IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

(913) COMMERCIAL APPEAL NO. 55 OF 2022
IN
INTERIM APPLICATION (L) NO. 7724 OF 2021
IN
COMMERCIAL ADMIRALTY SUIT NO. 7 OF 2021

MV Golden Pride)
(Through her owner Golden Star Marine FZE))
A vessel flying the flag of Domnica)
Which was ordered to be auction sold)
vide Order dated 22nd December 2020 and)
reconfirmed vide Order dated 24th March 2021)
passed by the Hon'ble Bombay High Court)
and the sale proceeds of which are lying)
deposited with the Ld. Prothonotary and)
Senior Master) ….Appellant/
(Original Defendant No.1)

V/s.

1. GAC Shipping (India) Pvt. Ltd.)
Having its registered office at P.O. Box 515,)
Subramania Road, Willingdon Island, Kochi,)
Kerala – 682 003 and also having an office at)
P.B. No. 226, G.P.O., Badheka Chamber,)
31, Manohardas Street, Mumbai – 400 001.) ….Respondent No.1
(Original Plaintiff)

2. The Board of Trustee of the Port of Mumbai)
A body corporate constituted under the Major)
Ports Act 1963 having their office at Vijay Deep,)
Shoorji Vallabhdas Marg, Ballard Estate,)
Mumbai – 400 038.) ….Respondent No.2
(Original Defendant No.2)

3. The Office of the Sheriff of Mumbai through)
Sheriff of Mumbai, having its Office at)
Old Secretariat Building, Mumbai – 400 032.) ….Respondent No.3
(Respondent No.3 in
Interim Application (L)
No. 8290 of 2021)

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4. M/s. Rajnish Steel Pvt. Ltd. Through the Director, Mr. Rajnish Gupta R/o. 131, Kasara Street, Darukhana Mazgaon, Mumbai – 400 010.) ….Respondent No.4 (Applicant in Interim Application No. 7724 of 2021)

ALONGWITH
INTERIM APPLICATION NO. 1676 OF 2022
IN
COMMERCIAL APPEAL NO. 55 OF 2022
IN
INTERIM APPLICATION (L) NO. 8290 OF 2021
AND
INTERIM APPLICATION (L) NO. 7724 OF 2021
IN
COMMERCIAL ADMIRALTY SUIT NO. 7 OF 2021

Mohammed Raees Khan, Sole Proprietor of Golden Star Marine (FZE) & Owner of Defendant vessel and having his current Residential Address at 181, 12th A Cross, WOC Road, Mahalaxmipuram, Bangalore – 560 086 .) ….Applicant (Original Defendant No.1)

In the Matter of)

MV Golden Pride (Through her owner Golden Star Marine FZE) A vessel flying the flag of Domnica Which was ordered to be auction sold vide Order dated 22nd December 2020 and reconfirmed vide Order dated 24th March 2021 passed by the Hon'ble Bombay High Court and the sale proceeds of which are lying deposited with the Ld. Prothonotary and Senior Master) ….Appellant/ (Original Defendant No.1)

V/s.

1. GAC Shipping (India) Pvt. Ltd. Having its registered office at P.O. Box 515, Subramania Road, Willingdon Island, Kochi, Kerala – 682 003 and also having an office at P.B. No. 226, G.P.O., Badheka Chamber, 31, Manohardas Street, Mumbai – 400 001.) ….Respondent No.1

(Original Plaintiff)

2. The Board of Trustee of the Port of Mumbai)
A body corporate constituted under the Major)
Ports Act 1963 having their office at Vijay Deep,)
Shoorji Vallabhdas Marg, Ballard Estate,)
Mumbai – 400 038.) ….Respondent No.2
(Original Defendant No.2)

3. The Office of the Sheriff of Mumbai through)
Sheriff of Mumbai, having its Office at)
Old Secretariat Building, Mumbai – 400 032.) ….Respondent No.3
(Respondent No.3 in Interim Application (L) No. 8290 of 2021)

4. M/s. Rajnish Steel Pvt. Ltd. Through the)
Director, Mr. Rajnish Gupta R/o. 131, Kasara)
Street, Darukhana Mazgaon, Mumbai – 400 010.) ….Respondent No.4
(Applicant in Interim Application No. 7724 of 2021)

AND

(914) COMMERCIAL APPEAL NO. 12 OF 2023
IN
INTERIM APPLICATION (L) NO. 8290 OF 2021
IN
COMMERCIAL ADMIRALTY SUIT NO. 7 OF 2021

MV Golden Pride)
(Through her owner Golden Star Marine FZE))
A vessel flying the flag of Domnica)
Which was ordered to be auction sold)
vide Order dated 22nd December 2020 and)
reconfirmed vide Order dated 24th March 2021)
passed by the Hon'ble Bombay High Court)
and the sale proceeds of which are lying)
deposited with the Ld. Prothonotary and)
Senior Master) ….Appellant/
(Original Defendant No.1/ Applicant)

V/s.

1. GAC Shipping (India) Pvt. Ltd.)

Having its registered office at P.O. Box 515,)
Subramania Road, Willingdon Island, Kochi,)
Kerala – 682 003 and also having an office at)
P.B. No. 226, G.P.O., Badheka Chamber,)
31, Manohardas Street, Mumbai – 400 001.) ….Respondent No.1
(Original Plaintiff)

2. The Board of Trustee of the Port of Mumbai)
A body corporate constituted under the Major)
Ports Act 1963 having their office at Vijay Deep,)
Shoorji Vallabhdas Marg, Ballard Estate,)
Mumbai – 400 038.) ….Respondent No.2
(Original Defendant No.2)

3. The Office of the Sheriff of Mumbai through)
Sheriff of Mumbai, having its Office at)
Old Secretariat Building, Mumbai – 400 032.) ….Respondent No.3
(Respondent No.3)

Mr. Shyam Kapadia i/b Mr. Kunal S. Gaikwad for Appellant.
Mr. Bimal Rajasekhar a/w Ms. Ridhi Nyati for Respondent No.1.
Mr. V.K. Ramabhadran, Senior Advocate a/w Mr. Ajai Fernandes, Mr. Deepak Motiwalla and Mr. Rooshesh Motiwalla i/b Motiwalla and Co. for Respondent No.2.

CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.
RESERVED ON : 13th APRIL 2023
PRONOUNCED ON : 2nd MAY 2023

JUDGMENT : (PER : K.R. SHRIRAM, J.)

COMMERCIAL APPEAL NO. 55 OF 2022

1. Appellant in both these appeals is impugning a common order and judgment passed by the learned single Judge of this court on 24th March 2021 in two Interim Applications, viz., Interim Application (L) No. 8290 of 2021 and Interim Application (L) No. 7724 of 2021. Interim Application (L) No. 7724 of 2021 was filed by the auction purchaser of appellant/vessel MV

Golden Pride which was allegedly owned by one Golden Star Marine FZE. Interim Application (L) No. 8290 of 2021 is filed at the instance of one Golden Star Marine FZE allegedly the owner of MV Golden Pride. Though it is not clear why two separate appeals have been filed, we are only concerned with the impugned order so far as it relates to Interim Application (L) No. 8290 of 2021 filed by Golden Star Marine FZE. The vessel MV Golden Pride (the said vessel) is no more a vessel since it has been sold in auction by the court and the said vessel has already been scrapped. Mr. Kapadia stated he was not pressing that issue of said vessel being sold for scrapping and not as a trading vessel.

2. It is the case of Golden Star Marine FZE (hereinafter referred to as "appellant") that the order dated 24th August 2020 passed by this court arresting the said vessel could not have been passed since the claim of Respondent No.1 was not a maritime claim under Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act).

3. The second part of appellant's case is impugning the order of the learned single Judge in permitting Mumbai Port Trust, viz., Respondent No.2, to withdraw an amount of Rs.1,31,27,146/- out of a sum of Rs.1.50 Crores that appellant had deposited in the Hon'ble Apex Court, later transferred pursuant to the directions/order passed by the Hon'ble Apex

Court on 12th March 2021 to the Prothonotary and Senior Master, High Court, Mumbai who is also the Admiralty Registrar.

4. Respondent No.1/Original Plaintiff had filed this Admiralty suit against the said vessel MV Golden Pride claiming indemnity for unpaid port charges with regard to the said vessel which Respondent No.2 may look to them for payment. Respondent No.1 was of course denying that it had any personal liability to the port.

5. Respondent No.1 was the agent of appellant. Towards the end of May 2018 Respondent No.1 was appointed to provide agency services to the said vessel during her stay at Mumbai. The agency charges were agreed and appellant was to pay port charges to Respondent No.2. Port charges were to be paid in advance but despite repeated reminders appellant did not pay port charges. Port raised invoice on Respondent No.1 and also threatened legal action. Respondent No.1 informed appellant that as on 31st July 2020 the estimated port charges would be approximately Rs.46,00,000/- but still only a sum of Rs.10,000/- was paid. Respondent No.1 had also given an undertaking to the Port – Respondent No.2 to pay all its dues for all vessels calling under its agency. As Respondent No.1 feared the port will look to it for payment of its charges and may even not permit vessels to call under its agency, Respondent No.1 called upon appellant to pay. As appellant was not paying either the Port or Respondent No.1,

Respondent No.1 filed an action *in rem* against the said vessel claiming that it is liable to pay the port the dues for the said vessel. According to Respondent No.1, though it would be in the nature of indemnity, the underlying claim would be a maritime claim against the said vessel, *inter alia*, under Section 4(1)(n) and 4(1)(p) of the Admiralty Act. It is averred in the plaint that (a) Respondent No.1's claim arises out of port dues payable in respect of the said vessel and it is not liable to pay the port for the same, (b) Respondent No.1 reasonably apprehends that the port will look to it directly for payment of its dues, and (c) hence, Respondent No.1 is entitled to be indemnified by the owner for the same. Respondent No.1 went ahead and obtained the order dated 24th August 2020 for arrest of the said vessel. As appellant did not furnish any security/put up bail, the said vessel was sold in auction for scrapping and the sale proceeds are lying with the Admiralty Registrar of this court. Of course, appellant had also raised an argument that the said vessel was sold for scrapping at a lower price than what it would have fetched if sold for trading and that issue was also dealt with by the learned single Judge in the impugned order. Mr.Kapadia, however, stated that grievance is not being agitated now. His grievance primarily is that the claim of Respondent No.1 by way of indemnity action cannot amount to maritime claim and hence an action *in rem* against the said vessel was not maintainable. Consequently, the said vessel could not have been arrested and later sold. Mr. Kapadia stated that if the court holds in his favour then he will be entitled to invoke the undertaking that

Respondent No.1 had given to the court while obtaining the Ex-parte order of arrest.

6. Having noted what is the case of Respondent No.1 in the plaint, let us examine now whether its claim would be a maritime claim under Section 4 of the Admiralty Act. The provisions that are relevant for the cause of action disclosed in the plaint are Sections 4(1)(l), 4(1)(n) and 4(1)(p) of the Admiralty Act which read as under :

> *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 – xxxxxxxxxx.*
>
> *(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;*
>
> *(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;*
> *xxxxxx*
>
> *(p) disbursements incurred on behalf of the vessel or its owners;*
> *xxxxxx*

7. Mr. Kapadia submitted as under :

(A) (a) Respondent No.1's claim would not fall under Section 4(1) of the Admiralty Act, let alone under any of these three provisions.

(b) Respondent No.1 under Clause 4(1)(l) of the Admiralty Act will be entitled to only agency fee that is payable to Respondent No.1 directly

and not what Respondent No.1 may have to pay to the port.

(c) Under clause (n) of Section 4(1) of the Admiralty Act only port can directly claim and not Respondent No.1 as it is claiming in the suit; and

(d) Under clause (p) of Section 4(1) of the Admiralty Act any disbursement have to be incurred by Respondent No.1 on behalf of the vessel or its owners, i.e., he must first pay and then claim and therefore, claim itself was pre-mature.

Consequently, no action *in rem* as against the said vessel was maintainable.

(B) The port having raised a demand notice for Rs.70,52,378/- upon the master of the said vessel and threatening distrainment/arrest of the said vessel, and later a notice under Section 64 of the Major Port Trusts Act, 1963, Respondent No.1 ought to have withdrawn the suit and sought for vacating the order of arrest. Otherwise, it would amount to arresting the vessel twice for the same cause.

The amount was paid to port without having to file a suit or prove the alleged claim. Port - Respondent No.2 has not proved its claim or filed suit but still the learned single Judge directed payment of Rs.1,31,27,146/- out of amount of Rs.1.50 Crores that appellant had deposited. The learned single Judge should not have allowed that amount to be paid without insisting that port should prove its claim.

8. Mr. Bimal Rajesekhar appearing for Respondent No.1 submitted as under :

(a) Liabilities properly incurred by the agent on account of the ship, and which it is clear he has rendered himself liable to discharge will be allowed against the owners even though at the time of the claim they may not actually have been discharged.

(b) Section 4 (1) of the Admiralty Act provides that the High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, "arising out of any – ……."

(c) Under clause (l) of Section 4(1) of the Admiralty Act, it says "…….. arising out of any …….. services rendered to the vessel for its operation …….. including any fee payable or leviable". It only means agency fee is one part of the component.

(d) Respondent No.1 had rendered services to the said vessel for its operation. But for Respondent No.1 applying to Respondent No.2 (port) for allotment of berth to the said vessel and undertaking to pay the port charges for the said vessel's operation within the port to enter, stay and sail out; it would have not possible.

(e) As regards Clause (n) of Section 4(1) of the Admiralty Act it reads "……. on a maritime claim, against any vessel, "arising out of any ….." dues "in connection with" any port …….. or any charges of similar kind chargeable under any law for the time being in force". It is wide enough to include a claim that the agent would make when the agent

becomes exposed to or has to pay those charges to the port on behalf of the vessel.

(f) The expressions "arising out of" and "in connection with" implies a very wide meaning.

(g) As regards clause 4(1)(p) of the Admiralty Act disbursement "incurred" would mean liabilities properly incurred. Situations may arise where a party relying on indemnity could very well file suit even though at the time of the claim they may not actually have been discharged.

(h) The real meaning of "disbursement incurred" in admiralty practice is disbursement which would make the agent liable being in respect of necessary things for the ships and necessary in the sense means that he is obliged.

(i) In an unreported judgment of a learned single Judge of this court in ***Jakhau Salt Company Pvt. Ltd. Vs. M.V. Dhanlakhsmi*** [1] the court has held that the person entitled to be indemnified may enforce his right as soon as the liability to the third party arises and he can obtain relief before he has actually suffered a loss.

In short "disbursement incurred" would not mean it requires pre-payment. Liabilities properly incurred on account of the ship, and which it is clear he has rendered himself liable to discharge will be allowed against the owners even though at the time of the claim they may not actually have been discharged.

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1 Dated 22nd, 23rd and 24th July 2008

(j) The whole law of indemnity is not embodied in Section 124 and 125 of the Indian Contract Act, 1872. A learned single Judge of this court in ***Gajanan Moreshwar Parelkar Vs. Moreshwar Madan Mantri***[2] held that Section 124 and 125 of the Indian Contract Act are not exhaustive of the law of indemnity and that the courts here would apply the same equitable principles that the Courts in England do. The court held that if the indemnifier has incurred a liability and that liability is absolute, he is entitled to call upon the indemnifier to save him from that liability and to pay it off. If Respondent No.1 has to pay the amount before it could enforce the indemnity and that he had to wait till the judgment is pronounced and only after satisfying the judgment that he could sue on his indemnity it would throw an intolerable burden upon the indemnity holder. What would happen if the indemnifier was not in a position to make the payments. Under the English Common Law no action could be maintained until actual loss had been incurred and the Court of equity had stepped in and mitigated the rigour of the Common Law. The Court of equity held that if the liability of the indemnifier has become absolute then he was entitled either to get indemnifier to pay off the claim or to pay into Court sufficient money which would constitute a fund for paying off the claim whenever it was made and that is exactly what happened in the case at hand.

(k) In ***Khetarpal Amarnath Vs. Madhukar Pictures***[3] the Division Bench of this court held that even before the damage is incurred by the

2 1942 SCC OnLine Bom 29
3 1955 SCC OnLine Bom 289

indemnity-holder, it would be open to him to sue for the specific performance of the contract of indemnity, provided of course it is shown that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability.

(l) The words "arising out of" used in Section 4 of the Admiralty Act cannot be given a narrow meaning of the expression "arising under". Rather should be given a wider meaning like for example "connected with".

(m) Therefore the claim of Respondent No.1 was a maritime claim.

9. Mr. V.K.Ramabhadran for Respondent No.2 submitted, after relying upon the authorities relied upon by Mr. Bimal Rajasekhar, as under :

(a) The learned single Judge has recorded that the claim of Respondent No.1 would be maritime claim under Section 4(1)(n) and Section 4(1)(p) of the Admiralty Act.

(b) Section 4(1)(n) of the Admiralty Act states "…….. any question on a maritime claim against any vessel, arising out of any …….. dues in connection with port ……..." is wide enough to include a claim in indemnity. The term "relating to" or "arising out of" is synonymous with "in connection with".

As per Blacks' Law Dictionary the term "relate to" is synonymous with "connection with". The term "in relation to" (so also "pertaining to"), is synonymous with the word "relate". The expression "in relation to" is a very broad expression which presupposes another subject

matter. These words of comprehensiveness might have both a direct as well as an indirect significance depending on the context - ***Mansukhlal Dhanraj Jain and Ors. Vs. Eknath Vithal Ogale***[4]***)***. The words "in connection with" are synonymous with the words "in relation to" as held by the Hon'ble Apex Court in ***Rajinder Singh Vs. State of Punjab***[5]. In view thereof "in connection with" which is synonymous with the words "relates, relation to" would be comprehensive enough to have a direct as well indirect significance. If the intention of the statute was to restrict the maritime claim only to a direct claim by port, harbour, canal etc., there was no need to add the words "arising out of" …….. "dues in connection with port" etc. Therefore, the words "arising out of …….. dues in connection with port" would not be confined only to a claim made by the port but also include within that Section an indemnity claim as well, as made by Respondent No.1.

(c) The claim would also fall under Section 4(1)(l) of the Admiralty Act for services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable. All services rendered to the said vessel, direct as well as indirect. The said vessel could not have been able to operate within the port but for the services that plaintiff/Respondent No.1 had rendered and hence Section 4(1)(l) of the Admiralty Act says "……and determine any question on a maritime claim, arising out of …….. goods …….. or services rendered to the vessel for operation ……..". It is very broad and comprehensive.

4 (1995) 2 Supreme Court Cases 665
5 (2015) 6 Supreme Court Cases 477

Renusagar Power Co. Ltd. Vs. General Electric Co.[6] supports this view.

(d) As held by the Queen's Bench Division (Admiralty Court) in England in the matter of ***The "Conoco Britannia" and Other Vessels***[7] "as long as the subject matter of claim is a maritime claim, any indemnity claim in respect of the same would also be a maritime claim.

(e) The learned single Judge rightly considered the claim of the Port/Respondent No.2 to receive the requisite part of the security amount deposited by appellant. The Hon'ble Apex Court in its order dated 12th March 2021 in paragraph no. 8 has stated as under :

> *8. Similarly, the claim of the Mumbai Port Trust to receive the requisite part of the security amount deposited by the appellant, during the interregnum, till all the questions are finally answered on merits, can also be considered by the learned Single Judge before deciding the contentions on merits. For us, suffice it is to direct the Registry of this Court to transfer the amount of Rs.1.50 crore deposited by the appellant to the High Court of Judicature at Bombay in Commercial Admiralty Suit (L) No.6807/2020 within a week. Ordered accordingly.*
>
> (emphasis supplied)

The learned single Judge had been given the liberty to release the amount payable to port before he even went on to decide the claims of Respondent No.1 on merits. Appellant, by its Advocate's letter dated 25th November 2020 addressed to the port, assured the port that they were arranging funds to clear the arrears of the port. That letter forms part of the appeal paper book. The Constituted Attorney of appellant/owner of the

6 (1984) 4 SCC 679
7 (1972)1 LLR 342

said vessel, as recorded in the order dated 18th December 2020 of the Admiralty Court, had made a statement to the court to furnish bank guarantee in the sum of Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs only) together with interest at the rate of 15% per annum to secure the claim of the port. As recorded in the order dated 1st January 2021, the counsel appearing on behalf of appellant on instructions taken in the court made a statement that appellant was ready and willing to pay the entire charges of Mumbai Port Trust alongwith interest as applicable on or before 4th January 2021. Though it was made without prejudice to its rights and contentions, the fact is appellant admitted its liability to the port though they may have some questions on the quantum.

Mr. Kapadia in fairness submitted that the port's claim has to be paid, its dues cannot be questioned but the quantum certainly can be.

(f) Appellant has forfeited its right to file written statement under the provisions of the Commercial Courts Act, 2015 and now cannot raise all these submissions. Port is a defendant in the suit and if Respondent No.1 wishes, will step into the witness box to prove its claim to prove the charges payable by the said vessel to the port.

In any event, on without prejudice basis, if at any stage the court directs port to get the money back into the court, the port, without prejudice to its rights and contentions, will abide by the court's order.

10. **Findings** :

In our view, the claim as made by Respondent No.1 in the suit will be a maritime claim under Section 4 of the Admiralty Act.

Section 4(1) of the Admiralty Act says "*The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any – ……."*

In the case of *Renusagar Power Co. Ltd.* (supra) the Hon'ble Apex Court has held *"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement".* Moreover in clause (n) of Section 4(1) of the Admiralty Act the expression used is "dues in connection with port ……". There is good deal of widest amplitude in the words "arising out of" on the one hand and the terminology "dues in connection with port ……..". The words "arising out of" and "in connection with" are of wide nature and can take in their sweep a maritime claim which is made against any vessel where there are dues of any vessel to the port including a claim by an agent who has to be indemnified against a port's claim. It need not be a claim only by the port but it can be even by an agent on indemnity action, as is the case at hand. It will appropriate here to reproduce paragraph Nos.11, 14, 15 and 16 of *Mansukhlal D. Jain* (supra) which read as under :

11. In order to resolve the controversy posed for our

consideration, it will be appropriate to note the relevant statutory provision having a direct bearing on this question. Section 41(1) of the Small Causes Courts Act reads as under :

> *"41(1). Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of Sub- section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the license fee or charges of rent thereof, irrespective of the value of the subject matter of such suits or proceedings."*
>
> *XXXXXXXXXX*

