IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for leave to appeal in terms of Section 13 (3) of the Judicature Act No. 2 of 1978 as amended against the order dated 26th July 2023 delivered by the High Court of the Democratic Socialist Republic of Sri Lanka in the exercise of its Admiralty Jurisdiction in Action in Rem 11/2022.

In the matter of a claim arising under and in terms of Sections 2 (1) (e) and 2 (4) of the Admiralty Jurisdiction Act No. 40 of 1983 read with the Marine Pollution Act No. 35 of 2008.

CA/LTA/08/2023- LTA/16/2023
Action in Rem No. 11/2022

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Plaintiff

Vs.

1. Master Steruros Illias Kardany
   Chi 05,
   Greece.

2. Porto Emporios Shipping Inc.
   80, Broad Street,
   Monrovia,
   Liberia.

3. New Shipping Limited,
   Leoforos Poseidonos 1900,
   Moschato 183 44,
   Greece.

And also at-

Leoforos Poseidonos 57A,
Neo Faliro183 44,
Greece.

4. The West of England Ship Owners Mutual Insurance Association (Luxembourg)
R.C.S. Luxembourg B8963,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

And also at-

Managers:
West England Insurance Services (Luxembourg) S.A,
R.C.S. Luxembourg B104783,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

UK Branch
One Creechurch Place,
Creechurch Lane,
London EC3A SAF.

5. GAC Shipping,
P.O. Box 1116,
No. 284, Vauxhall Street,
Colombo 02.

Defendants

AND THEN

In the matter of an Application under Rule 63 of the High Court (Admiralty Jurisdiction) Rules 1991.

Porto Emporios Shipping Inc.
80, Broad Street,
Monrovia,
Liberia.

New Shipping Limited,
Leoforos Poseidonos 1900,
Moschato 183 44,
Greece.

And also at-

Leoforos Poseidonos 57A,
Neo Faliro183 44,
Greece.

2nd and 3rd Defendants- Petitioners

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Plaintiff-Respondent

Master Steruros Illias Kardany
Chi 05,
Greece.

1st Defendant- Respondent

The West of England Ship Owners
Mutual Insurance Association
(Luxembourg)
R.C.S. Luxembourg B8963,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

And also at-

Managers:
West England Insurance Services
(Luxembourg) S.A,
R.C.S. Luxembourg B104783,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

UK Branch
One Creechurch Place,
Creechurch Lane,
London EC3A SAF.

4th Defendant- Respondent

GAC Shipping,
P.O. Box 1116,
No. 284, Vauxhall Street,
Colombo 02.

5th Defendant- Respondent

AND NOW

Porto Emporios Shipping Inc.
80, Broad Street,
Monrovia,
Liberia.

New Shipping Limited,
Leoforos Poseidonos 1900,
Moschato 183 44,
Greece.

And also at-

Leoforos Poseidonos 57A,
Neo Faliro183 44,
Greece.

2nd and 3rd Defendants- Petitioners-Petitioners

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Plaintiff- Respondent -Respondent

Master Steruros Illias Kardany
Chi 05,
Greece.

1st Defendant- Respondent-Respondent

The West of England Ship Owners
Mutual Insurance Association
(Luxembourg)
R.C.S. Luxembourg B8963,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

And also at-

Managers:
West England Insurance Services
(Luxembourg) S.A,
R.C.S. Luxembourg B104783,
31 Grand Rue,
L-1661 Luxembourg,
G.D. Luxembourg.

UK Branch
One Creechurch Place,
Creechurch Lane,
London EC3A SAF.

4th Defendant- Respondent-Respondent

GAC Shipping,
P.O. Box 1116,
No. 284, Vauxhall Street,
Colombo 02.

5th Defendant- Respondent-Respondent

Before:	**R. Gurusinghe J.** **&** **M.C.B.S. Morais J.**
Counsel:	Suren De Silva with Jivan Goonetilleka instructed by DLF De Saram for the Petitioners. F. Rasik, DSG with Shehan Soyza, SSC, Mihiri De Alwis, SSC, Nayomi Kahawita, SSC and Dinuka Coorey, SC for the Plaintiff- Respondent- Respondent. Dilumi De Alwis with Iranthi Walgama for the 5th Defendant- Respondent – Respondent instructed by DL & F De Seram.
Written Submissions:	By the 2nd and 3rd Defendants- Petitioners- Petitioners – 05.02.2025 By the 5th Defendant- Respondent- Respondent– on 05.02.2025 By the Plaintiff- Respondent -Respondent – on 06.02.2025
Argued on:	19.11.2024
Decided On:	**25.02.2025**

ORDER

M.C.B.S. Morais J.

This is a matter of an application for leave to appeal in terms of section 13(3) of the Judicature Act No. 2 of 1978 as amended, against the order dated 26th of July 2023 delivered by the High Court of Colombo, in the Exercise of its Admiralty Jurisdiction in Action in Rem No. 11/2022. The cases bearing nos. LTA 0008—23, LTA 0009—23, LTA 0010—23, LTA 0011—23, LTA 0012—23, LTA 0013—23, LTA 0014—23, LTA 0015—23, and LTA

0016—23 are taken together as it emanates from the same order and involves the same question of law. Therefore, as agreed by the parties the cases mentioned above will be addressed together.

