

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE EASWARAN S.

Thursday, the 14th day of August 2025 / 23rd Sravana, 1947

IA.NO.1/2025 IN ADML.S. NO. 21 OF 2025

APPLICANT/PLAINTIFF:

**PETER MATHIAS, AGED 61 YEARS, S/O MATHIAS, KURUMULLA THOPPE ,
SAKTHIKULANGARA, KOLLAM, KERALA- 691581, INDIA**

RESPONDENTS/DEFENDANT:

- 1. OWNERS AND PARTIES INTERESTED IN THE VESSEL MV MSC MAKOTO II (IMO: 9236212) FLYING FLAG OF PANAMA, TOGETHER WITH HER HULL, TACKLE, ENGINES, GEARS, PLANT, MACHINERY, ARTICLES, THINGS, APPAREL, EQUIPMENT, STORES AND OTHER PARAPHERNALIA ON BOARD, PRESENTLY LYING AT PORT OF ADANI VIZHINJAM PORT PVT LTD. IN INDIAN TERRITORIAL WATERS**
- 2. ADANI VIZHINJAM PORT PVT LTD, PORT OPERATION BUILDING, MULLOOR, THIRUVANANTHAPURAM, KERALA-695521 REPRESENTED BY ITS MANAGING DIRECTOR. (EMAIL ID- project.vizhinjam@adani.com, prakash.pillai@adani.com ,shery.francis@adani.com)**

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to grant an ex-parte order of arrest of the 1st Respondent vessel/Defendant Vessel along with her hull, tackle, engine, machinery spares, gear, apparel, paraphernalia, furniture, etc, presently anchored/ berthed in the Adani Vizhinjam Port Pvt Ltd, Vizhinjam within the jurisdiction of this Court until an amount of INR 40,06,489 / - (INR Forty Lakhs Six Thousand and Four Hundred Eighty Nine Only) due to the Plaintiff is deposited before this Court or until further orders of this Hon'ble Court, in the interest of justice.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI.V.J.MATHEW (SR.)M/S. MERLINE MATHEW, VIPIN P.VARGHESE, ADARSH MATHEW, ANIRUDH G. KAMATH, AGUSTHO NORBERT, MEGHA MADHAVAN, Advocates for the petitioners, SRI. PRANOY K. KOTTARAM (BY ORDER), Advocate for R1, SRI. ROSHEN D. ALEXANDER (BY ORDER), Advocate for R2 the court passed the following:

EASWARAN S., J.

Adml. Suit No.21 of 2025

Dated this the 14th day of August, 2025

ORDER

I.A. No.1 of 2025

Heard Sri. V.J. Mathew, the learned Senior counsel appearing for the petitioner/plaintiff, assisted by Adv. Merline Mathew, Sri. Pranoy K. Kottaram, the learned counsel appearing for the 1st respondent/owner and Sri. Roshen D. Alexander, the learned counsel appearing for the 2nd respondent/port.

2. The Admiralty Suit is one filed under Section 4(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 seeking for recovery of an amount of Rs.40,06,489/- (Rupees Forty Lakh Six Thousand Four Hundred and Eighty Nine only) for the loss caused to the plaintiff's fishing vessel directly in connection with the operation of MSC Elsa 3 owned and operated by the 1st respondent. Going by the averments contained in the application, it is seen that MV.MSC Elsa 3 capsized and sank approximately 13.4 nautical miles southwest of the coast of Kochi due to operational and technical faults. Due to the aforesaid incident, 643 containers were onboard the vessel and thrown into the sea. It is further alleged that on 02.6.2025 to 7.6.2025 the

plaintiff's vessel along with 10 crew members, ventured into sea from Shakthikulangara Coast. On 7.6.2025, when the boat reached approximately at 08°58'500"N 76°15'400"E Coordinates, the crew member faced/observed some abnormal resistance, which was also accompanied by strain on the winch and hauling gear. The crew checked on what was the issue and saw that the fishing nets and wire rope had been torn apart, the board was also seen cut out and damaged, and settled in the sea, and further, the deck equipment was also entangled with the debris.

3. The claim is supported by documents, including the report of the surveyor. The sustainability of the claim will have to be looked into by this Court in the suit.

4. The plaintiff now seeks the arrest of the 1st respondent's vessel MV. MSC MAKOTO-II (IMO 9236212) flying the Panaman flag and requires the 1st respondent to furnish security for the plaint claim before the vessel leaves the Vizhinjam port.

5. The learned Senior counsel for the plaintiff brought to the notice of this Court the order passed by this Court in a similar case, Admiralty Suit No.10 of 2025 dated 18.6.2025. Rule 19 of the Kerala High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2019 provides for arrest irrespective of the lodging of caveat by the respondent. Although there is no

caveat, in view of the voluntary appearance of the owner of the vessel before this Court, this Court is of the view that no prejudice would be caused to the 1st respondent if a conditional order of arrest is ordered till the furnishing of the security by the 1st respondent. It is not denied before this Court that the vessel is at present stationed within the jurisdiction of this Court and is presently docked at the 2nd respondent Port.

6. In view of the above, this Court is of the view that the appellant has made out a prima facie case and hence the following order is passed.

a. The vessel of the 1st respondent by name MV.MSC MAKOTO-II (IMO 9236212) Flying Flag of Panama, along with her hull, tackle, engine, machinery spares, gear, apparel, paraphernalia, furniture, etc., presently anchored at the 2nd respondent port is ordered to be arrested until an amount of Rs.40,06,489/- (Rupees Forty Lakh Six Thousand Four Hundred and Eighty Nine only) is deposited by the 1st respondent in this Court or until security for the said amount is furnished by the 1st respondent to the satisfaction of this Court.

b. It is ordered that the 2nd respondent shall execute the Warrant and effect the arrest, seizure and detention of the

said vessel, MV.MSC MAKOTO-II (IMO 9236212), along with her hull, tackle, engines, machinery, boards, bunkers, equipment, peripherals, and other appurtenances as ordered above.

c. It is made clear that the Warrant of Arrest would be withdrawn and the conditional order of arrest would automatically be vacated once the amount is deposited or security is furnished by the 1st respondent before this Court, without any further order from this Court.

d. It is further made clear that the deposit/security made by the 1st respondent shall be without prejudice to its contentions in the suit.

e. It is made clear that the aforesaid deposit shall be made without prejudice to any of the claims of the 1st respondent.

f. This order, however, will not stand in the way of the owner of the vessel from loading and unloading the cargo of the vessel.

Sd/-
EASWARAN S.
JUDGE

NS