relied upon paragraph-6 (23.10 and 23.11) which is quoted herein;

“6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali, as follows:

... 23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be

⁹ 2023 SCC OnLine SC 1407



adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23. Regarding the prayer made in I.A. No.08 of 2025 filed by the defendants, it is submitted by Mr. Nanda that in the said I.A. the defendants have sought for release of the arrested vessels which is not contemplated in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Regarding the I.A. No.16 of 2025 filed by the plaintiff seeking deferment of payment of court fee, the learned Senior Counsel submits that the right to audience in the said I.A.



with regard to the prayer made therein be reserved and leave may be granted for making further submissions in I.A. No.16 of 2025.

24. Mr. Nanda, learned counsel in response to the submissions of Mr. Mukherjee learned senior counsel opposing the amendment submits that though the defendants find flaw in the plaint in not mentioning the ‘Gujarat admiralty suit’ but the suit before this Court is in aid of the admiralty suit pending before Gujarat High Court, Section 5(1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims Act, 2017) itself gives the answer to the said contention of the defendants. Section 5(1) is reproduced herein :

“5(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; or(c)the claim is based on a mortgage or a charge of the similar nature on the vessel; or(d)the claim relates to the ownership or possession of the vessel; or(e)the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.”

25. It is submitted that since section 5(1) refers to an “...Subject of an admiralty proceeding...”, the suit before this Court is also in aid of another admiralty suit and the claim against the vessel is the subject of an admiralty suit pending



before the Gujarat High Court. It is submitted that the suit is for securing that claim and also for securing the value of the vessels those are subject matter of the suit at Gujarat.

26. It is submitted that reliance of the defendants on ***Rushab Ship International LLC v. Bunkers onboard Ship M.V. African Eagle***¹⁰ (rendered by the Bombay High Court) has to be considered in the context of the fact that ***African Eagle*** (*supra*) is a pronouncement prior to coming into force of the 2017 Act. The learned senior counsel refers to observations of ***Siem Offshore Redri AS vrs. Altus Uber***⁴ paragraph-37 onwards (of the SCC OnLine print) to contend that the observation in ***African Eagle***¹⁰ (*supra*) was rendered in a different context prior to the 2017 amendment.

27. Responding to the contention of the learned senior counsel Mr. Mukherjee that defendants in the present suit before this Court are not party before the Gujarat High Court in the pending suit there, Mr. Nanda submits that the defendants do not dispute that they are the owners of the vessels, the vessels have been named and are identified being subject matter of/party to the suit before this Court.

Referring to the preliminary objection of the learned senior counsel Mr. Mukherjee regarding the scope and applicability of Order VII, Rule 11-(a), it is submitted by Mr. Nanda that Order VII, Rule 11-(a) provides that only if the

¹⁰ 2014 SCC OnLine Bom 620 : (2014) 4 Bom CR 269



plaint does not disclose a cause of action it shall be rejected and in the proposed amendment the cause of action is disclosed.

27.1 Referring to the Court-fees Act, 1870 section 7 i.e computation of fees payable in certain suits Mr. Nanda relies on section 7(iv)(c) i.e. ‘for a declaratory decree and consequential relief’, 7(iv)(d) ‘for an injunction’ and 7(iv)(f) ‘for accounts’.

It is submitted by the senior counsel Mr. Nanda that regarding valuation of the suit it is the plaintiff who will value the suit. On the said proposition, he relies on judgment of the Supreme Court reported in **Sri Rathnavarmaraja v. Vimla Smt.**¹¹. He refers to paragraphs 2 and 3 of the said judgment:

“2. The Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid

¹¹ AIR 1961 SC 1299



adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate.

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“Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid....”

3. But this section only enables the defendant to raise a contention as to the proper court fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court Fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the Court of first instance on the matter of court fee payable in a plaint. The Act, it is true by Section 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court fee due from the litigant is



manifest from the detailed provisions made in Chapter III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court fee at the instance of the defendant, when no question of jurisdiction was involved.”

28. Referring to paragraph-3 of **Sri Rathnavarmaraja**¹¹ (*supra*) it is further submitted that the anxiety of legislature to collect court fee from the litigant does not arm the defendants with a weapon of technicality to obstruct a suit.

Summing up his submissions the learned senior counsel files a memorandum indicating the issues proposed on behalf of the plaintiff to be answered. The issues suggested on behalf of plaintiff reproduced herein:

“1. Whether non-payment of court fee within the time specified by the court followed by an application seeking modification of such order renders the suit liable for rejection under Or 7 R 11?

2. Whether there can be an automatic dismissal of suit (without passing a decree as required under Or 7 R 12 of the CPC)?

3. Can the plaintiff file an application for amendment under Or 6 R17 after such specified date fixed for the payment of court fee with an aim to reduce the quantum of court fee?

4. Whether the application under Or 6 R 17 to be considered prior to a decision is rendered on Or 7 R 11 application?



5. *Whether non-payment of court fee creates any legal right in favour of the defendants for the purpose of consideration/rejection of amendment application under OR 6 R 17?*

6. *Whether the application under Or 6 R 17 filed by the plaintiff changes the nature and character of the suit?*

Submissions on behalf of the Defendant

29. Mr. Mukherji, learned Senior Counsel for the defendants raised a preliminary objection to the application seeking amendment i.e. I.A. No.15 of 2025. Apart from the preliminary objection he addressed the Court in I.A. No.8 of 2025 filed for release of the vessels and I.A. No.11 of 2025 filed by the defendants invoking Order VII Rule 11(c) of the CPC for rejection of the plaint. Mr. Mukherji refers to paragraph-35 of the plaint to submit that it has been stated therein that the plaintiff has paid a “fixed Court fees of INR []” and hence, the present suit is sufficiently stamped. He then draws attention of the Court to the paragraph captioned as ‘prayer’ of the plaint

“i. This Hon’ble Court be pleased to pass an Order and Decree in favour of the Plaintiff and against the Defendants Vessels jointly and/or severally, her owner, and all persons interested in her, to pay the Plaintiff a sum of US\$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit till the date of the decree and applicable interest from the date of the decree till payment/realization.”

Referring to the above quoted prayer he submits that the prayer is for a money claim of a sum of ₹428,76,87,464.30



along with applicable interest per annum, the said amount is arrived at as the value of nine ships which form part of the alleged settlement agreement.

30. The learned Senior Counsel then refers to paragraph-11 of I.A. No.7 of 2025 filed by the plaintiff, which contains the following averments/statements:

“11. In the circumstances aforesaid, in all probability, this Hon’ble Court would not be hearing the captioned proceedings substantively, and they are likely to be stayed and/or transferred to another High Court. It would be manifestly unjust to compel the Plaintiff to pay court fees of approximately INR 85,00,000 in relation to a proceeding which will not be substantively heard by this Hon’ble Court.”

It is submitted that the Stamp Report made on 18.03.2025 by the Registry of this Court at paragraph-3 indicates court fee: “Rs.12,86,31,885/- is payable, Rs.75,012/- paid. Deficit court fee of Rs.12,85,56,873/- not paid.”

The learned Senior Counsel refers to the paragraph captioned as ‘prayer’ in the I.A. No.7 of 2025 that contains the prayer :

“that the plaintiff be granted additional time and the question of the payment of the of the remaining court fees be kept open till the transfer petition that would be filed by the plaintiff under Section 15 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is finally decided by the Hon’ble Supreme Court, and the arbitration proceedings are concluded.”



31. The learned Senior Counsel referring to the order passed by this Court dated 19.03.2025 in I.A. No.7 of 2025 submits that the discretion of this Court was invoked by the plaintiff before the coordinate Bench assigned earlier taking up the suit, by stating that Rs.75,000/- has been paid as court fee and the rest of the amount shall be paid as would be directed by the Court by enlarging the time for payment. Referring to the pleadings in the I.A. No.7 of 2025, disposed of by earlier order dated 19.03.2025, he submits that the prayers made in the said I.A. or any part of the plaint do not in any manner dispute the amount of court fee quantified to be payable by the plaintiff; paragraph-4 of the earlier order dated 19.03.2025 is very clear to the extent that on submission of the plaintiff, the Court granted four weeks time for payment of the admitted/deficit court fee. Mr. Mukherji also draws attention to the part of the order dated 19.03.2025 that records with respect of court fee: *“the Registry shall report with regard to its filing and sufficiency before the next date.”*

32. It is submitted by the learned Senior Counsel, Mr. Mukherji that as the events have unfolded, the defendants filed the application bearing I.A. No.8 of 2025 on 24.03.2025 for vacation of the order of arrest dated 19.03.2025 passed in I.A. No.6 of 2025 in view of the clear mandate of the order as contained in I.A. No.7 of 2025 dated 19.03.2025. The plaintiff consistently represented before this Court in the subsequent proceedings that they want to pay the court fees



within the time fixed as directed by this Court by order dated 19.03.2025. The court fees was not paid by the time extended/granted by this Court i.e. 16.04.2025 and thereafter application : I.A. No. 11 of 2025 was filed by the defendant on 08.04.2025 in terms of Order 7, Rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint.