The Plaintiff-Respondent-Respondent (hereinafter sometimes will be referred to as the Plaintiff) has initiated action against the 2nd and 3rd Defendants-Petitioners-Petitioners (hereinafter collectively will be referred to as the Petitioners), and the 4th and 5th Defendants-Respondents-Respondents (hereinafter collectively will be referred to as the Respondents) under and in terms of Rule 4 of the High Court (Admiralty Jurisdiction) Rules 1991. Accordingly, the Petitioners have prayed for the following;

I. Issue notice on the Plaintiff-Respondent-Respondent and the 1, 4th and 5th Defendants Respondents-Respondents;

II. Grant Leave to Appeal from the Order dated 26.07.2023 made by the High Court of Colombo in Action in Rem No.11/2022 ["X1"];

III. Set aside the Order dated 26.07.2023 made by the High Court of Colombo in Action in Rem No.11/2022 ["X1"];

IV. Make Order dismissing and/or Rejecting the Objection raised by the Plaintiff on 28.6.2023 in relation to the Application made by the 2nd and 3rd Defendants-Petitioners-Petitioners dated 28.06.2023 under Rule 63 of the High Court (Admiralty Jurisdiction) Rules 1991

V. Make Order directing the High Court of the Republic Sitting in Admiralty to proceed with the Applications dated 28.6.2023 made by the 2nd and 3rd Defendants-Petitioners-Petitioners in terms of Rule 63 of the High Court (Admiralty Jurisdiction) Rules 1991;

VI. Make Order directing the High Court of the Republic Sitting in Admiralty to determine the merits of the Application made by the 2nd and 3rd Defendants-Petitioners-Petitioners dated 28.06.2023 under Rule 63 of the High Court (Admiralty Jurisdiction) Rules 1991;

VII. Grant Costs;

VIII. Grant such other and further relief as Your Lordships' Court shall seem meet.

Accordingly, the Plaintiff has sought a sum of United States dollars two hundred and seventy-three thousand and fourteen and fifty cents (USD 273,014.50), based on the Fishing ban that was imposed from 3rd September 2020 to 6th September 2020. The purported damages amounting USD 273,014.50 claimed to have been suffered by the fishing community as a consequence of the said fishing ban. The matter was taken up before the High Court of Colombo under the Admiralty Jurisdiction Act No.40 of 1983. It is contended that such fishing ban was imposed due to the spillage of oil by the vessel '*The MT New Diamond* ' which caught fire in the territorial waters of Sri Lanka, to which the Respondents are allegedly responsible. Accordingly, the matter was fixed for filing of Petition by the Plaintiff on 28th of June 2023.

Having served the writ of summons on 17th of February 2023, the application was taken up on 28th of June 2023, and the Petitioners have raised an objection under Rule 63 of the High Court (Admiralty Jurisdiction) Rules of 1991, to rescind the writ of summons issued and/or dismiss the action. However, amidst other objections the Plaintiff has also objected to the said application on the basis that procedurally the Admiralty Rules should apply in sequential order as provided in the Rules. Having looked into these objections, the learned High Court Judge has overruled the objections raised by the Petitioners as it is premature, and allowed the Plaintiff to file the Petition.

Accordingly, it was contended in the court below that the filing of the pleadings are set out under Rule 44 of the Admiralty Rules and therefore making of an application under Rule 63 can only be after Rule 44 has been complied with. The learned High Court Judge has pronounced the order dated 26th of July 2023, upholding the objections by the Plaintiff and dismissed the application filed by the Petitioners under Rule 63 of Admiralty Rules. However, the learned High Court Judge has not proceeded to decide on the Plaintiffs above contention, but delivered the order on the basis that those objections cannot be decided without referring to the pleadings. Being aggrieved by the said order, the Petitioners have

made an application seeking leave to Appeal from the said order of the learned High Court Judge.

The learned High Court Judge in his order dated 26th of July 2023, has dismissed the preliminary objections raised by the Petitioners under Rule 63 of the High Court (Admiralty Jurisdiction) Rules 1991 on the basis that, the questions raised necessitates a detailed examination of the pleadings. Furthermore, the prescribed procedural requisites have not been adhered by the Petitioners in filing the motions in accordance with Rule 64. Considering the circumstances, the learned High Court Judge has dismissed the Preliminary Objections raised by the Petitioners as it can only be dealt subsequent to the pleadings. The Petitioners have failed to establish that these objections could have been decided even in absence of the pleadings. Furthermore, the Petitioners are free to raise those objections in due course as they were not adjudicated upon.

Therefore, all in all I do not see any prejudice caused to the Petitioners or any other substantial reason to interfere with the order dated 26th of July 2023, by the learned High Court Judge of Colombo in Action in Rem No.11/2022.

Leave refused.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal