

Can a vessel be arrested when the party liable for the maritime claim no longer holds the status of demise charterer? The Supreme Court of India holds in the negative.

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Bench: Chief Justice (*Author*), Justice J. Bagchi and Justice V. Mohana

Special Leave Petition (Civil) No. 23834 of 2026

Owners and Parties interested in M.V. Nereus Progress … Appellant

V/s.

Om Freight Forwarders Ltd. … Respondent

Brief Background:

In the present matter, the Hon'ble Supreme Court of India addressed a critical issue of whether a demise charterparty terminates upon the service of a valid notice of termination, or if it persists until the vessel is physically repossessed. The Hon'ble High Court had initially affirmed the arrest of the Appellant's vessel, holding that the demise charterer's status continued until actual physical handover of the vessel, thereby satisfying the jurisdictional requirements for a sister-ship arrest under Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("**Admiralty Act**"). Reversing this position, the Hon'ble Apex Court held that service of a valid termination notice, when read with the relevant contractual provisions, characterized the charterer as a "gratuitous bailee" post-termination, which effectively displaced the charterer's status as a 'demise charterer' of the vessel. Consequently, the Hon'ble Court ruled that the jurisdictional

prerequisites for arrest under the Admiralty Act were not satisfied, finding that the contractual scheme did not necessitate physical repossession to consummate the termination, and accordingly vacated the arrest.

Facts in brief:

i. The Appellant in its capacity as the owner of Nereus Progress ("**Vessel**") let out the Vessel on 'demise charter'[1] to Nereides Marine Services, a UAE based shipping operator ("**NMS**") *vide* the Bareboat Charterparty dated 3rd October 2024, executed on the BIMCO BARECON 2017 Form ("**BBC**").

ii. Similarly, the Respondent had also let out its vessel *viz.*, M.V. Bharadwaj ("**Respondent's Vessel**") to NMS, under a separate and independent Bareboat Charterparty dated 24th July 2024 ("**Respondent's BBC**").

iii. Thereafter, in and around August 2025, NMS started defaulting on its obligations to the Appellant under the BBC. Consequently, the Appellants issued a series of demand notices, calling upon NMS to clear the outstanding.

iv. As NMS failed to cure the defaults committed by it under the BBC, the Appellant issued a Anti-Technicality Notice dated 6th November 2025, granting NMS a period of 3 (three) days to regularise the defaults. Upon expiry of the said period, the Appellant issued a Termination Notice dated 13th November 2025 ("**Termination Notice**") under Clause 31 of the BBC, calling upon NMS to disclose the whereabouts of the Vessel and place it at the Appellant's disposal.

v. Additionally, the Appellant also issued a Repossession Notice dated 19th November 2025 under Clause 32 of the BBC, asserting its right to repossess the Vessel upon its berthing at Colombo, Sri Lanka.

vi. However, from the subsequent communication exchanged between the Appellant and NMS, it emerged that the Vessel was facing certain technical issues with the engine and was in the vicinity of the Indian Ocean.

vii. In this regard, NMS informed the Appellant that the Vessel had reached the port at Tuticorin, Tamil Nadu and sought instructions regarding its repossession by the Appellant.

viii. Simultaneously, NMS had also defaulted in complying with its obligations under the Respondent's BBC. Accordingly, the Respondent preferred Comm. Suit No. 314 of 2025 before the Hon'ble Madras High Court under S. 5 (1)(b) r/w S. 5(2) of the Admiralty Act, seeking arrest of the Vessel on the basis that NMS continued to be its demised charterer, rendering the Vessel liable in *rem*.

ix. Accordingly, even before the Appellant could complete taking physical possession of the Vessel at Tuticorin, Tamil Nadu, the Respondent obtained an *ex-parte* interim order from the Hon'ble High Court on 4th December 2025, for the arrest of the Vessel.

x. Consequently, the Appellant filed an application before the Hon'ble High Court seeking recall of the *ex-parte* interim order dated 4th December 2025. After hearing the parties, the Ld. Single Judge of the Hon'ble

[1] A demise charter is a legal agreement where a shipowner leases an empty vessel to a charterer, who assumes full possession, operational control and financial responsibility for the ship during the period of the Agreement.

High Court, dismissed the recall application, sustained the arrest and held that the Respondent abovenamed had made out a *prima facie* case for continuation of the arrest. In this regard, the Ld. Single Judge placed reliance on certain decisions of the Singapore High Court[2] and Sri Lankan Court of Appeal[3], holding that a demise charterer's status under a bareboat charter does not stand extinguished merely upon issuance of a termination or repossession notice and such status would continue to be in effect until actual physical repossession of the vessel.

xi. The order of the Ld. Single Judge was carried in appeal by the Appellant herein before a division bench of the Hon'ble High Court. However, the Division Bench also upheld the order passed by the Ld. Single Judge. Hence, the said order was challenged before the Hon'ble Supreme Court of India by the present Appeal.

Issues framed by the Hon'ble Supreme Court of India:

1. Whether the termination of the BBC by the Appellant *vide* the Termination Notice dated 13th November 2025 was proper and valid?
2. Whether NMS continued to be the demise charterer of the Vessel as on the date of arrest, i.e., 4th December 2025, *sans* physical repossession of the Vessel by the Appellant?
    a. Maintainability of the Arrest of the Vessel in terms of the Admiralty Act
    b. Requirement of Repossession as a Condition Precedent to the Termination

Ratio Decendi:

i. Since the BBC expressly permitted termination for non-payment of hire, etc., the valid and undisputed service of a notice of termination, in compliance with all contractual preconditions *viz.*, such as anti-technicality notices and grace periods, operated as a valid termination of the BBC.

ii. Further, the Hon'ble Court held that under the BIMCO BARECON 2017 form, the termination of the charterparty and the physical repossession of the vessel are legally distinct events. Termination is consummated upon the valid service of the notice whilst physical repossession is merely the consequential process of recovering control.

iii. After perusing the BBC, the Hon'ble Court held that Clause 32 therein does not establish physical repossession as a condition precedent to termination. The phrase "in the event of the early termination" contained in Clause 32 of the BBC confirms that termination would precede the mechanism of repossession. Hence, the clause evidently regulated the operational consequences of termination, without postponing its legal effect. The Hon'ble Court opined observed that to interpret physical repossession as a mandatory prerequisite for termination would permit a defaulting charterer to unilaterally prolong its

[2] The Chem Orchid Judgment – [2015] SGHC 50
[3] Navi Bunkering Corp v. M.V. Evangeli – C.A. Case No. CA/REM/02/2018

demise-charterer status by delaying or frustrating the handover, thereby defeating the owner's clear contractual right to terminate.

iv. Further, the Hon'ble Court held that upon the valid termination of a demise charter, and pending physical repossession, the charterer's legal status shifts from demise charterer to that of a 'gratuitous bailee'. The status of a "demise charterer" and a "gratuitous bailee" are mutually exclusive. A demise charterer possesses rights of use, control, and commercial employment, whereas a gratuitous bailee holds the vessel solely for the owner, lacking any independent right of user or control.

v. It was observed that for an arrest under Section 5(1)(b) of the Admiralty Act, the party liable for the maritime claim must maintain the status of demise charterer or owner at the time the arrest is effected. While Section 5(2) facilitates the arrest of a sister-ship, it remains subject to the jurisdictional requirements of Section 5(1). Consequently, the criteria for establishing the demise charterer's liability must be satisfied in relation to the vessel arrested. Accordingly, since the BBC had been validly terminated on 15th November 2025 i.e., prior to the arrest of the Vessel on 4th December 2025, NMS did not hold the status of a demise charterer at the relevant time. Consequently, the jurisdictional foundation required by Section 5(1)(b) is absent, rendering any arrest of the Vessel based on the charterer's liability, unsustainable.

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