14. So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensors. The first condition is clearly satisfied. Then remains the question whether the third condition, namely, that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not. It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal threatened acts of respondents/defendants. Relying on a series of decision of this Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud, J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section, in our view, it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that Section 41(1) does not employ the words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide

import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1). In this connection, we may refer to Blacks' Law Dictionary, Super Deluxe 5th Edition. At page 1158 of the said Dictionary, the term "relate" is defined as under:

> *"to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; 'with to'."*

It cannot be seriously disputed that when a plaintiff-licensee seeks permanent injunction against the defendant-licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does have a bearing on or a concern with the recovery of possession of such property. In the case of Renusagar Power Company Ltd. v. General Electric Co. a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapukar, J. at Page 471 of the report has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition 2 has been mentioned as under :

> *"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."*

15. In Doypack Systems (P) Ltd. v. Union of India, another Division Bench of this Court consisting of Sabyaschi Mukherji (as he then was) and G.L. Oza, JJ., had an occasion to consider this very question in connection with the provisions of Sections 3 and 4 of the Swadeshi Cotton Mills Co. Ltd. (Acquisition and Transfer of Undertakings) Act, 1986. Sabyaschi Mukherji, J. speaking for the Court, has made the following pertinent observations in paragraphs 49 and 50 of the report:

> *"The words "arising out of" have been used in the sense that it comprises purchase of shares and lands From income arising out of the Kanpur undertaking. We are of the opinion that the words*

"pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate", see Corpus Juris Secundum, Volume 17, Page 693. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Azeez, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul, Shyam Lal v. M. Shyamlal and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is Stated that the terms "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

16. It is, therefore, obvious that the phrase 'relating to recovery of possession' as found in Section 41(1) of the Small Causes Court Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase. Consequently in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Causes Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits.

(emphasis supplied)

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11. The Hon'ble Apex Court in the case of *Rajinder Singh* (supra) held that the expression "in connection with" is of widest amplitude and content.

12. The Queen's Bench Division (Admiralty Court) in "*The Conoco Britannia"* (supra) held that as long as the subject matter of the claim is a maritime claim any indemnity claim in respect of the same would also be a maritime claim. That was the case where plaintiff had supplied a tug by name *Hullman* in order to render towage services to defendants' tanker *Conoco Arrow*. The contract included a provision for an indemnity in case of loss or damage to the tug. *Conoco Arrow* collided with *Hullman* in the river Humber. Some of her crew were also lost. Plaintiffs brought an action *in rem* under the Administration of Justice Act, 1956 against three vessels which were sister ships of *Conoco Arrow* for various claims including in indemnity for the claim of the owners of *Hullman* in respect of the loss and damages sustained by the owners by the reason of the collision between *Hullman* and *Conoco Arrow*. Plaintiffs made their claim under various provisions of Section 1 of the Administration of Justice Act, 1956.

Defendants applied for the writ to be set aside and contended that the Court had no jurisdiction to entertain the claims for they did not fall within pars. (d), (e), (h), or (k) of sect. 1(1) of the Administration of Justice Act, 1956, which stated (*inter alia*) :

The Admiralty jurisdiction of the High Court shall be as follows,

that is to say, jurisdiction to hear and determine any of the following questions or claims :

xxxxxxxx

(d) any claim for damage done by a ship;

(e) any claim for damage received by a ship;

(h) any claim arising out of an agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(k) any claim in the nature of towage in respect of a ship or an aircraft.

Plaintiff argued that their claims come within clause (h), i.e., "any claim arising out of ……. use of or hire of a ship", viz., tug *Hullman*. Defendants argued that the words "relating to the use or hire of a ship" should be construed "*ejusdem generis*" with the preceding words in paragraph (h) "relating to the carriage of goods in a ship" and should accordingly be given a narrow construction which would not cover the case of a towage contract under which a tug is hired to attend on and assist a ship. The court held that there was no reason for giving a restricted meaning to the words "relating to the use or hire of a ship". The court held the words in their ordinary and natural meaning are amply wide enough to cover a case of hire of a tug under towage contract.

13. Mr. Kapadia accepted that the words "arising out of" and "in connection with" may imply for giving a wider meaning but added, that

cannot be stretched to an extent that a third party, as the agent in this case, gets a right to have a maritime claim over the port dues in addition to port itself having such a right. We do not agree with Mr. Kapadia. We say this because, otherwise, there was no need to use the words "arising out of ….. dues in connection with port" or "…… arising out of ……. services rendered to the vessel for its operation ……." or "……. arising out of …….. disbursements incurred". If a narrow meaning has to be given and not their ordinary and natural meaning which are wide, it would have employed the words "arising out of". Then Section 4(1) of the Admiralty Act would have read "The High Court may exercise jurisdiction to hear and determine a maritime claim, against any vessel …….., (l) for goods, materials …… services rendered to the vessel ……., (n) for dues of port …….. or charges of similar kind ……, (p) for disbursements incurred on behalf of the vessel or its owners". It will not be so widely worded as Section 4(1) of the Admiralty Act now in its ordinary and natural meaning reads. The provisions are wide and comprehensive in nature enough to take in its sweep an indemnity action of the nature at hand.

14. ***Nigel Meeson***[8] in Admiralty Jurisdiction And Practice opines :

> *"Liabilities properly incurred by the master on account of the ship, and which it is clear he has rendered himself liable to discharge will be allowed against the owners even though at the time of the claim they may not actually have been discharged".*

8 Paragraph 2.131 – Fourth Edition

15. In *Gajanan Moreshwar Parelkar* (supra) submissions of defendant that unless and until the indemnified has suffered a loss is not entitled to sue indemnifier was rejected. The court held as under :

> *It is true that under the English common law no action could be maintained until actual loss had been incurred. It was very soon realized that an indemnity might be worth very little indeed if the indemnified could not enforce his indemnity till he had actually paid the loss. If a suit was filed against him, he had actually to wait till a judgment was pronounced, and it was only after he had satisfied the judgment that he could sue on his indemnity. It is clear that this might under certain circumstances throw an intolerable burden upon the indemnity-holder. He might not be in a position to satisfy the judgment and yet he could not avail himself of his indemnity till he had done so. Therefore the Court of equity stepped in and mitigated the rigour of the Common Law. The Court of equity held that if his liability had become absolute then he was entitled either to get the indemnifier to pay off the claim or to pay into Court sufficient money which would constitute a fund for paying off the claim whenever it was made. As a matter of fact, it has been conceded at the bar by Mr.Tendolkar that in England the plaintiff could have maintained a suit of the nature which he has filed here; but, as I have pointed out, Mr. Tendolkar contends that the law in this country is different. I have already held that ss. 124 and 125 of the Indian Contract Act are not exhaustive of the law of indemnity and that the Courts here would apply the same equitable principles that the Courts in England do. Therefore, if the indemnified has incurred a liability and that liability is absolute, he is entitled to call upon the indemnifier to save him from that liability and to pay it off.*
>
> (emphasis supplied)

16. The Division Bench of this court in *Khetarpal Amarnath* (supra) in paragraph no. 4 held as under :

> *With respect, we think that the general observations made in the course of the judgment, which suggest that under a contract of indemnity the cause of action arises when the damage which the indemnity is intended to cover is suffered and that a suit brought before actual loss accrues is*

> *premature, must be regarded as 'obiter'. The question as to whether the provisions contained in s. 125 of the Indian Contract Act exhaustively dealt with the rights of the indemnity-holder and the remedies available to him does not appear to have been argued before the Court, and indeed on the facts found by the Court the question which really arose for the decision of the Court lay within a narrower compass. We are, therefore, disposed to take the view that the rights of the indemnity-holder should not and need not be confined to those mentioned in s. 125 of the Indian Contract Act. Even before damage is incurred by the indemnity-holder, it would be open to him to sue for the specific performance of the contract of indemnity, provided of course it is shown that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability. We may point out that the view which we are disposed to take in this matter has been taken by the High Courts of Calcutta, Madras and Allahabad (vide 'Kumar Nath Bhuttacharjee v. Nobo Kumar Bhuttacharjee', Ramalingathudayan v. Unnamalai Achi' and 'Shiam Lal v. Abdul Salam) and has besides received the approval of the commentators in Pollock and Mulla's Indian Contract Act.*
>
> (emphasis supplied)

Therefore, there was no need to pay off the claim before suing the indemnifier. Only requirement is the indemnified should be able to show that absolute liability has been incurred by him.

17. In *M.V. Dhanlakhsmi* (supra) the learned single Judge of this court in paragraph nos.25 and 26 held as under :

> *25. A common thread which runs through all these judgments is as to when such a suit on the breach of indemnity can be filed and it has been held that, though, under common law, a suit on the indemnity can be filed only after plaintiff suffers an actual loss, in equity, the person entitled to be indemnified, may enforce his right as soon as the liability to the third party arises and, therefore, he can obtain relief before he has actually suffered a loss. The gravamen of the argument made by the learned Counsel appearing on behalf of the defendants was that the actual loss which was likely to be suffered by the plaintiff was not quantified since the arbitration proceedings were pending in London and as long as the said loss was not quantified by the*

> *order passed in the arbitration proceedings, the plaintiff was not entitled to file a suit under the admiralty jurisdiction since the time had not become ripe and it was, therefore, premature to file the suit under the admiralty jurisdiction based on such a claim and, therefore, the liability had not become absolute.*
>
> *26. I am afraid that this submission cannot be accepted. The judgments on which reliance is placed by the learned Counsel for the defendants do not support this submission. Perusal of the judgments clearly indicate that the party who is relying on the indemnity could very well file a suit even before it had actually suffered a loss. In the facts of the present case, the plaintiff had to give security and the proceedings were taken out in New York under Rule 9(h) of the Federal Rules of Civil Procedure and, thereafter, arbitration proceedings were initiated in London and a definite claim had been made. Therefore, even otherwise, it cannot be said that the claim was premature and had not been crystalised. The plaintiff has come to this Court with a specific case that in view of clause 16 of the charter party agreement, the defendants had clearly indemnified and promised to bear losses which would be caused as a result of damage caused by the ship of the defendants. The wording of clause 16, therefore, clearly indicates that the liability is absolute and unconditional and, therefore, the plaintiff was entitled to file a suit under the admiralty jurisdiction and seek an order for arrest of the ship. The submission of the learned Counsel appearing on behalf of the defendants that this Court does not have jurisdiction to entertain the claim of the plaintiff on indemnity and that an action in rem should not be invoked on a claim of indemnity also cannot be accepted.*
>
> (emphasis supplied)

Therefore, as held in *M.V. Dhanlakhsmi* (supra) and the *"Conoco Britannia"* (supra), as long as the subject matter of claim is a maritime claim, any indemnity claim in respect of the same would also be a maritime claim.

18. Therefore, considering the nature of the claim of Respondent No.1, the claim of Respondent No.1 would fall under clause (l), (n) and also

(p) of Section 4(1) of the Admiralty Act.

19. Therefore, the submissions of appellant that Respondent No.1's claim being a claim in the nature of indemnity would not be a maritime claim has to be rejected.

20. As regards Mr. Kapadia's submissions that both an agent of the vessel and the port cannot maintain an action simultaneously, on first blush looks interesting. But that is a non-starter when we have held that an indemnity action is maintainable. Moreover, both are separate causes of action available to both parties, one in the nature of a maritime claim (agent's claim) and the other a maritime lien (port's claim) or under Section 64 of The Major Port Trusts Act, 1963.

21. Coming to the amount having been paid to the port in the sum of Rs.1,31,27,146/-, the Hon'ble Apex Court, as per its order quoted above, left it to the learned single Judge to consider whether the claim of the port was entitled to receive the requisite part of the security amount deposited by appellant. Therefore, the learned single Judge was correct in deciding the same. The learned single Judge considered all the admissions made by appellant (some have been noted earlier by us) to pay port dues and charges and directed release of the amount. Hence, we find no reason to interfere.

22. At the same time we accept the without prejudice undertaking made by Mr. Rambhadran on behalf of the port that if at any stage during or after the trial in the suit port is directed to bring back any amount to the court, port will bring back the amount.

23. Therefore, Appeal No. 55 of 2022 stands dismissed.

24. Mr. Rambhadran and Mr. Rajasekhar are pressing for costs. In fact, at the beginning when we had made it clear to Mr. Kapadia that we would be imposing costs on the losing party and if appellant ended up as the losing party how would they secure the costs, Mr. Kapadia stated that the amount deposited by appellant in the court or whatever surplus from the sale proceeds is available could be paid over to Respondent No.1 and Respondent No.2, if appellant looses.

Appellant having lost and this being a Commercial Appeal, costs have to be imposed. We direct costs of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) each be paid to Respondent No.1 and Respondent No.2. If within two weeks the amount is not paid by appellant to the respective advocates of Respondent No.1 and Respondent No.2, they may apply to the Prothonotary and Senior Master/Admiralty Registrar of this court to be paid over this amount from the surplus of the amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) that was deposited by appellant pursuant to the order of the Hon'ble Apex Court.

25. Mr. Kapadia had made a statement that he is not pressing the appeal in which learned single Judge's decision to allow the Interim Application of the auction procedure namely Interim Application (L) No. 7724 of 2021 was allowed. Hence, we are not considering the same and dispose it.

26. Therefore, Appeal No. 12 of 2023 stands dismissed.

27. Consequently, all Interim Applications also stand disposed.

(RAJESH S. PATIL, J.) (K.R. SHRIRAM, J.)

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