

**IN THE COMMERCIAL HIGH COURT OF THE WESTERN PROVINCE**  
**(EXERCISING ADMIRALTY JURISDICTION) HOLDEN IN COLOMBO**

In the matter of a claim arising under and in terms of section 2(1)(1) of the Admiralty Jurisdiction Act No 40 of 1983.

Fleet Management India Pvt Ltd, No 601/A,  
Elegant Business Park,  
Off-Andheri Kurla Road, Andheri East, Mumbai  
400-059  
India.

**Plaintiff**

**Case No: CHC. 06/2020/Rem**

**Vs.**

1. M.T. Prem Pride
2. Hindage Oilfield, Tandalja Road,  
Vadodara,  
Gujarat 390020,  
India.

**Defendants**

**Before : Pradeep Hettiarachchi, H.C.J**

**Decided on : 03.12.2024**

## **JUDGMENT**

1. The Plaintiff instituted this action by Petition dated 26.08.2020 seeking to recover USD 97,643.22 as purported ship management fees from the 2<sup>nd</sup> Defendant for the period from 01.07.2020 to 07.11.2020.
2. The Plaintiff also seeks to recover USD 266,913 as subrogated crew wages for the month of February and March 2020 relating to 22 crew members alleged to have been paid by the Plaintiff.
3. The case was filed on 20.05.2020 by an affidavit to lead warrant of arrest.
4. The application for warrant of arrest and the writ of summons in Rem was supported on 21.05.2020, where the warrant of arrest and a writ of summons in Rem were issued on the same day.
5. Subsequently, upon furnishing a bank guarantee to the value of USD 460,000 by the Defendants, the ship was released from its arrest.
6. The Defendants tendered their answer disputing and denying the Plaintiff's claim. The Defendants also made a counter claim in the sum of USD 3,554,248 from the Plaintiff as damages incurred due to the arrest of the ship.
7. According to the answer, the 2<sup>nd</sup> Defendant became the owner of the 1<sup>st</sup> Defendant vessel only on 11.03.2020. Prior to 11.03.2020, Mercator Ltd was the owner of the vessel.
8. The Defendants contended that no ship management agreement was entered into between the 2<sup>nd</sup> Defendant and the Plaintiff, although several discussions were held between the parties on a prospective ship management agreement.

9. According to the document marked as X2, the 2<sup>nd</sup> Defendant entered into a ship management agreement on 17.03.2020 with Synergy Oceanic Services India PVT LTD, (SOS), which was appointed as the technical and crew manager of the 2<sup>nd</sup> Defendant.
10. The Defendant contended that in terms of the ship management agreement dated 08.07.2013, entered into between the Plaintiff and the former owner Mercator Ltd, the previous owner is liable to pay the management fees to the Plaintiff until one month after delivery of the vessel to the new buyers in the event the vessel is sold.
11. Therefore, the Defendant averred that the Plaintiff ought to claim management fees from the 1<sup>st</sup> owner i.e., Mercator Pvt Ltd., and hence the Plaintiff is not entitled to claim any management fees from the Defendants.
12. Furthermore, it is stated that the 2<sup>nd</sup> Defendant settled crew wages of the 1<sup>st</sup> Defendant for the month of January on behalf of Mercator Ltd without accepting the liability, for the purpose of obtaining the No Objection Certificate (NOC) from Shipping master which is a precondition for the transfer of ownership of the 1<sup>st</sup> Defendant to be effected by the Mercantile Marine Dept. (Mumbai) of the Director General of Shipping in India.
13. The letters sent by Mercator Ltd and signed acknowledgment by the crew were marked as X4 (a) and X4(b).
14. The Defendants further state that the 22 crew members who were on board the 1<sup>st</sup> Defendant ship as at 11.03.2020 had each entered into seafarer employment agreements with the former owner of the 1<sup>st</sup> Defendant vessel according to which they became employees of Mercator.
15. As of 11.03.2020, some of the seafarer agreements had lapsed. The 2<sup>nd</sup> Defendant discussed with the Plaintiff and the crew members the possibility of entering into new seafarer employment agreements. However, these

agreements could not be finalized or executed, as the crew members and the Plaintiff refused to enter into such agreements.

16. The second Defendant argued that, since no crew employment agreements were entered into between the 2<sup>nd</sup> Defendant and the crew referred to in the petition, the crew is not entitled to claim wages from the 2<sup>nd</sup> Defendant.
17. In view of the above, the Defendants further contended that, in the absence of seafarer agreements between the 2<sup>nd</sup> Defendant and the crew, the crew cannot claim that the 2<sup>nd</sup> Defendant is responsible for paying their income tax and other taxes.
18. The Defendant further averred that the Plaintiff prevented the 2<sup>nd</sup> Defendant from taking the possession of the vessel notwithstanding the purchase and transfer of ownership of the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant on 11.03.2020.
19. Furthermore, the Defendants averred that although a representative of Synergy Oceanic Services India PVT LTD came to Sri Lanka to take charge of the vessel on the instruction of the 2<sup>nd</sup> Defendant, all efforts by the said representative to board the vessel was prevented by the Plaintiff.
20. Therefore, the Defendants contended that the crew referred to in the petition are not employees of the 2<sup>nd</sup> Defendant, and hence, there is no obligation on the 2<sup>nd</sup> Defendant to pay any crew wages to the subject crew referred to in the petition.
21. The Defendants also claim damages from the Plaintiff alleging that the arrest of the 1<sup>st</sup> Defendant vessel is wrongful and therefore, the 1<sup>st</sup> Defendant vessel incurred loss when it was under arrest. Moreover, the Defendants claim that they had to furnish a bank guarantee in order to get the vessel released which cost them further USD 5400.00.
22. Following are the admissions recorded by both parties.

1. Jurisdiction of the Court.
  2. The incorporation of the Plaintiff.
  3. The 2<sup>nd</sup> Defendant namely Hindage Oilfield Services Ltd is the present owner of the 1<sup>st</sup> Defendant vessel.
  4. The 2<sup>nd</sup> Defendant became the owner of the 1<sup>st</sup> Defendant vessel on 11.03.2020.
  5. Prior to 11<sup>th</sup> March 2020, Mercator Limited was the owner of the 1<sup>st</sup> Defendant vessel.
  6. As set out in paragraph 4 (b) of the answer, although several discussions and negotiations were held between the 2<sup>nd</sup> Defendant and the Plaintiff on a prospective ship management to be signed between the parties, they could not reach an agreement and therefore, no ship management agreement was entered into between the 2<sup>nd</sup> Defendant and the Plaintiff.
  7. That the 2<sup>nd</sup> Defendant on 17<sup>th</sup> March 2020, entered into a ship management agreement with another ship manager Synergy Oceanic Services India Pvt Ltd.
  8. The 1<sup>st</sup> Defendant vessel was arrested by the Marshall on 22<sup>nd</sup> May 2020 and their appearance was thereafter entered on behalf of the owner of the Defendant vessel.
  9. That action in Rem No 07/2020 was instituted by the former crew members of the 1<sup>st</sup> Defendant vessel and subsequently withdrawn by the said Plaintiffs.
  10. That the second Defendant remitted and/or settled crew wages of the 1<sup>st</sup> Defendant for the month of January 2020 on behalf of Mercator Ltd without accepting any liability.
23. There were 31 points of contentions out of which 1<sup>st</sup> – 12<sup>th</sup> and 19<sup>th</sup> – 31<sup>st</sup> were framed by the Plaintiff, while 14<sup>th</sup> – 18<sup>th</sup> were by the Defendants.

***Points of Contention of the Plaintiff***

1. As morefully set out in paragraphs 2 and 3 of the Petition-

- (a) Was the 2<sup>nd</sup> Defendant the owner of the 1<sup>st</sup> Defendant vessel at all times material to this action?
- (b) Is the person who would be liable on the Plaintiff's claim in an action in personam, the 2<sup>nd</sup> Defendant?
2. As morefully set out in paragraph 4 of the Petition-
- (a) Had the 2<sup>nd</sup> Defendant contracted to take delivery of the 1<sup>st</sup> Defendant vessel from its previous owner, Mercator Limited, with effect from 1<sup>st</sup> January 2020.
- (b) Had the Plaintiff been contracted as the technical/crew manager of the 1<sup>st</sup> Defendant vessel under the previous ownership of the vessel?
- (c) Prior to formalizing the agreement for the sale of the vessel to the 2<sup>nd</sup> Defendant, had the 2<sup>nd</sup> Defendant engaged in discussions with the Plaintiff to continue as the technical/crew manager of the vessel?
- (d) On change of ownership and at the request of the 2<sup>nd</sup> Defendant, did the Plaintiff continue as the technical/crew manager of the 1<sup>st</sup> Defendant vessel?
- (e) Although the formal change of ownership of the 1<sup>st</sup> Defendant vessel to the 2<sup>nd</sup> Defendant took place on the 11<sup>th</sup> of March 2020, did the 1<sup>st</sup> Defendant commit to settle the Plaintiff's management expenses and crew wages from the 1<sup>st</sup> of January 2020, until the date of change of ownership and thereafter?
- (f) In this respect, did the 2<sup>nd</sup> Defendant settle the crew dues for the month of January 2020 on the 7<sup>th</sup> of February 2020?
3. Did the 2<sup>nd</sup> Defendant entered into the ship management agreement with Synergy Oceanic Services India Pvt. Ltd. contrary to the discussions and agreements that had taken place between the Plaintiff and the 2<sup>nd</sup> Defendant?
4. Did the 2<sup>nd</sup> Defendant not take any steps to settle the outstanding payments due to the Plaintiff as management fees for the period starting from the 1<sup>st</sup> of January 2020 till the institution of this action?

5. As such, has a cause of action accrued in favour of the Plaintiff against the Defendants as morefully set out in paragraph 10 of the Petition?
6. Had the 2<sup>nd</sup> Defendant undertaken to make payments to the crew members on board the 1<sup>st</sup> Defendant vessel from 1<sup>st</sup> of January 2020 onwards?
7. Had the 2<sup>nd</sup> Defendant failed to make payments to the crew members from the 1<sup>st</sup> of February 2020 onwards?
8. Was the Plaintiff under an obligation to pay the sums payable to the crew members for and on behalf of the 2<sup>nd</sup> Defendant and subrogate the right to claim the same from the 2<sup>nd</sup> Defendant?
9. Was the crew members' maritime lien for non-payment of wages by the 2<sup>nd</sup> Defendant subrogated to the Plaintiff?
10. Did the Plaintiff make payment as morefully set out in paragraph 15 of the Petition to the crew-members, being the payments made to the crew members for the month of February and March?
11. As such, has a cause of action accrued in favour of the Plaintiff against the Defendants as morefully set out in paragraph 18 of the Petition?
12. If any one of more of the aforementioned issues are answered in favour of the Plaintiff, is the Plaintiff entitled to the reliefs prayed for in the Petition of the Plaintiff?

***Points of Contention of the Defendants***

13. As morefully set out in paragraph 4 of the Answer;
  - (a) Was there a Ship Management Agreement dated 8<sup>th</sup> July 2013 entered into between the Plaintiff and the former owners of the Defendant Vessel, namely Mercator Limited in respect of the subject vessel?
  - (b) In terms of the said Ship Management Agreement between the Plaintiff and Mercator Limited, was Mercator Limited liable to pay the Management Fees to the Plaintiff until 1 month after delivery of the vessel to new buyers in the event the vessel was sold?

- (c) Therefore, was the Plaintiff obliged to claim the Management Fees claimed by the Plaintiff under the first cause of action from the said previous owner namely, Mercator Limited by way of initiating arbitration?
  - (d) As such is the Plaintiff not entitled to claim any Management Fees from the 1<sup>st</sup> and /or 2<sup>nd</sup> Defendants?
14. As morefully set out in paragraph 6 of the Answer;
- (a) Had the 22 crew members that were on board the 1<sup>st</sup> Defendant Vessel as at 11<sup>th</sup> March 2020 each entered into seafarer employment agreements [annexed marked 'Z10(a)' to 'Z10(v)' to the Petition] with the former owner of the 1<sup>st</sup> Defendant Vessel namely, Mercator Limited?
  - (b) As per the said Seafarer agreements 'Z10(a)' to 'Z10(v)' were such crew members recruited by the former Owners of the 1<sup>st</sup> Defendant Ship namely Mercator Limited as Mercator Limited's employees?
  - (c) As at 11<sup>th</sup> March 2020 were some of the said Seafarer agreements lapsed and/or terminated?
  - (d) By communication dated 24<sup>th</sup> April 2020 did the Plaintiff state that the crew will not continue to be employed in the 1<sup>st</sup> Defendant Vessel?
  - (e) Was there no crew employment agreement or seafarer agreement(s) entered into between the 2<sup>nd</sup> Defendant and the subject former crew referred to in the Petition of the Plaintiff?
  - (f) Therefore, are the subject crew members referred to in the Petition and/or the Plaintiff not entitled to claim wages from the 2<sup>nd</sup> Defendant?
  - (g) In the absence of employment contracts and/or sea farer contracts is the crew referred to in the Petition not entitled to claim that their income tax and other taxes be paid by the 2<sup>nd</sup> Defendant?
  - (h) Did the Plaintiff prevent the 2<sup>nd</sup> Defendant from taking over physical possession/delivery of the 1<sup>st</sup> Defendant vessel notwithstanding the purchase and transfer of ownership of the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant on 11<sup>th</sup> March 2020?

- (i) As morefully set out in paragraph 6(j) of the Answer did the Master of the ship who was on board at the time of purchase by the 2<sup>nd</sup> Defendant continuously refuse to take orders from the 2<sup>nd</sup> Defendant and act contrary to the instructions of the 2<sup>nd</sup> Defendant?
  - (j) As morefully set out in paragraph 6(l) of the Answer was the representative of Synergy Oceanic Services India Pvt. Ltd namely, Mr. Joseph Peter prevented from boarding the 1<sup>st</sup> Defendant vessel by the Plaintiff and /or the subject crew referred to in the Petition?
  - (k) Therefore, was 2<sup>nd</sup> Defendant unable to take over possession and/or charge and/or delivery of the 1<sup>st</sup> Defendant Vessel?
  - (l) Have the crew referred to in the Petition acted contrary to the interest of the 2<sup>nd</sup> Defendant?
  - (m) Therefore, is there no legal duty or obligation on the 2<sup>nd</sup> Defendant to pay any crew wages to the subject crew referred to in the Petition of the Plaintiff?
  - (n) Therefore, is the Plaintiff not entitled to claim any crew wages, related Income Tax and GST from the 1<sup>st</sup> and/or 2<sup>nd</sup> Defendants which has been purportedly settled by it for the months of February and March 2020?
15. As morefully set out in paragraph 7 of the Answer;
- i. Did the Plaintiff wrongfully and maliciously seek and obtain a Warrant of Arrest against the 1<sup>st</sup> Defendant Vessel by suppressing material facts?
  - ii. Did the Bank Guarantee to the value of US\$ 460,000/- which had to be provided by the 2<sup>nd</sup> Defendant, to have the 1<sup>st</sup> Defendant Vessel released cost a sum of US\$ 5,400/- to the Defendants?
  - iii. Are the Defendants entitled to claim all the costs incurred by the Defendants in respect of the said Bank Guarantee and any subsequent renewal/extension thereof?
16. As morefully set out in paragraph 11 of the Answer;
- (a) Is the Plaintiff's action misconceived in law?

- (b) Is the Plaintiff not entitled to claim the relief prayed for in the Petition against the Defendants?
- (c) In any event strictly without prejudice to the above are the claims of the Plaintiff erroneous and excessive?

***Consequential Points of Contention of the Defendants***

- 17. Did the 2<sup>nd</sup> Defendant so settle the crew wages of the 1<sup>st</sup> Defendant for the month of January 2020, for the sole purpose of obtaining the 'No Objection Certificate' from Shipping Master?
- 18. Is the 'No Objection Certificate' from the Shipping Master a pre-condition for the transfer of ownership of the 1<sup>st</sup> Defendant Vessel to be effected by the Mercantile Marine Department (Mumbai) of the Director-General of Shipping in India?

***Points of Contention arising out of the Counter Claim of the Defendants***

- 19. As morefully set out in paragraph 13 of the Answer;
  - (a) Was the arrest of the 1<sup>st</sup> Defendant vessel effected on non-disclosure and/or suppression of material facts and/or on false misrepresentations made by the Plaintiff?
  - (b) Therefore, is the arrest of the 1<sup>st</sup> Defendant vessel illegal and/or wrongful and/or unwarranted and/or negligent and/or malicious and/or an abuse of process of Court?
- 20. As morefully set out in paragraph 14 of the Answer;
  - (a) Was the 1<sup>st</sup> Defendant vessel arrested and continued to be detained for the period from 22<sup>nd</sup> May 2020 to 14<sup>th</sup> July 2020 as a result of the Arrest Warrant obtained by the Plaintiff?
  - (b) Due to aforesaid arrest of the 1<sup>st</sup> Defendant Vessel, did the 2<sup>nd</sup> Defendant inter alia suffer a loss of revenue due to loss of charter

hire/income in a sum of US\$ 597,618 as morefully set out in paragraph 14 of the Answer?

21. As morefully set out in paragraph 15 of the Answer due to the wrongful and/or malicious arrest of the 1<sup>st</sup> Defendant Vessel, did the 2<sup>nd</sup> Defendant incur an expense of US\$ 80,000/- as Alphard Maritime Anchorage Dues and Agency Fees?
22. As morefully set out in paragraph 16 of the answer, did the 2<sup>nd</sup> Defendant also suffer a loss of USD 2,876,630 due to loss of charter hire/income for the period from 11<sup>th</sup> March 2020 to 22<sup>nd</sup> May 2020?
23. Therefore, as morefully set out in paragraph 19 of the Answer has a cause of action accrued on the Defendants to counter claim from the Plaintiff in a sum of US\$ 3,554,248/- together with legal interest thereon?
24. Can a maritime lien on seaman's wages and/or master's wages not be subrogated if it has been paid without a prior sanction of Court?
25. If one or more of the above issues are decided in favour of the Defendants are the Defendants entitled to the relief claimed in their Answer?

***Consequential Points of Contention of the Plaintiff***

26. As morefully set out in paragraph 6(d) of the Plaintiff's Replication-
  - (a) Did the 2<sup>nd</sup> Defendant never dispute the fact that the Plaintiff was functioning as the technical/crew manager of the 1<sup>st</sup> Defendant vessel at the time at which the Plaintiff was providing the said services to the vessel?
  - (b) As such, is the 2<sup>nd</sup> Defendant now estopped in law from disputing this position?
27. As morefully set out in paragraph 8(h) of the Replication, does the Plaintiff not bear any responsibility for any delays that may have

occurred due to the failure on the part of the 2<sup>nd</sup> Defendant to meet its contractual obligations?

28. As morefully set out in paragraph 8(i) of the Replication-

- (a) Were the representatives of outside parties requested to board the 1<sup>st</sup> Defendant vessel in March 2020 not allowed on board due to Covid-19 restrictions?
- (b) Did the Plaintiff never prevent any such parties from boarding the 1<sup>st</sup> Defendant vessel?

29. As morefully set out in paragraph 12 of the Replication-

- (a) Has no wrongful arrest of the 1<sup>st</sup> Defendant vessel taken place by the Plaintiff?
- (b) Has the 2<sup>nd</sup> Defendant not suffered any loss or damage due to the facts morefully set out in paragraph 12(c) of the Replication?
- (c) Therefore, has no delay been caused to the affairs of the 2<sup>nd</sup> Defendant as a result of the institution of this action?
- (d) In such circumstances, does the 2<sup>nd</sup> Defendant have no right to maintain the 2<sup>nd</sup> Defendant's counter claim against the Plaintiff in this action?

30. Has no cause of action arisen against the Plaintiff in favour of the 2<sup>nd</sup> Defendant as in terms of the Answer of the Defendants?

31. If any one or more of the aforementioned issues are answered in favour of the Plaintiff, is the Plaintiff entitled to the relief prayed for in the Petition and the Replication of the Plaintiff?

24. Rajit Rao, the vice president of the Plaintiff Company testified on behalf of the Plaintiff. His evidence in chief was submitted by way of an affidavit dated 08.09.2021 along with documents marked as P1 – P15.

The facts of the affidavit can be summarized as follows.

25. The 1<sup>st</sup> Defendant ship is in the ownership of Hindage Oilfield Services Limited (HOSL) India. When the cause of action arose and also on the date of the institution of the present action, the owner of the tanker Prem Pride and the beneficial owner was HOSL Limited.
26. The previous owner of the vessel was Mercator Limited from whom HOSL took delivery of the vessel with effect from 01.01.2020.
27. The Plaintiff was contracted as the technical/crew manager of the said vessel by Mercator Limited. Even after the change of ownership, the Plaintiff continued to be the technical/crew manager of the vessel.
28. Although no formal agreement was signed between HOSL and the Plaintiff, both of them agreed to the draft terms of the ship management agreement on 16.03.2020. The e-mail dated 16.03.2020 incorporating the negotiated shipment 2009 agreement on BIMCO terms is produced as P4.
29. The formal change of ownership of the Defendant vessel to HOSL Private limited took place on 11.03.2020. HOSL committed to settle the Plaintiff's management expenses and crew wages from 01.01.2020 until the change of ownership and thereafter from 01.01.2020. HOSL settled the crew dues for the month of January 2020 and 07.02.2020. The documents marked as P5 and P6 are submitted in support of the above.
30. The document marked P6 is an e-mail and bank remittance confirmation provided by HOSL.
31. Subsequently, the HOSL had decided to enter into a separate ship management agreement with another ship manager named "Synergy Oceanic Services India Private Limited" contrary to the discussions and agreement that had taken place between the parties while the Plaintiff

remained as the technical manager of Defendant vessel. The document marked as P7 is a communication sent from the said Synergy Oceanic Services India Private Limited.

32. The Plaintiff states that the HOSL has failed to settle the outstanding payments due to the Plaintiff to settle as management fees for the period starting on the 15.01.2020 up until 11.07.2020.

33. Despite numerous demands made by the Plaintiff, HOSL has failed to settle the payments due to the Plaintiff.

34. The witness states that a sum of USD 97,643.22 is due and owing to the Plaintiff from HOSL as management fees for the period of 01.01.2020 to 11.07.2020. A true copy of the breakdown of the claim is marked as P9.

35. It is also stated that the said HOSL has failed to make payments for crew members from 01.01.2020 onwards for the months of February 2020 and March 2020.

36. As the operating technical manager of the Defendant vessel, the Plaintiff paid the sums payable to the crew members on behalf of the HOSL.

37. The witness states that the crew members have a lien on the basis of non-payment of wages, and the said lien has also been subrogated to the Plaintiff. The Plaintiff has paid USD 266913.00 on account of the unpaid crew wages for the month of Feb and March 2020.

38. Confirmation of receipt of such payments by the crew members and the subrogation of their rights to the Plaintiff to claim the same from HOSL are marked as P11, P11(a) to P11 (v).

39. Corresponding bank remittance confirmations are produced and marked as P12 (a) to P 12 (v). The Plaintiff sent letters of demand to the Defendant marked as p13 and P14. HOSL had discussions with the

Plaintiff and the Plaintiff granted a timeline until 27.04.2020 but HOSL failed to settle the dues. Email correspondence to that effect was marked as P15.

40. It is further stated that the crew members also filed papers for writ of summons in rem and for warrant of arrest in case No 07/2020-Rem, which was served on the Defendant vessel. However, that case was subsequently settled and the action was withdrawn.

41. Admittedly, the previous owner of the 1<sup>st</sup> Defendant vessel was Mercator Pvt Ltd from whom the Plaintiff purchased it. The date on which the transfer of the vessel's ownership was 11.03.2020.

Cross-examination of the Plaintiff's witness:

42. As can be observed from the testimony of the Plaintiff's witness during cross examination, the delivery of the vessel was taken place on 01.01.2020. The Protocol of Delivery Acceptance (PODA) was signed between Mercator and HOSL.

43. At that time, Mercator's crew that was recruited by the Plaintiff was there. It was the Plaintiff, who managed the ship on behalf of Mercator by that time. The ownership changed only on 11.03.2020, but the Plaintiff's crew left the ship on 11.06.2020.

44. Although the new owners suggested that the crew sign contracts with them, the crew refused to do so. The witness states that to sign a new contract with HOSL, the crew first needed to sign off from the vessel.

45. The above evidence shows that it was the Plaintiff's crew under the Plaintiff's management appointed by Mercator manning the ship until June 2020.

46. The email marked as D1 shows that the Plaintiff had asked the Defendants not to send anyone on board until crew wages for February and March are paid. However, in the affidavit evidence, the Plaintiff has not annexed D1.
47. D3 is the agreement between the Plaintiff and Mercator. There were two agreements namely Ship Management Agreement and the Crew Agreement signed with Mercator.
48. Gurpreet Malhi is the Managing Director of HOSL who purchased the 1<sup>st</sup> Defendant ship Prem Pride. The Plaintiff's first cause of action is for management fees while the second cause of action is for crew wages.
49. As admitted by the witness, Rem 7/2020 was filed by the crew claiming wages from April to July till they sign off. It is in evidence that the crew gave the possession of the vessel to the Defendant on July 17<sup>th</sup>. The Certificate of Ownership (COO) was obtained from the registry on 11.03.2020.
50. The witness admitted that the Defendants paid the crew wages for January in order to obtain the NOC, which is a requirement.
51. Although the witness stated that the Plaintiff paid salaries for March and April, the witness could not produce any evidence in proof of payment of crew wages for March.
52. Similarly, the witness failed to produce any document to prove that the wages for February was paid.
53. More importantly, the witness admitted that this crew was never employed by the Defendant company. The witness also admitted that there was no crew agreement signed between the Defendants and the crew, although there were several correspondences between the parties.

54. Furthermore, the witness admitted that the crew was Mercator's employees. It is also evident from this witness's testimony that the crew was managed by the Plaintiff and their appointments were also signed by the Plaintiff.
55. As admitted by the witness, the previous owners are obliged to pay them for an additional month from the date of transfer of ownership. According to page 6 of clause 12(b) of the document marked D2, Mercator is obliged to pay the Plaintiff for one month after its termination. From January till March there was no agreement between the Plaintiff and the Defendants.
56. The termination fee was paid to the Plaintiff by Mercator. The witness admitted that this action was filed before the vessel was handed over.
57. Admittedly, the contracts the Plaintiff entered into with the Mercator lapsed only after 11<sup>th</sup> March. They all end with the certificate being issued in the name of the Defendant.
58. Crew management agreement lapsed on the 11<sup>th</sup> March after the certificate is issued. The vessel came to Sri Lanka in Feb 2020 under the Plaintiff's management.
59. It is significant to note, that the witness admitted that Defendants did not enter the ship during that period nor did the Defendant's agent or fleet managers. The witness admitted that he was in control of the crew. The Plaintiff supplied food, water and other essentials to the ship to have crew on board.
60. The witness admitted that he prevented the crew from disembarking or entering into crew agreement with the new owners as it is against the Shipping Act, and DG Shipping Rules since the crew was already in contract with the Plaintiff.

61. The Plaintiff did not do dry docking in Colombo Shipyard but after 8 months the vessel was sent to Singapore to do a dry dock. The witness failed to explain as to why dry docking was not done in Colombo.

62. It is to be noted that the 3<sup>rd</sup> officer's contract and most of the other crew members' contracts had lapsed by that time. The 3<sup>rd</sup> officer Kunal Nanda had signed off and left on 29.01.2020 but according to P11(d) they were paid salaries.

63. It is important to note that the witness admitted that the Plaintiff renewed the contracts of crew members even after 29<sup>th</sup> January on which date the contracts had lapsed. It is further admitted that since they are on board, they cannot be signed off as it is not in a convenient port.

64. The Plaintiff extended the crew contracts in the name of Mercator. Although the vessel changed the ownership on 11.03.2020, the witness stated that the Defendant maintained that the Plaintiff was the technical manager of the vessel.

65. It is further admitted that the Defendant entered into a ship management agreement and a crew management agreement with Synergy in March. The Defendant also entered into a BIMCO agreement with Synergy.

At the closure of the Plaintiff's evidence, the Defendants called their evidence.

66. The first witness summoned by the Defendants is Suchin Bayond the Head of Contracts and Procurement of the Parent Company of the 2<sup>nd</sup> Defendant company.

67. The Defendant's witness Suchin's evidence in chief was tendered by way of an affidavit along with the documents marked as D1 to D 18.

68. The facts of the affidavit filed by the said witness could be summarized as follows:
69. According to the affidavit, the 2<sup>nd</sup> Defendant only became the owner of the 1<sup>st</sup> Defendant vessel on 11.03.2020. Although there were several discussions between the Plaintiff and the 2<sup>nd</sup> Defendant, no ship management agreement was entered into between the parties.
70. Consequently, the 2<sup>nd</sup> Defendant entered into a BIMCO Ship Management Agreement dated 17.03.2020 with Synergy Ocean Services India PVT LTD (SOSI) after reviewing the Certificate of Indian Registry for the 1<sup>st</sup> Defendant vessel. Thus, SOSI was appointed as the Technical and Crew Manager in respect of the 1<sup>st</sup> Defendant vessel.
71. In terms of the ship management agreement dated 08.07.2013, entered into between the Plaintiff and the former owner of the vessel Mercator Ltd, the latter is liable to pay the management fees to the Plaintiff until one month after delivery of the vessel to new buyers in the event the vessel is sold.
72. The witness states that the Plaintiff should claim the management fees claimed under the first course of action from the said previous owners Mercator Private Limited. Relevant Ship Management agreement dated 8<sup>th</sup> July 2013 marked as D 11 was produced in evidence.
73. The email dated 26.05.2020 sent by Gurpreet Malhi of Mercator to the second Defendant marked as D12. The Ship Management agreement and the Crew management agreements were marked as D12 (a) and D12 (b).
74. The second Defendant settled crew wages of the first Defendant for January 2020 on behalf of Mercator without accepting liability for the sole purpose of obtaining the NOC from shipping master which is a precondition for the transfer of ownership of the first Defendant vessel.

75. In proof of the above payment, the letter dated 10.02.2020 sent by Mercator Pvt. Ltd to the shipping master and the signed acknowledgement issued by the crew dated 10.02.2020 are marked as D 13(a) and D 13 (b).
76. The agreements of 22 crew members, who were on board the first Defendant vessel as at 11.3.2020 (the date on which the second Defendant became the owner of the vessel) with the former owner marked as P10 (a) to P10 (v). The said agreements clearly state that crew members are recruited by Mercator and are their employees.
77. As at 11.03.2020 some of those seafarer agreements had been lapsed and terminated before the second Defendant became the owner of the vessel. The document marked as D14 confirms the above.
78. The document marked as D15 (a) is a communication to the Plaintiff, by the second Defendant, suggesting to sign the crew members contract between the second Defendant and the former crew. The document refusing the Defendant's suggestion and stating that they would not continue to be employed in the first Defendant vessel is marked as D15(b). Thus, there are no crew employment agreement or seafarer agreements entered into between the second Defendant and the subject crew referred to in the petition,
79. Consequently, the crew members referred to in the petition are not entitled to claim wages from the second Defendant although, the ownership of the vessel was transferred to the second Defendant on 11<sup>th</sup> March 2020. The Plaintiff prevented the second Defendant from taking over the physical possession of the vessel until 17<sup>th</sup> July 2020.
80. Despite repeated requests, the master of the ship who was on board at the time of purchasing the ship, refused to take orders from the second Defendant and thus did not consider the second Defendant as the employer of the vessel.

81. The second Defendant entered into a Ship Management agreement dated 17<sup>th</sup> March 2020 with Synergy Ocean, and Synergy Ocean was appointed as the technical and crew manager. However, the Plaintiff and the crew did not allow the representatives of Synergy Ocean Mr. Joseph Peter to take charge of the vessel. This evidence was not challenged by the Plaintiff and thus remains undisputed.
82. Thus, the Plaintiff is not entitled to claim wages related income tax and GST from the first Defendant. The Defendants also disputed the income tax rates claimed by the Plaintiff.
83. The witness further states that the arrest warrant was wrongfully and maliciously obtained against the first Defendant by the Plaintiff while suppressing the aforementioned material facts.
84. It is further stated that due to the bank guarantee to the value of US dollars 460,000 which had to be provided by the second Defendant to have the first Defendant released, the second Defendant incurred a further cost at the expense of US dollars 5400.
85. The witness further states that on the instructions of the Plaintiff, the crew instituted a case No. Rem 07/2020 and wrongfully and maliciously obtained a warrant of arrest against the 1<sup>st</sup> Defendant vessel by suppressing and misrepresenting material facts and that the said action was subsequently withdrawn by the crew member. The witness further elaborated the loss suffered by the second Defendant as a result of the arrest of the first Defendant vessel and therefore claim USD 3,554,248.00 and interest thereon from the Plaintiff.
86. As previously stated, both parties have acknowledged that the 2<sup>nd</sup> Defendant became the owner of the 1<sup>st</sup> Defendant vessel on March 11, 2020. Prior to this date, the 1<sup>st</sup> Defendant vessel was owned by Mercator Limited.

87. It has also been admitted, as outlined in paragraph 4(b) of the answer, that although several discussions and negotiations took place between the 2<sup>nd</sup> Defendant and the Plaintiff regarding a prospective ship management agreement, no consensus was reached. Consequently, no ship management agreement was executed between the 2<sup>nd</sup> Defendant and the Plaintiff.

88. When Mercator was the owner of the 1<sup>st</sup> Defendant vessel, the Plaintiff and Mercator entered into a ship management agreement dated July 8, 2013, marked as X3. The Defendants assert that, under the terms of the agreement, the previous owner is obligated to pay the management fees to the Plaintiff for up to one month after the vessel's delivery to the new buyers in the event of its sale.

89. The Defendants rely on Clause I (2) (b) of the said agreement, which reads:

*In the event that the vessel is sold, on the date 1 month after delivery to buyers of the vessel, provided that no damages shall be payable in respect of additional management fees notwithstanding that no formal notice of termination in terms of clause B(2) hereof is given to either party.*

90. In the petition, the Plaintiff averred that the 2<sup>nd</sup> Defendant is deemed to have taken delivery of the said vessel from its previous owner, Mercator Ltd., with effect from 01.01.2020.