33. It is submitted no application for extension of time for payment of deficit court fees has been filed by the plaintiffs by the extended date i.e. 16.04.2025 and even thereafter till today, no application for extension of time has been filed. It is submitted that the I.A. No.16 of 2025 filed by the plaintiffs for modification of order dated 19.03.2025 passed in I.A. No.7 of 2025 is misconceived, hit by *res judicata* and otherwise not maintainable in view of the consistent stand of the plaintiff to pay the deficit court fees within the time fixed by the Court.

Further, in the alternative it is submitted that no case is made out for exercise of discretion for extension of time to deposit the court fees as directed earlier by this Court. It is submitted that filing of I.A. No.15 of 2025 is abuse of the process of law inasmuch as the prayer for amendment is effectively is to change the nature and character of the suit. If such amendment is to be allowed that would result in the suit no more remaining an admiralty suit. At best the purpose for filing of this I.A. is for delaying or not paying the court fees as determined by the Registry of the Court in



terms of the Court Fees Act and Rules. The time granted by the Court having expired, further indulgence would amount encouraging the abuse of process of law.

34. Mr. Mukherji, learned Senior Counsel draws attention to the transfer application referred to by the plaintiff in I.A. No.86277/2025 filed before the Supreme Court. On 07.04.2025 the Supreme Court has dismissed the Transfer Petition (s) (Civil) Nos.906-907/2025 filed by the plaintiff. Therefore, it is submitted the plea of extension of time till consideration and the decision of the transfer petition by the Supreme Court no more survives after 07.04.2025. It is submitted that on the face of it, the value of the vessels remaining same the court fees that would be applicable and determined on the said value cannot be changed at the instance of the plaintiff in any manner. More so, when the value has been disclosed by the plaintiff themselves to be urged before this Court. It forms basis of their claim and calculation of the court fee payable. The defendant's prayer would be that the order dated 19.03.2025 directing arrest of the vessels of the defendants could not have continued after the date of extension of time to pay the court fees expired on 16.04.2025 as the suit did not survive to be adjudicated. After filing of the I.A. No.11 of 2025 at the instance of the defendants for modification of the interim order of arrest should not continue beyond today and the plaint is liable to be rejected in terms of the O.7, R.11 of the CPC.



35. It is submitted by the learned Senior Counsel that when the plaint or the suit does not survive in view of the order dated 19.03.2025 in I.A. No.6 of 2025 which also itself forms part of the order passed in I.A. No.7 of 2025, there is no question of bringing any amendment to the pleadings of the suit. Mr. Mukherji refers to the decision of the Supreme Court in ***Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another***⁶ which has also been relied upon by the learned senior counsel for the plaintiff. Mr. Mukherji relies on paragraphs-71.3.2, 71.4.2., 71.4.3. and 71.4.4 of ***Life Insurance Corporation***⁶ (*supra*) which are reproduced herein :

“71.3. *The prayer for amendment is to be allowed:*

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side.

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.”*



36. It is submitted that the amendment sought for, would take away the valuable right, i.e., dismissal of the suit accrued in favour of the defendants as provided under Order VII Rule 11 of CPC. It is submitted that the exceptions to rejection of amendment of plaint as laid down in ***Life Insurance Corporation***⁶ (*supra*) do not protect the plaintiff as far as prayer for amendment is concerned. The learned Senior Counsel refers to the order passed by the Co-ordinate Bench assigned earlier (Order No.1 dated 19.03.2025), to submit that the Court directed court fee to be furnished within four weeks that ended on 16.04.2025. As far as rejection of plaint due to non-payment of court fee: contemplated in Order VII Rule 11(c); the fatality occurred on 16.04.2025. Post occurrence of that fatality, valuable right accrued in favour of the defendants which is sought to be taken away by the amendment.

37. The learned Senior Counsel refers to paragraphs-10, 17, 18 (a), (d),(e),(f) of the I.A. for amendment i.e. I.A. No.15 of 2025, to submit that the I.A. makes it clear and it has been pleaded in the I.A. that the plaintiff for the first time refers to the suit before the Gujarat High Court wherein the present defendants are not party. Neither the owner nor any of the vessels are parties thereto.

Referring to the paragraph-10 of I.A., the learned Senior Counsel reiterates that the value of the vessels are still mentioned as ₹153,14,75,775/- to be the market value



of such vessels. He then refers to the paragraph-7 of the schedule of the amendment (quoted herein):

“7. For paragraph 35 of the Plaint :

“The plaintiff has paid a fixed court fee of INR [] and hence, the present suit is sufficiently stamped” is deleted, and “The Plaintiff values its relief at ₹20,00,000/-. Therefore, the ad valorem court fee to be paid by the Plaintiff is ₹61,185/. The Plaintiff has already paid INR 75,000/- as court fee for the suit, and hence, the present suit would be sufficiently stamped. The Plaintiff has filed I.A. No.13 of 2025, seeking extension of time on the issue of court fee till this Hon’ble Court allows I.A. No.12 of 2025” is inserted.”

38. It is submitted in the proposed amendment as indicated above the valuation of the relief claimed by the plaintiff is valued at ₹20,00,000/- (Rupees Twenty Lakhs), the *ad valorem* court fee to be paid on the same has been calculated to be ₹ 61,185 is without any basis, bereft of any particulars. No reasons for such calculation is forthcoming everything else including the valuation of the vessels remaining the same.

39. The learned Senior Counsel, Mr. Mukherji then refers to the decision of the Bombay High Court in ***Siem Offshore Redri AS vrs. Altus Uber***⁴ also relied upon by the plaintiff. The relied upon paragraphs-36 and 37, are quoted herein:

“36. An action in rem is filed by way of a suit and governed by the provisions [of the Code of Civil Procedure](#), 1908. The Full Bench in [Golden Progress](#) (Supra) was conscious of the fact that a suit cannot be filed simplicitor for interim relief as they



have expressed their conclusion in paragraph 78(ii) by saying that the action in rem must be for recovery of the claim. This can only mean that a decree must be sought as a decree is the only manner in which a claim can be recovered in a suit.

37. This Court in *African Eagle* (Supra) was considering an action in rem where the prayer in the suit was confined to seeking security pending arbitration, i.e., for interim reliefs only. The suit was not for recovery of the claim at all and no final relief of decree was sought. It is in this context, this Court, relying upon the settled legal position reiterated in *BALCO* (Supra) held that such a suit only for interim relief is not maintainable. The present suit of plaintiff is not such a suit. In fact in the case of *African Eagle* (Supra), this Court observed in paragraph 21 that "the Full Bench (in *Golden Progress*), in my view has not considered a situation like in the present suit as to whether a suit seeking a final relief at the interlocutory stage is maintainable or not". Consequently, the judgment in *African Eagle* (Supra) is distinguishable on facts because that suit was only for interim relief and no decree for recovery of the claim was sought."

40. Relying on paragraph-36 of ***Siem Offshore***⁴ (supra), it is argued that action in rem must be for recovery of the claim. This can only mean that a decree must be sought as a decree is the only manner in which a claim can be recovered in a suit. Referring to paragraph-37 of ***Siem Offshore*** (supra) it is submitted that in ***Rushab Ship International LLC v. Bunkers onboard Ship M.V. African Eagle and Freight***¹⁰ (supra) it was held that the settled legal position is that suit only for interim relief is not maintainable. In ***African Eagle*** (supra) the Bombay High Court was



considering an action in rem where the prayer in the suit was confined to securing security pending arbitration i.e. for interim reliefs only. The suit was not for recovery of claim at all. The Court relying on the earlier decision in **BALCO** held that such a suit only for interim relief is not maintainable. It is submitted the proposed amendments are seeking security for the suit pending at Gujarat.

41. The learned Senior Counsel also relies on **Pradeep Kumar and another v. Vishnu Kumar and others**¹²: paragraph-17 to submit that the plaintiff was required to make good the deficiency in court fee by the date fixed by the Court and in the relied upon decision the plaintiff in fact sought amendment of the plaint seeking reduction in the claim by the date fixed as held in **Mt. Saiyadunnssa Khatun v. Gaibandha Loan Co. Ltd.** (*supra*). He further refers to the decision of the High Court of the then East Punjab in the case of **Gainda Mal v. Madan Lal** referred to in **Pradeep Kumar** (*supra*) to submit that the plaintiff can reduce his claim and furnish requisite court fee on reduced valuation within the time extended by the Court to deposit the court fee. It is submitted that in the case at hand after the fatality had already happened i.e. non-payment of court fee by the extended date fixed by the Court : 16.04.2025. Before such date there has been no plea for amendment/prayer for extension of time to pay court fee.

¹² 2018 SCC Online ALL 6466



42. Mr. Mukherji, learned Senior Counsel continuing his submissions in opposition to the prayer for amendment made in the I.A. No.15 of 2025 referred to the judgment rendered by the High Court of Bombay in ***Rushab Ship International LLC and others v. Bunkers onboard the Ship M.V. African Eagle***¹⁰ (*supra*). The relied upon paragraphs 17, 18, 21 22, 23, 25, 31, 37, 38, 48, 49 and 51 are reproduced herein:

17. In Golden Progress (supra), what the Court had to consider was whether an application under Section 9 of the Arbitration and Conciliation Act, 1996 for security pending the award could be obtained by arrest of a ship in rem. The Court held, for arrest of a vessel for obtaining security for an award that may be made in the arbitration proceeding, an application under Section 9 of the said Act is not maintainable. What the Court held was an action in rem (in admiralty jurisdiction) for recovery of the claim and arrest of the vessel where the parties have agreed to submit the dispute to arbitration can be maintained and in such case if by way of an interim measure, the vessel is arrested or security is provided to obtain the release of the vessel, matter shall proceed in accord with Article VII of the International Convention on Arrest of Ships, 1999.

18. In Golden Progress, the plaintiffs had filed a suit (a) for the purposes of recovering an amount aggregating US\$ 46,913.52 (together with interest thereon and costs) due and payable to them by the second defendant and (b) in the alternative, for securing the said amount pending the commencement and outcome of the arbitration proceedings to be initiated in London against the second defendant.

The plaintiffs had claims against the defendants under the Charter Party and the defendants not



having made the payments, the plaintiffs filed the suit. It is necessary to emphasise that the primary prayer was for a decree in their favour, i.e., for recovering US\$ 46,913.52 and only in the alternative the plaintiffs pleaded that in view of the arbitration clause they are entitled to an order of arrest of the ship to secure their claim in arbitration which was to be commenced. In the said judgment, the full bench considered the Apex Court's judgment in the matter of *Bhatia International v. Bulk Trading S.A.*⁵ and held that the conclusions drawn in *Bhatia International* by the Apex Court and the law declared therein do not lead to the conclusion that an application under Section 9 of the said Act is maintainable for the arrest of the vessel for obtaining security for an award that may inure for their benefit in the foreign arbitration. The Court felt that Section 9(ii)(b) of the said Act cannot be construed so as to read into it in rem jurisdiction. The Court held that the said provision does not cover the arrest of the ship or the keeping of the ship under arrest in the exercise of the Court's jurisdiction in rem at all. The Court held that what is provided by Section 9(ii)(b) is securing the amount in dispute in the arbitration by way of an interim measure which does not include the arrest of the vessel. Though the Court has not said in so many words, I would say that such an action in the admiralty jurisdiction cannot be only for security pending arbitration as the sole relief. The reason for that, in my view, is the ship may be arrested in the admiralty jurisdiction only to acquire/assume jurisdiction or to obtain security for satisfaction of the claim when decreed or in execution of a decree and once the vessel is arrested, the suit must proceed to trial against the owner as in any other suit. In fact, this is confirmed by the full bench in *Golden Progress* (supra), while considering the judgment of the Apex Court in

the matter of *M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.* and in the matter of *M.V. Sea*



Success v. Liverpool and London Steamship Protection and Indemnity Association Ltd.. The Full Bench has in paragraphs 30 and 38 observed thus:

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22. The expression used is “An action in rem (in admiralty

jurisdiction) for recovery of the claim and arrest of the vessel”. Recovery of claim can only be in the suit where the plaintiff has sought a decree - ‘recovery of the claim’. In fact, the Full Bench has quoted and has not disagreed with what the English Courts have held. The English Courts have opined that where the plaintiff had sought to invoke the admiralty jurisdiction not to obtain the hearing and determination of claim but for the purpose of obtaining security for an award for arbitration proceedings such an action cannot be maintained. Para 39, 40, 41 & 42 of Golden Progress read as under:

23.Brandon, J. granted the order for which the ship owners asked and also ordered that in the event of the action being so dismissed, the bail should be released. Brandon J. opined that the charterers had sought to invoke the admiralty jurisdiction not to obtain the hearing and determination of claim but for the purpose of obtaining security for an award for arbitration proceedings, and that an admiralty court had no jurisdiction to arrest the ship or to keep ships under arrest for that purpose.”

25. it is not the purpose of arresting a ship in an action in rem to provide the plaintiff with security for payment of an award which he may obtain in an arbitration of the same claim as that raised in the action and, therefore, the court has no jurisdiction to arrest a ship, or keep her under arrest, for such other purpose.



31. In the BALCO (supra) judgment, the Apex Court has in no uncertain terms held that an inter parte suit simply for interim reliefs pending arbitration would not be maintainable. The Apex Court held that in order to claim an interim relief, the existence of a pending suit is necessary. The Apex Court opined that pendency of the arbitration proceedings outside India would not provide a cause of action for the suit where the main prayer is for interim relief and in a suit where it is only for interim relief as security pending arbitration, interlocutory reliefs and the final relief would be identical and such a suit would not be maintainable because an interlocutory injunction can only be granted during the pendency of the suit, claiming the relief which is likely to result in a final decision upon the subject in dispute. The Apex Court further held that the suit would be maintainable only on the existence of a cause of action, which would entitle the plaintiff for the substantive relief claimed in the suit and the interim relief must be a part of the substantive relief to which plaintiff's cause of action entitled him. The Court further said that these ingredients will be missing in a suit claiming only interim relief during pendency of the arbitration proceedings outside India. Since the dispute is to be decided by the arbitration, no substantive relief concerning the merits of the arbitration could be claimed in the suit and the plaintiff's only claim would depend on the outcome of the arbitration proceedings in a foreign country over which the Courts in India would have no jurisdiction. The cause of action would clearly be contingent/speculative. There would be no existing cause of action and the plaint itself would be liable to be rejected under Order 7 Rule 11(a) of the Civil Procedure Code. What in effect the Court said was no interim relief could be granted unless it is in aid of as an auxiliary to the main relief that may be available to a party on final determination of rights in a suit.



37. In order to claim an injunction the existence of a pending suit is a prerequisite. It is in this background that one has to examine as to whether an inter partes suit for interim relief during the pendency of arbitration proceedings outside India would be maintainable.

38. outside India would not provide a cause of action for a suit where the main prayer is for injunction. It must also be noticed that such a suit, if at all, can only be framed as a suit to “inter alia restrain the defendant from parting with property.” All that could then be filed would, therefore, be a bare suit for injunction restraining the other party from parting with property. The interlocutory relief would also be identical. In our view, such a suit would not be maintainable, because an interlocutory injunction can only be granted during the pendency of a civil suit claiming a relief which is likely to result in a final decision upon the subject in dispute. The suit would be maintainable only on the existence of a cause of action, which would entitle the plaintiff for the substantive relief claimed in the suit. The interim injunction itself must be a part of the substantive relief to which the plaintiff's cause of action entitled him. In our opinion, most of the aforesaid ingredients are missing in a suit claiming injunction restraining a party from dealing with the assets during the pendency of arbitration proceedings outside India. Since the dispute is to be decided by the Arbitrator, no substantive relief concerning the merits of the arbitration could be claimed in the suit. The only relief that could be asked for would be to safeguard the property which the plaintiff may or may not be entitled to proceed against. The cause of action would clearly be contingent/speculative. There would be no existing cause of action. The plaint itself would be liable to be rejected under Order 7 Rule 11(a).



48. So far as the Indian Law is concerned, it is settled that the source “of a Court's power to grant interim relief is traceable to Section 94 and in exceptional cases Section 151 CPC. The Civil Procedure Code presupposes the existence of a substantive suit for final relief wherein the power to grant an interim relief may be exercised only till disposal thereof.

49. In this view of the matter, it is patent that there is no existing provision under the Civil Procedure Code or under the Arbitration Act, 1996 for a Court to grant interim measures in terms of Section 9, in arbitrations which take place outside India, even though the parties by agreement may have made the Arbitration Act, 1996 as the governing law of arbitration.

(emphasis supplied)”

51. In the circumstances, as the Apex Court has held that an interparte suit simply for interim relief pending arbitration outside India will not be maintainable and unless the dispute is decided by the arbitrator cause of action will clearly be contingent and speculative and there will be no existing cause of action, the plaint is bound to be rejected under Order 7 Rule 11(a). In my opinion, the Court's jurisdiction to arrest a ship in an action in rem should not be exercised for the purpose of providing security of an award, which may be made in arbitration proceedings that is maintainable because the purpose of the exercise of the jurisdiction is to provide security in respect of the action in rem, and not to provide security in some other proceedings like an arbitration proceeding. If the plaintiff invokes the jurisdiction of the Court to obtain the arrest of the ship as security for an award in an arbitration proceeding, the Court should not issue a warrant of arrest.”

43. Mr. Mukherji refers to the decision of Madhya Pradesh High Court at Gwalior in **Ramcharan Goyal v. Smt. Kamalarani Verma and others**, Misc. Petition No.6624 of



2023 decided on 02.05.2025, paragraphs 10 and 11 are reproduced herein:

“10. As per the law settled, the allegations in the plaint including the substantive relief claimed must be the basis for settling the Court fee payable by the plaintiff. But where the plaintiff attempts to under-value the plaint and reliefs, the Court has to intervene. In doing so, concept of real money value forms integral part of Court enquiry where relief sought has real money value, which can be objectively ascertained. In this connection, Sub-section (iv)(c) of Section 7 of the Act which relates to computation of court fees payable in certain suits, envisages that "to obtain a declaratory decree or order, where consequential relief is prayed".

11. In the present case, petitioner-plaintiff has sought declaration for protection of possession on the basis of agreement to sell which itself is not the basis of any title. The relief for such declaration is an independent relief and connected with the relief of title, meaning thereby, the relief sought by the plaintiff on the basis of agreement automatically includes the question of title alongwith possession and for such independent relief, the petitioner will have to pay the court fee on the basis of amount of consideration mentioned in the agreement.”

44. The learned Senior Counsel then refers to the decision of this Court by a coordinate Bench in **Sk. Majnu v. Lochan Sahoo**¹³, paragraph 15 is reproduced herein:

“15. Also, even though provision under Section 7 (iv)(c) of the Court Fees Act provides for determination of valuation of the suit by 9 the plaintiffs at his option but such valuation cannot be arbitrary and must have

¹³ (2011) 112 CLT 886; 2011 SCC OnLine Ori 170



some relation with the real market value of the property at the time of institution of the suit. Referring to a number of authoritative judicial pronouncements, this Court has held in *Kedarnath Biswal -vrs.- Budhanath Jena* : 106 (2008) CLT 595:

“6. On a close and composite reading of the provisions of Section (iv)(c) of the Court Fees Act along with the above noted case laws, one can comfortably infer that in a suit for declaration coupled with the consequential reliefs, the Plaintiffs as per the provisions of Section 7 (iv)(c) of the Court Fees Act can value the suit at his option, but such valuation cannot be arbitrary and must have some relation with the real market value of the property at the time of institution of the suit.”

45. The learned Senior Counsel relies on the decision of the High Court of Delhi in ***Radha Goyal v. Gaurav Goyal and another***¹⁴, paragraphs 6, 7, 8 and 9 are relied upon and are reproduced herein:

“6. The said order was never challenged and attained finality. Arguments were then addressed on the application of the respondents/defendants under Order VII Rule 11 of the CPC. When the third application was moved and apparently in order to avoid ad valorem court fee, the petitioner/plaintiff sought to introduce averments in the nature of claiming constructive/joint possession of the properties in question along with the respondents thereby blowing hot and cold in same breath inasmuch as perusal of the pleadings would show that she has claimed complete ouster and exclusion

¹⁴ 2024 SCC OnLine Del 2318



from the possession of the properties by the respondents. Learned Trial Court noticed the following defects in the proposed amendment that were sought to be carried out in paragraph (11):

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“7. It would be relevant to reproduce the reasons given by the learned trial Court in dismissing the application, which go as under:—

“26. It is stated that it is well settled that amendment to plaint is retrospective in nature and such amendment shall be applicable from the date, plaint was instituted. It is apparent that this court did not have pecuniary jurisdiction to hear the case, when the same was filed. Defendant No. 1 has taken the objection in his written statement and also moved an application that this court did not have pecuniary jurisdiction to try the suit and suit was not properly valued for the purpose of jurisdiction and court fees, however, plaintiff instead of moving appropriate application at that stage had opposed application filed by defendant No. 1 and thus, wasted almost 09 years of the court-as well as of defendant No. 1. After period of 09 years, clock is trying to be moved anti clockwise and parties are again relegated to the position in which they were 07 years ago. Application has been filed by plaintiff with malafide intention to delay proceedings and hence, deserve to be dismissed.

27. On reply on merits, contentions of plaintiff have been denied. It is denied that unless there is dismissal of partition suit on merits, right to partition does not extinguish. It is stated that multiple opportunities have been granted to plaintiff to amend the plaint to comply with law of valuation but plaintiff has failed to do so and has filed present application with malafide intention to avoid payment of ad valorem court fees despite finding of this court in order dated 22.11.2023 that plaintiff is not in



possession of suit properties and is liable to pay ad valorem court fees.

28. Plaintiff has failed to meet onus under proviso to Order 6 Rule 17 CPC that despite due diligence, party could not have raised the matter before commencement of trial. Documents for circle rate filed with the application are denied. It is stated that valuation is not clear as to which property is being valued. Plaintiff is attempting to add word “constructive” joint possession in para numbers 3 and 7 of the plaint simply to avoid payment of ad valorem court fees as directed vide order dated 22.11.2023. Plaintiff has deleted relief of permanent injunction even after valuing the same while attempting to amend para No. 11 of the plaint.

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8. Unhesitatingly, the aforesaid observations clearly bring out the conduct of the petitioner/plaintiff in the open. It clearly appears that in order to avoid payment of ad valorem court fee, the petitioner/plaintiff is making all sorts of attempts to hoodwink the process of law by avoiding putting a fair and just value to the reliefs claimed by her.

9. Suffice to state that although the petitioner/plaintiff by way of the proposed amendments has apparently valued each relief with regard to share in the properties putting a different value and though the overall relief is above Rs. 5,94,00,000/-, she has again elected to pay fixed court fee of Rs. 20/- and valuing the suit for permanent injunction at Rs. 130/-. There is a clear attempt to evade payment of ad valorem court fee under Article 17(vi) of the Court Fees Act, 1870 and the proposed amendment being not warranted by law, cannot be allowed.”

46. The learned Senior Counsel Mr. Mukherji further relies on the decision of the High Court of Punjab & Haryana at



Chandigarh in **Jatinder Pal Singh v. The State of Punjab and another**¹⁵. Paragraphs 2, 5 and 6 of the said judgment are relied upon and are reproduced herein:

2. Shorn and short of unnecessary details, the facts, emerging from the perusal of the file and culminating in the filing of the present revision petition, are that the petitioner-plaintiff filed the above-referred Civil Suit for seeking a decree for declaration to the effect that the order passed by the respondents-defendants (here-in-after to be referred as 'the defendants') on 15.02.2018, for denying his extension in the service, was illegal, arbitrary and discriminatory and he also claimed the damages for the consequential loss as suffered by him and further prayed for the issuance of mandatory injunction, by directing the defendants to grant him all the service benefits as well as compensation for the period, for which he was denied the extension of his service and to pay the damages, along-with interest thereon. The defendants filed written-statement and the trial Court framed the issues on 18.03.2021. Thereafter, on 17.03.2022, the plaintiff stepped into the witness-box as his own witness and tendered his affidavit (Annexure P-4) with some documents. Meanwhile, he moved the application Annexure P-3 under Order XI CPC and application Annexure P-5 for summoning the record and another application Annexure P-6 under Order XII CPC and as mentioned in the impugned order (Annexure P-16), the defendants also moved an application under Order 7 Rule 11 CPC for seeking rejection of the plaint on the ground of non-payment/non-affixation of proper court-fee thereon. On 09.02.2023, the plaintiff moved the afore-said application, Annexure P-11, for seeking amendment in the plaint by way of considering the affidavit and the documents, as tendered by him in his evidence, as a

¹⁵ CR No.539 of 2024 (O & M) decided on 09.02.2025



part of the pleadings therein and by adding the words “this is for assessing the jurisdiction of the Hon’ble Court only” in Para No.24 and by replacing the word ‘damages’ in Paras No.1 & 3 in the prayer clause with words ‘consequential relief’ and also by substituting Para No.32 in the same with the following Para :-

“That a court fee of Rs 50/- is affixed for the relief of declaration and the court fee of Rs 50/- (Rs fifty only) for the relief of mandatory injunction and the value of the suit for court fee is assessed as Rs 1000/- (Rs one thousand only) because the consequential relief for which the plaintiff will be eligible as per law,

A. has not been assessed by this Hon’ble court,

B. the case falls under the category ‘C’ of Section 7(iv) of the court fee Act.

accordingly, as per the law laid down in the case of case of ‘State of Punjab Vs Dev Brat Sharma’ by the Hon’ble APEX COURT where in the reference of the law laid down by the CONSTITUTIONAL BENCH in the case of S. RM.AR.RM. Ramanathan Chettiar by the Apex Court has been given, that ultimately it would be the actual relief granted which would determine the court fee, the plaintiff undertakes to make good the deficient court fee as per the actual relief that would be granted by this Hon’ble court, as such a court fee of Rs 50/- (Rs fifty only) is affixed at this stage. A court fee of a sum of Rs 50/- (Rs fifty only) is affixed for future interest as well because the consequential relief has not been assessed by this Hon’ble court, the plaintiff undertakes to make good a deficient court fee as per the actual relief that would be granted by this Hon’ble court as ultimately it would be the actual



relief granted which would determine the court fee”.

and vide the impugned order, the trial Court has dismissed his above-mentioned application (Annexure P-11).