91. It is evident that no formal agreement was signed between the Plaintiff and the Defendant. However, the Plaintiff contends that, at the request of the 2<sup>nd</sup> Defendant, the Plaintiff continued to act as the technical and crew manager for the 1<sup>st</sup> Defendant vessel despite the absence of a formal agreement. Thus, the Plaintiff claims a ship management fee for the period from 01.01.2020 to 31.12.2020. However, the Plaintiff has failed to produce any evidence of such a request allegedly made by the 2<sup>nd</sup> Defendant.

92. The Plaintiff places significant reliance on the documents marked P4, P5, and P6 to establish that the second Defendant authorized the Plaintiff to act as their agent and ISM Manager for the Defendant vessel.

93. In light of the arguments presented by both parties, the following questions are of significant relevance to the present case.

- When did the 2<sup>nd</sup> Defendant become the owner of the vessel?
- Was there a valid contract/agreement between the Plaintiff and the 2<sup>nd</sup> Defendant pertaining to the management of the vessel?

94. In this regard, following admissions are of much relevance. Parties admitted that:

1. The 2<sup>nd</sup> Defendant became the owner of the 1<sup>st</sup> Defendant vessel on 11.03.2020.
2. Prior to 11<sup>th</sup> March 2020, Mercator Limited was the owner of the 1<sup>st</sup> Defendant vessel.
3. As set out in paragraph 4 (b) of the answer, although several discussions and negotiations were held between the 2<sup>nd</sup> Defendant and the Plaintiff on a prospective ship management to be signed between the parties, they could not reach an agreement and therefore, no ship management agreement was entered into between the 2<sup>nd</sup> Defendant and the Plaintiff.

95. The Plaintiff contends that although the formal change of ownership of the 1<sup>st</sup> Defendant vessel to the 2<sup>nd</sup> Defendant occurred on 11.03.2020, the 2<sup>nd</sup> Defendant committed to settling the Plaintiff's management expenses and crew wages from 1<sup>st</sup> January 2020 until the date of the change of ownership, and thereafter.

96. As set out in Section 58 of the Evidence Ordinance, facts that are admitted need not be proved. Therefore, once the parties admitted that the Plaintiff became the owner of the first Defendant vessel on 11.03.2020, and that

Mercator Ltd was the owner of the vessel prior to that date, further proof of these facts is unnecessary.

97. Consequently, the Plaintiff's contention that the second Defendant functioned as the owner of the vessel from January 2020 cannot be sustained, given their own admission.

98. The Plaintiff, referring to a series of emails exchanged between the parties, marked as P4, submitted that the second Defendant authorized the Plaintiff to act as their agent in managing the ship.

99. However, it is important to note that in the email dated 13.03.2020, sent by Rajit Rao to Elango, it is only stated that the Plaintiff presumed they were authorized by the Defendants to manage the vessel on the agreed terms, pending the signing of the contract. The email does not suggest that the second Defendant had formally authorized the Plaintiff to manage the vessel.

100. Since no formal written contract existed between the parties regarding the management of the vessel and the employment of the crew, the key question in the present action is whether the second Defendant is liable to pay management expenses and crew wages for the period from 1<sup>st</sup> January 2020 to 11<sup>th</sup> July 2020.

101. The Plaintiff contends that the conduct of the parties led to the formation of a contract between the Plaintiff and the second Defendant. The Plaintiff submits that the way in which events transpired between the parties established the existence of a valid contract.

102. It is true that several correspondences were exchanged between the Plaintiff and the second Defendant regarding a prospective ship management agreement. However, to determine whether the conduct of the parties gave rise to a valid contract, the court must analyze the

series of events that occurred after the second Defendant's purchase of the vessel from Mercator Pvt. Ltd.

103. The second Defendant purchased the vessel from Mercator Pvt. Ltd, with whom the Plaintiff had an agreement to manage the ship. At the time of the purchase, both the crew and the ship were under the Plaintiff's management.
104. Admittedly, the second Defendant only settled the crew dues for the month of January 2020, without accepting any liability. The witness for the second Defendant clearly stated that this payment was made solely for the purpose of obtaining the NOC, without accepting any liability.
105. Thus, the payment of crew wages by the 2<sup>nd</sup> Defendant for the month of January cannot, in any manner, be considered an admission of liability or acceptance of the Plaintiff's offer to manage the 1<sup>st</sup> Defendant vessel.
106. It is noteworthy that, at no point, did the 2<sup>nd</sup> Defendant agree to the terms and conditions proposed by the Plaintiff.
107. The ownership of the vessel changed on 03.11.2020. The Plaintiff's crew remained on board until 11.06.2020. So, obviously, the crew remained on board for 3 months after the change of ownership.
108. As evidenced by the email marked as D1 the Plaintiff had asked the 2<sup>nd</sup> Defendant not to send anyone on board until crew wages for February and March are paid.
109. The certificate of ownership (COO) was obtained from the Registry on 11.03.2020. Evidently, the crew was managed by the Plaintiff and their appointments were also signed by the Plaintiff.

110. The Plaintiff's witness claimed that the Plaintiff had paid the crew wages for March and April; however, the witness was unable to provide any documentary evidence to substantiate this claim.
111. It is also noteworthy that during cross-examination, the Plaintiff's witness admitted that the Plaintiff did not permit the crew to disembark, vacate the ship, or enter into new agreements with the new owners. This further demonstrates that the crew members were under the control of the Plaintiff, not the second Defendant.
112. Furthermore, it is evident that the second Defendant obtained possession and control of the ship only on July 17, 2020. This is confirmed by the document marked as P21A, an email dated July 17, 2020, from Rajit Rao of the Plaintiff company to Sachin Bayond of the second Defendant company, which explicitly states that possession of the first Defendant vessel was delivered to the second Defendant on that date.
113. In fact, this position was admitted by the Plaintiff's witness during cross examination, as follows:
- Q. That's okay, so you will appreciate that my client the Defendant got possession of the vessel on the 17<sup>th</sup> July 2020.*
- A. Yes sir.*
114. It is also important to note that the Plaintiff has failed to prove the subrogation documents marked as P11(a) to P11(v) and P23(a) to P23(v), which were purportedly signed by the crew and marked subject to proof.
115. Nevertheless, the Plaintiff cannot settle crew wages, income tax, and GST or claim the same from the second Defendant through the purported subrogation papers, without obtaining the sanction of the court.