5. However, the above-raised contentions are devoid of any merit because as mentioned earlier, the issues had been framed in the afore-said Suit long back on 18.03.2021 and then, on 17.03.2022, the plaintiff had tendered his affidavit, along-with several documents, in his evidence while appearing as his own witness whereas he had moved the application, Annexure P-11, on 09.02.2023. Meaning thereby that the trial had already commenced in the said Civil Suit before the filing of the above-said application. The verdict rendered by the Apex Court in Life Insurance Corporation of India (supra), is of no avail to the plaintiff because though, it has been observed therein that “all the amendments are to be allowed which are necessary for determining the real question in controversy provided these do not cause injustice or prejudice to the other side and this is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 CPC” but in the instant case, throughout in his afore-referred application, the plaintiff has not whispered even a single word to explain as to how the proposed amendments would be necessary for determining the real question in controversy between the parties.

6. Rather, as regards the prayer of the plaintiff for considering his affidavit and the documents tagged therewith, as a part of his pleadings/plaint, it is well settled that the evidence need not be pleaded in the pleadings. So far as his prayer for replacing word ‘damages’ with words ‘consequential relief’ in Paras No.1 and 3 of the prayer clause and for the proposed amendments in Paras No.24 and 32 qua the valuation of the Suit for the purpose of court-fee, is concerned, the same would not be permissible in the



circumstances when concededly, the application moved by the defendants under Order 7 Rule 11 CPC for seeking rejection of the plaint on the score of non-affixation of the proper court-fee on the same, is pending adjudication before the trial Court and rather, the above-mentioned proposed amendments seem to have been sought in view of the afore-said application, as filed by the defendants.”

47. The learned Senior Counsel relies on the decision of the Supreme Court in **Kamaleshwar Kishore Singh v. Paras Nath Singh and others**¹⁶, paragraph 8 is reproduced herein:

“8. It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have

¹⁶ (2002) 1 SCC 304



omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit.

48. Referring to the proposed amendments as contained in the amendment petition, it is submitted by the learned Senior Counsel that there is no reference to the Gujarat suit filed and pending before the High Court in the plaint. It is for the first time being introduced in the form of proposed amendment. The learned Senior Counsel refers to **paragraphs 7, 8, 10 and 15 of** the I.A. for amendment as well as schedule paragraph 7 to submit that the proposed amendments shall result in change of nature and character of the suit i.e. pending before this Court. It is submitted that the indulgence shown by the Court for payment of court fee by the time extended as directed should not be extended to the extent that the suit is allowed to remain without being dismissed. Modification sought for cannot come into the aid of the plaintiff for not paying the court fee. Referring to the I.A. No. 16 of 2025 filed by the plaintiff it is submitted that there has been no prayer for extension of time to file the deficit court fee.

49. Mr. Mukherji after serving copy on the other side provides a comparative table of the pleadings in the original plaint along with I.A. Nos.6, 7 and 10 of the 2025 compared with the pleadings in the I.A. No.15 of 2025 seeking amendment, I.A. No.16 of 2025 for modification of the order



dated 19.03.2025 to contend that proposed amendment changes the nature and character of the suit and also such amendment does not change the value of suit.

I.A. No.9 of 2025

50. The I.A. No.9 of 2025 has been filed on behalf of intending intervenors.

At the outset, learned Senior Counsel Mr. Padhi submits he does not have to make any submissions in response to the submissions of learned Senior Counsel either by Mr. Nanda on behalf of plaintiff or by Mr. Mukherjee on behalf of the defendants. Since it is admitted by the parties that the property involved in the present suit i.e. the two vessels are mortgaged to the petitioner (intending interveners) in the I.A. Petitioner's substantial rights are involved. Consequence of the order in the I.A. arresting the ships has directly impacted the mortgaged property. He submits that at this stage the Court is grappling with the vexed issues i.e. whether the plaint is to be allowed to be amended; whether court fee not being paid the plaint is to be rejected; if at all the amendment is allowed whether as a consequence what would be the valuation of the suit; and whether on allowing the application for amendment the Court fees suggested by the plaintiff would be accepted as the correct valuation. It is submitted by the learned Senior Counsel that he may have further arguments as far as the intervention application is concerned, however, for the



present the contentions would be confined to the issues raised in the I.A for amendment. It is submitted that the amendment to be allowed has to pass the scrutiny of the tests laid down in ***Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another***⁶ (*supra*) relied on by the plaintiffs as well as the defendants. Learned senior counsel refers to paragraphs 71.4.3 and 71.10 of the judgment, reproduced herein :

“71.4.3. The prayer for amendment is malafide, or

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.”

51. Referring to the above quoted paragraphs of **LIC** (*supra*), the learned senior counsel submits that the Court has to see whether the proposed amendment is afflicted by mala fide and whether amendment would cause change of the nature and character of the suit or result in change of the cause of action. The Court has to see whether the case set up in the proposed amendment is foreign to the case already set up in the plaint. To give an instance he refers to the original plaint where there has been no reference to any pending admiralty suit before the Gujarat High Court whereas in the proposed amendment the issue is all about



the pending suit before the Gujarat High Court. It is submitted that not mentioning regarding the pending admiralty suit before the Gujarat High Court in all probability could be a deliberate ploy of the plaintiff. Regarding the valuation of the suit, the learned senior counsel refers to the plaint at paragraphs-12 and 13, to submit that the plaintiff themselves value the suit at Rs.598 crores whereas in the amendment proposed they have valued it differently, purportedly being in aid of the suit pending at Gujarat.

52. In response to the submissions of Mr. Padhi, learned Counsel Mr. Samvit Mohanty, appearing for the plaintiff made his submissions. He refers to Order VI Rule 17 of CPC to submit that the amendment shall be allowed by this Court that may be necessary for the purpose of determining the real question in controversy between the parties. He highlights the term 'parties' to submit that the intending interveners not being party to the proceeding, there is no scope for entertaining the contentions of the interveners. It is submitted that submissions of the learned senior counsel regarding mala fide, change of nature and character of the suit have been argued by Mr. Mukherji for the defendants and have been answered by arguments of Mr. Nanda, for the plaintiff.



Summary of the submissions of the learned Senior Counsel on behalf of the plaintiff and the contentions raised

- 53.** (i) court has power to exercise the jurisdiction under Section 149 of the CPC for granting further time for deposit of the deficit court fees;
- (ii) court has power to allow the prayer of the plaintiff to amend even if in effect it amounts to reduction of the quantum of claim resulting in reduction in court fee calculated thereupon;
- (iii) in view of Section 5 of the Act, 2017, for the purpose of providing security against maritime claim, pending before Gujarat High Court and in the arbitration proceeding at Singapore in lieu of the vessels now within the jurisdiction of this Court the amendment of pleadings as prayed for needs to be allowed;
- (iv) amendment sought for will not change the nature and character of the suit inasmuch as the relief sought for remains to be 'injunctive' and 'declaratory';
- (v) all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side;



- (vi) if the amendment is required for effective and proper adjudication of the controversy between the parties, it should be allowed.
- (vii) the power of the Court while considering the petition for amendment of pleadings under Order VI Rule 17 of the CPC is unfettered. It cannot be based on the evidence to be led by the defendants. The Court need not go beyond the pleadings of the plaintiff while considering the prayer for amendment of plaint;
- (viii) Order VI Rule 17 is intended to give the plaintiff a scope to provide amendment to its pleadings and such right of plaintiff can be exercised at any stage;
- (ix) though the defendants find flaw in the plaint, as the 'Gujarat admiralty suit' has not been mentioned but the suit before this Court is in aid of the admiralty suit pending before Gujarat High Court;
- (x) the anxiety of legislature to collect court fee from the litigant does not arm the defendants with a weapon of technicality to obstruct a suit.



Summary of the submissions on behalf of the defendants and the contentions raised

- 54.** (i) there is no change in value of the suit i.e. a money claim of US\$ 49,268,902.45 (INR ₹428,76,87,464.30) with applicable interest, if the amendment would be allowed as sought for the value still remains ₹428,76,87,464.30;
- (ii) the Stamp Report made on 18.03.2025 by the Registry of this Court at paragraph-3 indicates court fee: “Rs.12,86,31,885/- is payable, Rs.75,012/- paid. Deficit court fee of Rs.12,85,56,873/- not paid.”;
- (iii) prayer in the I.A. No.7 of 2025 may be referred to (as quoted below):

“that the plaintiff be granted additional time and the question of the payment of the of the remaining court fees be kept open till the transfer petition that would be filed by the plaintiff under Section 15 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is finally decided by the Hon’ble Supreme Court, and the arbitration proceedings are concluded.”

the prayers made in the said I.A. or any part of the plaint do not in any manner dispute the amount of court fee quantified to be payable by the plaintiff;



- (iv) paragraph-4 of the earlier order dated 19.03.2025 passed by the court is very clear to the extent that on submission of the plaintiff, the Court granted four weeks' time for payment of the admitted/deficit court fee;

order dated 19.03.2025 records direction of the Court with respect to court fee: *"the Registry shall report with regard to its filing and sufficiency before the next date."*;

- (v) the plaintiffs consistently represented before this Court in the subsequent proceedings that they want to pay the court fees within the time fixed as directed by this Court by order dated 19.03.2025. The court fees was not paid by the time extended/granted by this Court i.e. 16.04.2025;

- (vi) no application for extension of time for payment of deficit court fees has been filed by the plaintiffs by the extended date i.e. 16.04.2025 and even thereafter till today no application for extension of time has been filed;

- (vii) I.A. No.16 of 2025 filed by the plaintiffs for modification of order dated 19.03.2025 passed in I.A. No.7 of 2025 is misconceived, hit by principle of *res judicata* and otherwise not maintainable in view of the consistent stand of the plaintiff to pay



the deficit court fees within the time fixed by the Court;

- (viii) no case is made out for exercise of discretion by the Court for further extension of time to deposit the court fees as directed earlier by this Court;
- (ix) filing of I.A. No.15 of 2025 with the prayers as made is abuse of the process of court and law inasmuch as the prayer for amendment is effectively is to change the nature and character of the suit. If such amendment is to be allowed that would result in the suit no more remaining an admiralty suit. At best the purpose for filing of this I.A. is for delaying or not paying the court fees as determined by the Registry of the Court in terms of the Court Fees Act and Rules. The time granted by the Court having expired, further indulgence would amount encouraging the abuse of process of law;
- (x) plea for extension of time to pay the court fee till consideration and the decision on the transfer petition by the Supreme Court no more survives as the transfer petition has been dismissed;
- (xi) on the face of it, the value of the vessels remaining same the *ad valorem* court fees that would be applicable and determined on the said value



cannot be changed at the instance of the plaintiff in any manner;

the value has been disclosed by the plaintiff themselves to be urged before this Court. It forms basis of their claim and calculation of the court fee payable;

- (xii) order dated 19.03.2025 directing arrest of the vessels of the defendants could not have continued after the extended date as directed by the Court to pay the court fees expired on 16.04.2025. Thereafter, the suit did not survive to be adjudicated;

after filing of the I.A. No.11 of 2025 at the instance of the defendants for modification of the interim order of arrest should not continue beyond today and the plaint is liable to be rejected in terms of the O.7, R.11 of the CPC;

- (xiii) in view of the order dated 19.03.2025 in I.A. No.6 of 2025 which also itself forms part of the order passed in I.A. No.7 of 2025, there is no question of bringing any amendment to the pleadings of the suit;

the amendment results in injustice to the other side;



the amendment divests the other side of a valuable accrued right, i.e., dismissal of the suit for non-payment of court fee;

amendment would change the nature of the suit;
the prayer for amendment is malafide;

(xiv) as far as rejection of plaint due to non-payment of court fee is concerned, it is contemplated in Order VII Rule 11(c) of C.P.C., the fatality occurred on 16.04.2025. Post that fatality valuable right accrued in favour of the defendants which is sought to be taken away by seeking the amendment;

(xv) that the value of the vessels are still mentioned as ₹153,14,75,775/- to be the market value;

in the proposed amendment as indicated above the valuation of the relief claimed by the plaintiff is valued at ₹20,00,000/- (Rupees Twenty Lakhs), the *ad valorem* court fee to be paid on the same has been calculated to be ₹61,185/- is without any basis, bereft of any particulars. No reasons for such calculation is forthcoming everything else including the valuation of the vessels remaining the same;

(xvi) action in rem must be for recovery of the claim. This can only mean that a decree must be sought



as a decree, is the only manner in which a claim can be recovered in a suit;

an action in rem where the prayer in the suit is confined to securing security pending arbitration is for interim reliefs only. Such suit is not for recovery of claim at all. Such a suit only for interim relief is not maintainable;

(xvii) a suit with only prayer for interim relief is not maintainable;

(xviii) plaintiff, if so advised can reduce his claim and furnish requisite court fee on reduced valuation within the time extended by the Court to deposit the court fee, but cannot reduce the court fee on the claim remaining unchanged;

(xix) after the fatality had already happened i.e. non-payment of court fee by the extended date fixed by the Court: 16.04.2025, before such date there has been no plea for amendment/prayer for extension of time to pay court fee;

(xx) there is no reference to the Gujarat suit filed and pending before the High Court in the plaint. It is for the first time being introduced in the form of amendment. The paragraphs 7, 8, 10 and 15 of the I.A. for amendment as well as schedule paragraph 7 to clearly reveal that the proposed



amendments shall result in change of nature and character of the suit pending before this Court;

(xxi) indulgence shown by the Court for payment of court fee by the time extended as directed should not be extended to the extent that the suit is allowed to remain without paying court fee instead of being dismissed.

Issues to be decided

55. Based on the pleadings of the parties and the submissions at the Bar, this Court frames the following issues that falls for adjudication:

- (i) whether the plaint is to be allowed to be amended;
- (ii) whether amendment if allowed would cause change of the nature and character of the suit or result in change of the cause of action;
- (iii) whether the case set up in the proposed amendment is foreign to the case already set up in the plaint;
- (iv) whether the proposed amendment is afflicted by mala fide;
- (v) if at all the amendment is allowed whether as a consequence it would affect the valuation of the suit, i.e., whether it would result in reduction of the value and the court fee payable ;
- (vi) whether on allowing the application for amendment the Court fees suggested by the



plaintiff would be accepted as the correct valuation;

(vii) whether court fee having not been paid the plaint is to be rejected;

Further discussions and conclusions

56. On 17.04.2025 the plaintiff-petitioner filed I.A. No.15 of 2025 for amendment of the pleadings. As they did not deposit the amount of court fee initially determined by them and extension of time was sought for by them for deposit of the amount, this Court had granted further four weeks' time by order dated 19.03.2025. The four weeks' period ended on 16.04.2025. The plaintiff does seek further extension of time but not for depositing the deficit court fee but to defer such deposit till disposal of the I.A. seeking amendment of pleadings.

In the I.A. No.15 of 2025 for amendment the paragraphs-3 to 10 and Schedule (i), paragraph-7 indicates the following:

“3. It has always been the Applicant’s case that they have instituted arbitration proceedings against the Samson, i.e., the owner of the Defendant Vessels, on 20 February 2025 for inter alia their indemnity claim provisionally quantified at ₹428,76,87,464.30 (equivalent to approximately USD 49.23 million) arising from the breach of the Settlement Agreement. Subsequently, on 11 March 2025 and 12 March 2025, respectively, the Applicant invoked the admiralty jurisdiction of both the Hon’ble Gujarat High Court and this Hon’ble Court in accordance with the well-settled



legal position that vessels may be arrested as security for an arbitration by instituting admiralty suits for a maritime claim in the court exercising admiralty jurisdiction.

4. The Plaintiff's maritime claim of ₹428,76,87,464.30 arises out of the Settlement Agreement which is a contract for the sale of vessels and falls under Section 4(1)(r) of the Admiralty Act.

5. The Admiralty Act is vessel-centric and requires an aggrieved plaintiff to go to different courts for the same cause of action.

6. Accordingly, the Plaintiff filed R/Admiralty Suit No. 3 of 2025 before the Hon'ble Gujarat High Court for its maritime claim of ₹ 428,76,87,464.30 for the arrest of the five vessels situated within its territorial waters.

7. The value of each vessel in Gujarat High Court proceedings is as follows:

Sr. No	Vessel Name	Vessel Value - 04/03/2025	MSI - 04/03/2025	Average
1	Ocean Opal	\$ 6,650,000	\$ 6,500,000	\$ 6,575,000
2	Ocean Coral	\$ 6,490,000	\$ 8,400,000	\$ 7,445,000
3	Ocean Citrine	\$ 6,170,000	\$ 6,500,000	\$ 6,335,000
4	Ocean Ammolite	\$ 2,960,000	\$ 3,000,000	\$ 2,980,000
5	Swissco Pearl	\$ 9,300,000	\$ 12,700,000	\$ 11,000,000
	Total	\$ 31,570,000	\$ 37,100,000	\$ 34,335,000 ₹296,52,39,270

8. Thus, the total value of the five vessels in Gujarat is approximately ₹296,52,39,270 (US\$ 34,335,000), leaving a shortfall of ₹128,72,21,700 (US\$ 14,903,902.45).



9. Moreover, the values tabulated above are only market estimates, and the actual realisable value from judicial sale may be significantly lower due to prevailing market conditions, vessel condition, and other commercial factors. Therefore, in order to secure the entire claim, the Plaintiff has also approached this Hon'ble Court for arrest of additional vessels, i.e., the Defendant Vessels that are within its territorial jurisdiction.

10. The value of the Defendant Vessels, which are located within the jurisdiction of this Hon'ble Court, is as follows:

Sr. No.	Vessel Name	Vessel Value - 04/03/2025	MSI - 04/03/2025	Average
1	Ocean Jade	\$6,110,000	\$13,200,000	\$9,655,000
2	Ocean Morganite	\$7,760,000	\$8,400,000	\$8,080,000
	Total	\$13,870,000	\$21,600,000	\$17,735,000 ₹153,14,75,775

SCHEDULE-I

“7. For paragraph 35 of the *Plaint* :

“The plaintiff has paid a fixed court fee of INR [] and hence, the present suit is sufficiently stamped” is deleted, and “The Plaintiff values its relief at ₹20,00,000/-. Therefore, the ad valorem court fee to be paid by the Plaintiff is ₹61,185/. The Plaintiff has already paid INR 75,000/- as court fee for the suit, and hence, the present suit would be sufficiently stamped. The Plaintiff has filed I.A. No.13 of 2025, seeking extension of time on the issue of court fee till this Hon'ble Court allows I.A. No.12 of 2025” is inserted.”



57. Section 4 of the Court Fees Act, 1870 provides as follows :

“4. Fees on documents filed, etc., in High Courts, in their extraordinary jurisdiction- No document of any of the kinds specified in the First or Second Schedule to this Act, annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

Or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction- *or in the exercise of its jurisdiction as regards appeals from the [Judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more Judges of the said Court, or of a Division Court;*

Or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision- *or in the exercise of its jurisdiction as a Court of reference or revision,*

Unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.”

[Underlined to supply emphasis]

In ***Tajendra Singh Ghambhir v. Gurprit Singh***¹⁷ at paragraph-8 of SCC, [the Court discussed the scheme of



Section 6 (2) and (3) of the Court Fees Act, 1870 (as applicable in the State of U.P.)]: it was held by the apex Court that the said Sections cast duty on the Court to determine as to whether or not Court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by Court. The important thread that runs through Section 6 (2) and (3) of 1870 Act is that for payment of court fee, time must be granted by the Court and if despite the order of the Court, deficit court fee is not paid, then consequence as provided therein must follow.

58. The provisions of the Court Fees Act, 1870 make it mandatory for documents specified in first and second schedules of the Act to be affixed with the court fee as prescribed in the schedule and the statute further mandates the documents shall not be received or furnished by the parties unless fee of an amount not less than prescribed is paid.

Tajendra Singh Ghambhir¹⁷ (*supra*) lays down that opportunity to the plaintiff to be given to make up the deficiency in court fee and if despite the order of the court, the deficit court fee is not paid then the consequence as provided therein must follow. In the suit at hand, this Court by order dated 19.03.2025 in I.A. No.7 of 2025 had granted



time to make up the deficiency in court fee. The court fee having not been paid the consequence as provided Court Fees Act, 1970 must follow.

59. Sections 148 and 149 of the C.P.C. have been relied upon by the plaintiff as well as the defendants to support their respective contentions. The said sections are quoted herein:

“148. Enlargement of time.- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total,] even though the period originally fixed or granted may have expired.

149. Power to make up deficiency of Court-fees. – Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

[Underlined to supply emphasis]

60. In considered view of this Court, Section 148 of the Code is a general provision and Section 149 thereof is special. The first application was filed in terms of Section 149 of the Code (I.A. No.7 of 2025). Once the Court granted time for payment of deficit court fees within the period



specified, thereafter it would not have been possible to extend the same by the Court in exercise of its power under Section 148 of the Code. The plaintiff has opted not to pay the deficit court fee, not to seek extension of time to file the deficit court fees, but has preferred to seek amendment of the pleadings, which according to the plaintiff if allowed would reduce the amount of court fee payable.

61. In *Buta Singh v. Union of India*¹⁸, the Supreme Court had the occasion to state the nature of judicial discretion of a Court as available under Sections 148 and 149 and Order 41, Rule-9 of the C.P.C. as well as the manner in which such discretion is to be used. It was held: such discretion has to be exercised keeping the facts and circumstances in each case in mind and not by showing undue indulgence. The indulgence to be shown is not automatic for mere asking to make good the deficit court fee [paragraph-9 of SCC].

62. The plaintiff relies on Section 7(iv)(c) i.e., for a declaratory decree and consequential relief, 7(iv)(d) 'for an injunction' and 7(iv) (f) 'for accounts' of the Court Fees Act, 1870 as indicated herein :

“7. Computation of fees payable in certain suits. -

(iv) In suits –

for a declaratory decree and consequential relief. –(c) to obtain a declaratory decree or order, where consequential relief is prayed;

¹⁸ (1995) 5 SCC 284; AIR 1995 SC 1945



for an injunction.- (d) to obtain an injunction;

for accounts.- (f) for accounts –

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:

In all such suits, the plaintiff shall state the amount at which he values the relief sought;

The prayer in the plaint is for a money decree of amount US\$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit till the date of the decree and applicable interest from the date of the decree till payment/realization.

63. In view of ***Buta Singh***¹⁸ (*supra*) it has to be and is held that for making good the deficit court fee, indulgence was shown by this Court to the plaintiff by order dated 19.03.2025 in I.A. No.7 of 2025 filed by the plaintiff. The indulgence shown has not yielded any result as the time granted by the Court has expired and the court fee has not been paid. As an irresistible conclusion, the legal consequence must follow.

64. This Court is of the considered opinion that the proposed amendment will change the nature and character of the suit as would be evident by comparative analysis of the plaint and prayer on record and the amendment that is sought to be made. For convenience of reference relevant portions of the comparative table are extracted that demonstrate the change in nature and character of the suit:



PLAINT/IA NO.6/IA NO.7/IA NO.10	IA NO.15/IA NO.16
“18. The plaintiff has a claim of the indemnity amount of INR 428,76,87,464.30 (equivalent to US\$ 49,238,902.45). Given that this indemnity <u>amount has not been paid</u> to the Plaintiff, the Plaintiff has been constrained to file the present Suit and incur costs of litigation...” “¶18@Pg12. Plaintiff.	Proposed amendment to paragraph-18 “The plaintiff has a claim of the indemnity amount of INR 428,76,87,464.30((equivalent to USS 49,238,902.45), initiated before the Gujarat High Court vide the Gujarat Suit. The average market value of the five vessels in the Gujarat Suit is ₹296,52,39,270 (US\$ 34,335,000), leaving a shortfall of ₹128,72,21,700(US\$ 14,903,902.45) ... In these circumstances, as the value of the five vessels in the Gujarat Suit were not sufficient to secure Plaintiff’s claims, the Plaintiff was compelled to file the captioned Admiralty Suit to, inter alia, seek arrest of the Defendant Vessels which are within the jurisdiction of this Hon’ble Court in aid of the claim in the Gujarat Suit.” ¶4(a), Schedule 1, IA No.15. <u>Insertion of paragraph 18A</u> “Given that this indemnity amount has not been paid to the Plaintiff and the value of the vessels before the Gujarat High Court are insufficient to satisfy the Plaintiff’s claim, the Plaintiff has been constrained to file the



	present Suit and incur costs of litigation. The Plaintiff humbly submits that the costs of its litigation before this court are likely, at the very least, to be US\$ 50,000. Thus, the Plaintiff is entitled to arrest and the sale proceeds of the Defendant Vessels, plus poundage with further interest at the rate of 2% per month from the date of suit till the date of payment and/or realization against the Defendant Vessels.” ¶5, Schedule I, IA No.15.
“28. The plaintiff has established that there exists a prima facie maritime claim under Section 4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.Therefore, the Plaintiff has satisfied the requirement for getting an order of arrest of the Defendant Vessels” ¶28@Pg 15, Plaintiff.	<u>Proposed amendment to paragraph 28</u> “The plaintiff has established that there exists a prima facie maritime claim under Section 4(1)(r) of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, <u>and its entitlement to security against the maritime claim.</u>” ¶6, Schedule I, IA No.15.
<u>Prayer (i)</u> This Hon’ble Court be pleased to pass an Order and Decree in favour of the Plaintiff and against the Defendants Vessels jointly and/or severally, her owner, and all persons interested in her, to pay the Plaintiff a sum of US\$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit	Proposed amendment to Prayer (i) “This Hon’ble Court be pleased to declare that the Defendant Vessels are connected with and subject of the same maritime claim arising out of or in connection with the transaction under the Settlement Agreement as in the <u>Gujarat Suit (AS(R) 3/2025.</u>” ¶8. Schedule I, IA No.15



till the date of the decree and applicable interest from the date of the decreed till payment/realization” Prayer Clause (i) @ Page17, Plaintiff	
Prayer(ii) “That the Defendant Vessel OCEAN JADE (IMG: 9660750),together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon’ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Suit”. Prayer Clause (ii) @ Pgs 17-18, Plaintiff.	<u>Proposed amendment to Prayer (ii)</u> “That the Defendant Vessel OCEAN JADE (IMG:9660750), together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon’ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the <u>Gujarat Suit (AS (R) 3/2025)</u>” ¶9, Schedule I, IA No.15.
<u>Prayer (III)</u> “That the Defendant Vessel OCEAN MORGANITE (IMG:9676498) together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other	<u>Proposed amendment to prayer (iii)</u> “That the Defendant Vessel OCEAN MORGANITE (IMG:9676498) together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip



location within the territorial waters of India <u>be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Suit</u>" Prayer Clause (iii) @ Pg 18, Plaint.	Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the <u>Gujarat Suit (AS (R) 3/2005"</u> ¶10. Schedule I., IA No.15.
<u>Prayer (iv)</u> "That pending the hearing and final disposal of the Suit, Defendant Vessels OCEAN JADE (IMO:9660750) and OCEAN MORGANITE (IMO:9676498), together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at the port of Paradip or at such other location within the territorial waters of India be arrested by a warrant of arrest under the orders of this Hon'ble Court and/or be detained and/or be restrained from sailing out of their respective ports and/or moving out of the territorial waters of India until security towards the Plaintiffs claim is furnished" Prayer Clause (iv)@ Pg 18, Plaint.	<u>Proposed amendment to Prayer (iv)</u> "That pending the hearing and final disposal of the <u>Gujarat Suit (AS (R) 3/2005),</u> Defendant Vessels OCEAN JADE (IMO:9660750) and OCEAN MORGANITE (IMO:9676498), together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at the port of Paradip or at such other location within the territorial waters of India be arrested by a warrant of arrest under the orders of this Hon'ble Court and/or be detained and/or be restrained from sailing out of their respective ports and/or moving out of the territorial waters of India until security towards the plaintiffs claim in <u>Gujarat Suit (AS (R) 3/2025)</u> is furnished" ¶11, Schedule I, IA No.15.



<u>Prayer (vi)</u>	<u>Proposed amendment to Prayer (vi)</u>
“That pending the hearing and final disposal of the Suit, the Bailiff be directed to immediately upon the sale of Defendant Vessels OCEAN JADE (IMO:9660750) and OCEAN MORGANITE (IMO-9676498) and to hold the sale proceeds on behalf of the Admiralty Registrar and to deposit the sum with the Admiralty Register to the Credit of the Plaintiffs claim in suit after deducting the expenses of sale incurred by him" Prayer Clause (vi) @ Pg 19 Plaint.	“That pending the hearing and final disposal of the Suit, the Bailiff be directed to immediately upon the sale of Defendant Vessels OCEAN Jade (IMO:9660750) and OCEAN MORGANITE (IMO:9676498) and to hold the sale proceeds on behalf of the Admiralty Registrar and to deposit the sum with the Admiralty Register to the Credit of the Plaintiffs claim in <u>Gujarat Suit (AS (R) 3/2025)</u> after deducting the expenses of sale incurred by him.”¶ 12, Schedule I, IA No.15.”

65. Perusal of the amendments sought for, as indicated above goes to show that the nature and character of the suit from that of a ‘money claim arising out of an alleged settlement agreement’ changes to a ‘suit to secure the plaintiffs claims’ in an admiralty suit filed before the Gujarat High Court. The principles enumerated in ***Life Insurance Corporation of India***⁶ (*supra*) that would be applicable for allowing amendment do not come to the aid of the plaintiff. Rather, the exceptions as enumerated in paragraph 71.4 comes to aid of the defendant. To further elaborate the conclusions of LIC: 71.4.2 *the amendment changes the nature of the suit*, 71.4.3 *prayer for amendment is mala fide*. 71.4.4 *by the amendment the other side loses the valid defence*, come into play for this Court to refuse the proposed amendments.



66. The judicial pronouncements relied upon on behalf of the plaintiff and elaborately dealt in preceding paragraphs would be of no avail for its cause as the fact matrix of those cases are at poles apart from the facts of the present suit. A decision is only an authority for the proposition laid down in a given fact matrix, and not for all that, would logically follow from what has been so laid down or every observation made, said the Earl of Halsbury, Lord High Chancellor more than a century ago in **Quinn v. Leathem**¹⁹ and I quote :

“Before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. I think that the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision in Allen v. Flood(1).”

[Underlined to supply emphasis]

67. Lack of bona fide in seeking amendment is found as far as the prayer for amendment is concerned. Paragraph 71.1.10

¹⁹ [1901] UKHL 2 : 3[1901] AC 495 : [1900-3] All E.R. Rep.1 (Placitum H & I)



of ***Life Insurance Corporation of India***⁶ (*supra*) also comes in the way of the plaintiffs to seek amendment as the amendment changes the nature and character of the suit. The further finding of this Court is that by bringing proposed amendment the cause of action sought to be raised would become foreign to the case that was set up in the earlier plaint as 'Gujrat Suit' is introduced in the amendment for the first time without there being any reference in the original plaints and the defendants are not party to the 'Gujrat Suit'. As a result the issues no.(ii), (iii) and (iv) noted at paragraph 55 above are answered in the affirmative against the plaintiff and in favour of the defendants.

68. Accordingly, the I.A. No.15 of 2025 filed by plaintiff seeking amendment of plaint is dismissed. The issues as have been framed at para 55 i.e. issue no.(i) is answered in the negative against the plaintiff.

69. Dismissal of I.A. No. 15 of 2025 leads to the issue whether still the plaint can be sustained after non-payment of the court fee.

By filing I.A. No.7 of 2025, the plaintiff had sought for exercise of the discretion of this Court before the Co-ordinate Bench stating that ₹75,000/- has been paid as court fee and the rest of the amount would be paid by enlargement of the time for payment. The prayer made in the said I.A. or any part of the plaint did not in any manner dispute the amount of court fee quantified to be payable by the plaintiff. The order dated 19.03.2025 by the Bench then



having assignment, granting further time for payment of court fee is clear to the extent: that on submission of the plaintiff this court granted four weeks' time for payment of the deficit ad-valorem court fee. This Court further directed "The Registry shall report with regard to its filing and sufficiency before the next date". The plaintiff consistently and unequivocally represented before this Court that they want to pay the court fee within the time fixed as directed by this Court. The deficit court fees were not paid by the extended time granted by the Court, i.e., 16.04.2025. The fatality (of the time granted to pay court fees having expired) occurred. Thereafter no application for extension of time was filed or has been filed, rather, I.A. No.16 of 2025 has been filed for modification of the order dated 19.03.2025. The prayer made by the plaintiff in the subsequent I.A., is at the most, is for deferment of payment of court fee which is in complete contrast to its original stand to pay court fee within a certain date.

Without looking at any other material other than the plaint and the IAs filed by the plaintiff this Court is of the considered view that on the face of it, the value of the vessels remains the same, the court fee that would be payable on the said value cannot be changed in any manner. Concededly the value is itself determined by the plaintiff, therefore, everything remaining same including the claim against the defendant, the value of ad-valorem court fee remains unchanged as was determined on the date of filing



of the suit. Accordingly, the issues (v) and (vi) as at para-55 have to be and are answered in the negative against the plaintiff.

These observations are made in the context of the fact, that as noted above, extensive arguments have been advanced by both the sides addressing this particular aspect. Now, though the suit is dismissed for the reasons as elaborated above but assuming for the sake of argument that the amendments could have been allowed then the consequence still would be that the court fee would remain unpaid, in deficit, and in the facts and circumstances as well by operation of law the suit has to be dismissed.

70. The Co-ordinate Bench in its order dated 19.03.2025 though did not expressly refer to the section 149 of the CPC in I.A. No. 7 of 2025, presumably exercised judicial discretion to extend the time for payment of deficit court fee by four weeks. By the said order this Court had further directed the Registry to report with regard to filing of the deficit court fee and sufficiency. The ad-valorem court fee determined by the Registry to be payable in the plaint remains unchanged, i.e., Rs.12,86,31,885/- (Rupees Twelve crore eighty six lakhs thirty one thousand eight hundred and eighty five only) and the deficit that remains is Rs.12,86,56,873/- (Rupees Twelve crores eighty six lakhs fifty six thousand eight hundred and seventy three only). Non-payment of court fee has resulted in fatal injury to the suit. Such being the position, in view of



Tajendra Singh¹⁷ (*supra*) and **Buta Singh**¹⁸ (*supra*) the I.A. No.16 has to fail.

The I.A. No. 16 of 2025 filed by the plaintiffs seeking relief of deferment of payment of court fees by exercise of discretion 'under section 149' of the CPC is dismissed.

71. As a result of the aforesaid findings and conclusions and as a consequence of dismissal of the I.A.s, the suit: ADMLS No.2 of 2025 has to be and is dismissed; issue no.(vii) is answered in the affirmative against the plaintiff.

All the interim orders passed earlier stand vacated.

In view of dismissal of the suit, the I.A. No.9 of 2025 for intervention is disposed of without any further orders.

In the facts and circumstances of the case, costs made easy.

Mruganka Sekhar Sahoo
Judge

Orissa High Court, Cuttack
The 9th July, 2025/dutta/Gs