116. As admitted by both parties, the second Defendant became the owner of the first Defendant vessel only on the 11<sup>th</sup> of March 2020, even though the second Defendant contracted to take delivery of the second Defendant vessel from its previous owner Mercator Ltd with effect from 1<sup>st</sup> of January 2020.
117. Furthermore, it is also evident that the Plaintiff had the ship/crew management agreement with the previous owner Mercator. Hence, the Plaintiff should have and could have made claim for the period with Mercator.
118. It is true that during that period, negotiations were going on between the Plaintiff and the second Defendant regarding a prospective crew management agreement but the parties could not arrive at an agreement.
119. Therefore, it cannot be safely inferred that the second Defendant had agreed to suggestions made by the Plaintiff and a valid contract was formed.
120. It is significant to emphasize that the documents marked as P3, P4, P5, P7 and P8 are not indicative or suggestive of any agreements between the parties.
121. It is important to note that a ship changes its ownership only upon a certificate being issued. In the present case, the issuance of the certificate took place only on the 11<sup>th</sup> of March 2020. In fact, the second Defendant entered into a BIMCO ship management agreement with SOS PVT Ltd on the 17<sup>th</sup> of March 2020 after receiving the certificate from Indian registry for the first Defendant vessel. In fact, the above was admitted by the Plaintiff's witness during cross examination.

122. It should be emphasized that upon issuance of the certificate, the Plaintiff's contract with Mercator lapsed. The crew management contract also lapsed at the same time. Therefore, until the 11<sup>th</sup> of March 2020, if any claims are made by the Plaintiff, they should be made on Mercator and not on the second Defendant.
123. During cross-examination, the Plaintiff's witness admitted that possession of the vessel was handed over to the second Defendant only on July 11, 2020, despite being aware that the second Defendant had obtained a certificate from the Indian Registry and had thereby become the owner of the vessel as of March 11, 2020. The Plaintiff has failed to provide a valid justification for its continued occupation of the vessel beyond this date. Consequently, the Plaintiff has no legitimate basis to claim management or crew charges from the second Defendant after March 11, 2020.
124. Based on the above facts, it is evident that no valid contract existed between the Plaintiff and the second Defendant concerning the management of the vessel or the employment of the crew. Therefore, the Plaintiff's claim against the Defendants cannot be sustained and must fail.
125. The next issue to be addressed is whether the Defendants are entitled to the reliefs sought in their claim-in-convention.
126. The Defendants contend that the Plaintiff wrongfully and maliciously sought and obtained a warrant of arrest against the first Defendant vessel by, among other things, suppressing material facts.
127. It is evident that the first Defendant was released from arrest only after the second Defendant furnished a bank guarantee amounting to USD 460,000. Furthermore, the Defendants assert that they incurred an additional cost of USD 5,400 in this regard.

128. In his affidavit, the second Defendant's witness detailed the losses allegedly incurred by the Defendants due to the arrest and detention of the vessel between May 22, 2020, and July 14, 2020. The Defendants have claimed USD 597,618 as compensation for loss of income during this period. To substantiate this claim, they have appended Indicative Time Charter rates for an Aframax Tanker, sourced from the Maritime Index website, marked as Exhibit D16.
129. To succeed in a claim for wrongful arrest, the owners must establish either *mala fides* or gross negligence, which implies malice. *Mala fides* is evident when the arresting party lacks an honest belief in their entitlement to arrest the ship. Gross negligence, on the other hand, applies to cases where there are insufficient grounds for the arrest of the vessel.
130. The test for wrongful arrest of a vessel dates back 150 years to the Privy Council decision of ***The Evangelismos (1858) 12 Moo PC 352***. To succeed in a claim for wrongful arrest, the owners must demonstrate that there is either *mala fides* (bad faith) or *crassa negligentia* (gross negligence) which implies malice. Subsequent to ***The Evangelismos***, several UK decisions have applied the test 'without reasonable or probable cause' so as to infer malice interchangeably with the test of gross negligence.
131. In Singapore, the phrase 'without reasonable or probable cause' has also found favour in two local decisions: ***The Evmar [1989] 2 MLJ 460; [1989] SLR 474*** and ***The Ohm Mariana [1992] 2 SLR 623***. In 1999, the Court of Appeal in Singapore in ***The Kiku Pacific [1999] 2 SLR 595*** settled the test once and for all. The Court of Appeal held that while the use of the term 'reasonable or probable cause' is well established in actions for malicious prosecution (not involving vessels), they would be uncomfortable with the import of such a term into admiralty law as part of the test for wrongful arrest of a vessel. The Court of Appeal ruled that the test for wrongful arrest of a vessel should

be the test laid down in *The Evangelismos*, ie. ***mala fides*** or ***crassa negligentia*** implying malice.

132. When determining whether the arrest of the vessel was prompted by malice or gross negligence on the part of the Plaintiff, thereby entitling the Defendants to damages, the following authorities are particularly relevant.
133. In ***The Active, 1 (1862) 5 L.T. (N.S.) 773*** an action for damages following a collision was dismissed by Dr Lushington at the conclusion of the case for the plaintiff on the basis that the vessel arrested had not been sufficiently identified as a vessel involved in the collision. An application for damages for wrongful arrest was filed. Dr Lushington referred to *The Evangelismos* and stated that for damages to flow "... there must have been on the part of the [plaintiff] either *mala fides*, or such *crassanegligentia* as implies malice." Dr Lushington noted that the plaintiffs had made *bona fides* inquiries which must have been expensive and that had they not arrested the vessel she may have left the port and defeated all proceedings. Costs only were awarded.
134. In ***The Kate,(1864) Br. & L. 218; 167 ER 343***. tug owners arrested a vessel on a claim for 500 L for services provided. The vessel was detained for several days and then released without bail with the consent of the tug owners. Prior to release, the owners of the vessel appeared and filed affidavits showing the value of the property saved to be 650 L and a notice of motion seeking the dismissal of the proceedings,40 costs and damages for wrongful arrest. The tug owners filed documents indicating the value of the property to be 820 L and even more and resisted the motion on the basis that the court had no jurisdiction to hear the matter and therefore no jurisdiction to award costs and damages.

Dr Lushington stated:

*“The defendants are not in my opinion entitled to damages, because the circumstances of the case do not shew on the part of the Plaintiffs any mala fides or crassa negligentia, without which, according to the case of The “Evangelismos” unsuccessful Plaintiffs are not to be mulcted in damages.”*

135. The Privy Council next considered the issue of damages for wrongful arrest in ***The Strathnaver, (1875) 1 AC 58***, an appeal from the Vice-Admiralty Court of New Zealand. The in rem proceedings concerned a salvage claim in relation to a vessel being towed into the port of Wellington. The central issue in the case at first instance was whether the services rendered were salvage services or towage; the court not having jurisdiction to make an award for towage in salvage proceedings. The Privy Council confirmed the first instance judgement that the services rendered were towage and that it was proper that no award be made. Damages were awarded for wrongful arrest at first instance. It was noted that the trial judge had rightly expressed the view that the salvors had prosecuted their claim with bona fides and had simply made an error in judgement in bringing the suit and set aside the order as to damages. His Lordship confirmed the rule in *The Evangelismos* and noted that that decision stood for the proposition, *“...that in the absence of proof of mala fides or malicious negligence, they ought not to give damages against the parties arresting the ship.”*

136. In ***The Collingrove, The Numida,(1885) 10 PD 158***, two appeals on the same issue were heard together, namely, whether the commission payable on a bail bond was recoverable as costs or only as damages upon a finding of wrongful arrest. Sir James Hannen P held that:

*“We do not, however, consider that the bare fact of the proceedings being discontinued entitled the defendant to damages, it is necessary for him to shew that the arrest of the ship was malicious, of the result of gross negligence. This has not been done in [these cases] ... and we therefore dismiss the summons with costs.”*

137. Another landmark English decision on wrongful arrest is the decision of Coleman J in the High Court in ***The Kommunar Centro Latino Americano de Comercio Exterior SA v Owners of the Ship "Kommunar" (No.3) [1997] 1 Lloyd's Rep 22.***
138. The court had previously set aside the writ and ordered the release of the arrested vessel on the basis that at the time of the arrest the Defendant owners were not the same legal entity as the owners, charterers or party in possession of the vessel when the cause of action arose.
139. The Defendants sought damages for wrongful arrest arguing that the Plaintiffs were aware of all the relevant facts as to the proper party who would be liable in personam in relation to the proceedings at the time of the arrest and that in rem jurisdiction did not exist on the basis contended.
140. Colman J noted that The Evangelismos governed the recovery of damages for wrongful arrest and interpreted that decision as comprising the following principles:

*Two types of cases are thus envisaged. Firstly, there are cases of mala fides, which must be taken to mean those cases where on the primary evidence the arresting party has no honest belief in his entitlement to arrest the vessel. Secondly, there are those cases in which objectively there is so little basis for the arrest that it may be inferred that the arresting party did not believe in his entitlement to arrest the vessel or acted without any serious regard to whether there were adequate grounds for the arrest of the vessel. It is, as I understand the judgement, in the latter sense that such a phrase as "crassa negligentia" and "gross negligence" are used and are described as implying malice or being equivalent to it.*

141. In this case, it was further held that there was no evidence to suggest that the Plaintiffs acted with mala fides; their expert evidence indicated that the subject debts owed from the state-owned company were transferred, along with certain assets, to the privately-owned Plaintiff company and that they believed on this basis that they were entitled to bring proceedings against the vessel.

142. Turning to *crassa negligentia*, Colman J. noted that the defect in the proceedings arose out of the discontinuity of the legal personality whom owned the subject vessel, which had its origin in the complicated privatization of Russian state assets and was first brought home to the Plaintiffs in an affidavit in support of the Defendant's motion for release of the vessel from arrest.

143. His Honour considered that the assumption that the vessel could properly be arrested under English law was not so groundless as to amount to *crassa negligentia* and that:

*It is entirely understandable that, at least up to service of the notice of motion in March, 1996, [the plaintiff] should have pursued the proceedings in rem. They relied on London solicitors very experienced in this field. The solicitors themselves could not be said to have overlooked an obvious defect in the proceedings.*

144. In ***The Owners of Cargo Lately Laden on board The 'Euroexpress' v The 'Euroexpress' (Owners of) (Banque Indosuez & Anor, Interveners) [1988] 3 MLJ 367***, Court of Appeal of Singapore held:

*Claimants are entitled to arrest a vessel or other such property as is permitted to obtain security for the claim. It cannot be argued that the arrest is made in 'bad faith' merely because there is good defence to the claim. In our opinion, for an arrest to be in 'bad faith', there must be some element in the arrester's conduct, for example, where the arrest is in relation to a malicious claim, or is of itself malicious, apart from the*

*proper enforcement of his claim. In our judgement, no such suggestion had or could have been advanced.*

145. It is with these legal principles in mind, I will now consider the issue of damages claimed by the Defendants.

146. In the present action, a ship management contract was signed between the Plaintiff and Mercator, from whom the second Defendant purchased the vessel subject to this action. The Plaintiff continued to manage the ship and the crew, regardless of the change in ownership.

147. It is evident that several correspondences were exchanged between the Plaintiff and the second Defendant in an attempt to reach a prospective ship management agreement, although it was not finalized. The surrounding circumstances that led the Plaintiff to seek a warrant of arrest, when considered in their entirety, do not, in my opinion, demonstrate any malice or gross negligence on the part of the Plaintiff.

148. To elaborate further, the Plaintiff's claim is not based on a mere assertion, but on the belief that a contract was formed due to the conduct of the second Defendant concerning the management of the vessel and crew. Although the court is not inclined to accept the Plaintiff's contention in this regard due to a lack of sufficient evidence, it is illogical to state that the initiation of proceedings and the subsequent request for a warrant of arrest were malicious or grossly negligent acts on the part of the Plaintiff. The Plaintiff had reasons to believe that it was entitled to maintain the claim against the Defendants.

149. Accordingly, I shall proceed to answer the issues as follows:

1 (a). the 2<sup>nd</sup> Defendant became the owner of the 1<sup>st</sup> Defendant vessel on 11.03.2020.

(b). Yes

2 (a). Yes

- (b). Yes.
- (c). Yes.
- (d). Not proved.
- (e). No
- (f). Yes, but without accepting the liability

3. The 2<sup>nd</sup> Defendant entered into a ship management agreement with SOSI Ltd.

4. Does not arise in view of the answer to issue 1(e).

5. No

6. Not proved

7. Does not arise in view of the answer given to issue No 6.

8. No

9. Not legally

10. not proved.

11. No

12. No

13. (a). yes.

(b). Yes.

(c). Yes

(d). Yes

14. (a). Yes

(b). Yes.

(c). Yes.

(d). Yes.

(e). No

- (f). They are not entitled to.
  - (g). Not entitled to.
  - (h). Yes
  - (i) Yes.
  - (j) Yes
  - (k). Yes.
  - (l). Yes.
  - (m). Yes
    - (n). Yes.
- 15 (i) Malicious intention not proved.
- (ii). Yes
  - (iii) Yes.
- 16 (a) Yes.
- (b) Yes
  - (c) Does not arise.
17. Yes
18. Yes
19. (a) No
- (b)No
20. (a) Yes
- (b) Does not arise as there existed no malicious intention or gross negligence.
21. Does not arise as no malice is proved.
22. Does not arise as no malice is proved.
23. No
24. Yes
25. The Defendants are only entitled to costs.

26. (a) Disputed by the 2<sup>nd</sup> Defendant.  
(b) Does not arise in view of the above answer.

27. No.

28. (a) Not proved

(b) No

29. (a). Yes

(b). Yes

(c). Yes

(d). Yes

30. Yes

30. Yes

31. Plaintiff is not entitled to the reliefs.

150. Based on the above findings, I am not inclined to award damages to the second Defendant as requested in the claim in reconvention. Thus, I disallow the Defendants' claim in reconvention.

151. Nevertheless, I have no hesitation in awarding costs to the Defendants, as the Plaintiff's initiation of this action caused significant inconvenience to the Defendants and resulted in substantial litigation expenses.

152. Accordingly, I dismiss the Plaintiff's action with costs.

**Pradeep Hettiarachchi**  
**Judge of the Commercial High Court**  
**Colombo 12.**

SCK/-

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