

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

Monday, the 7th day of July 2025 / 16th Ashadha, 1947
IA.NO.1/2025 IN ADML.S. NO. 12 OF 2025 J

APPLICANT/PLAINTIFF:

STATE OF KERALA REPRESENTED BY ITS SPECIAL SECRETARY ENVIRONMENT
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001.,KERALA.

RESPONDENTS/DEFENDANTS:

1. M V MSC AKITETA II (IMO NO. 9220847) (AND HER OWNERS AND ALL OTHER PERSONS CONCERNED AND ALL OTHER PERSONS CONCERNED AND/OR INTERESTED IN HER) A VESSEL REGISTERED IN LIBERIA, TOGETHER WITH HER HULL, TACKLE, ENGINES, GEARS, PLANT, MACHINERY, ARTICLES, THINGS, APPAREL, EQUIPMENT, PARAPHERNALIA, AND ALL OTHER APPURTENANCES, PRESENTLY AT THE PORT AND HARBOUR OF ADANI PORT, WITHIN THE TERRITORIAL WATERS OF INDIA AND WITHIN THE ADMIRALTY JURISDICTION OF THIS HON'BLE COURT.
2. MEDITERRANEAN SHIPPING CO. S.A (MSC) REPRESENTED AS OWNER/DEMISE CHARTERER/MANAGER AND OPERATOR OF THE VESSEL, MSC ELSA 3, HAVING ITS OFFICE ADDRESS AT SA CHEMIN RIEU, 12-14, 1208, GENEVA, SWITZERLAND.
3. MEDITERRANEAN SHIPPING COMPANY THROUGH ITS AUTHORIZED NODAL OFFICER, MR. JACOB GEORGE, MSC HOUSE, ANDHERI – KURLA ROAD, ANDHERI EAST, MUMBAI, MAHARASHTRA, INDIA, PIN - 400059.
4. MSC AGENCY INDIA PVT LTD 146, PALAYAMKOTTAI ROAD, 1ST FLOOR, MANICKAM TOWER, TUTICORIN, INDIA, PIN - 628003.
5. ADANI VIZHINJAM PORT PVT LTD PORT OPERATION BUILDING, MULLOOR, THIRUVANANTHAPURAM, KERALA, INDIA, PIN - 695521.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to issue a warrant of arrest of the 1st defendant Vessel M V MSC AKITETA II(IMO No.9220847) flying flag of Liberia, along with her hull, tackle,engine,machinery spares,gear,apparel,paraphernalia,furniture,etc, presently/scheduled to be within the Territorial Waters of India at the Port/Anchorage of Vizhinjam and direct the 5th defendant (Adani Vizhinjam Port PVT LTD, Port Operation Building,Mulloor,Thiruvananthapuram,Kerala-695521) to keep the vessel under safe arrest until further orders of this Hon'ble Court and also prayed that this Hon'ble Court may be pleased to communicate the order of arrest to the 5th Respondent/Defendant by e-mail/fax/phone and direct the 5th Respondent/Defendant to act upon the e-mail/fax/copy of order, 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 GOVERNMENT PLEADER, for the petitioner and of PRANOY K.KOTTARAM Advocate for the respondent No.1, Roshen D. Alexander, Advocate for the respondent No.5, the court passed the following:

M.A. ABDUL HAKHIM, J.

Adml.S. No. 12 of 2025

Dated this the 7th day of July 2025

ORDER

1. Admit. Advocate Sri. Pranoy.K.Kottaram takes notice for the 1st defendant as he has appeared pursuant to the Caveat filed by him. Advocate Sri. Roshen D. Alexander takes notice for the 5th defendant/Port. Advocate Sri. Pranoy.K.Kottaram submitted that he has instructions for appearing only for the 1st defendant vessel and he prayed for posting on 10.07.2025 in order to enable him to report whether he will be able to take notice for the defendants 2 to 5. The 2nd defendant is shown as the owner of the 1st defendant vessel and the 3rd and 4th defendants are stated to be the agents of the 2nd defendant in India. In view of the submission of Advocate Sri. Pranoy.K.Kottaram, the issuance of notice to the defendants Nos. 2 to 4 is deferred for the time being.
2. Post the suit for further consideration on 10.07.2025..

I.A. No.1 of 2025

1. This Application is filed by the plaintiff in the captioned Admiralty Suit to issue Warrant of Arrest against the Marine Vessel “MSC” AKITETA II (IMO 9220847) with all her accessories, which is presently anchored at Vizhinjam Port, which is within the territorial waters of India and within the admiralty jurisdiction of this Court.
2. I heard the learned Advocate General Sri.K.Gopalakrishna Kurup instructed by learned Government Pleader Smt.Parvathy Kottol for the Applicant/State of Kerala, learned counsel for the 1st respondent Sri. Pranoy.K.Kottaram and the learned Counsel for the 5th respondent Sri. Roshen D. Alexander.
3. The State of Kerala as the plaintiff through its Special Secretary, Environment Department has filed the above captioned suit seeking to pass a decree directing the 1st and 2nd defendants to pay a sum of Rs.9,531 Cores to it towards maritime claims, with interest @ 6% per annum till the date

of decree and thereafter 12% from the date of decree till realisation.

4. The maritime claims are made with respect to the vessel “MSC ELSA -3 (IMO No. 9123221)” belonging to the 2nd respondent which was capsized and sunk in the coastal waters of Kerala, on the allegation that the same has been causing damage by way of pollution to marine environment, coastline and related interest of the State and also economic loss to the fishermen in the State.
5. Rs. 8,626.12 Crores is claimed as compensation towards damage caused by MSC ELSA- 3 to the environment, coastline and related interest of the State of Kerala. It is averred in the plaint that the damage occurred on account of oil pollution caused by the said vessel and pollution caused by the cargo in 643 containers carried in the said vessel. It is averred that the compensation is computed in accordance with the Central Pollution Control Board Guidelines. The computation of the said claim is provided in paragraph Nos.V.I, V.I.A and V.I.B of the plaint.

6. Rs.378.48 Crores is claimed for taking measures to prevent, minimise or remove the damage caused by the said vessel to the environment, coastline, and related interest in the State of Kerala and cost of reasonable measures for restoration of environment. The computation of the said claim is provided in paragraph V.II of the plaint.
7. Rs,526.51 Crores is claimed towards economic loss caused to the fishermen of the State of Kerala as a result of damage caused by the aforesaid vessel. The details of computation of the claim is provided in Paragraph No. V.III, V.III.1 and V.III.2 and V.III.3.
8. The Applicant has produced 42 documents along with the plaint to prove the plaint claim.
9. Document No.1 would show that Nairne Ocean Way Limited is the registered owner and the 2nd respondent is the Ship Manager/Commercial Manager of MSC AKITETA II. The address of the 2nd respondent is shown as the care of address of the registered owner of MSC AKITETA II. It reveals that the 2nd respondent is having substantial interest

in the registered owner of 1st respondent vessel. Document No.2 would reveal that ELSA 3 Maritime INC is the registered owner and the 2nd respondent is the Ship Manager / Commercial Manager of MSC ELSA III. The address of ELSA 3 Maritime INC is shown as the care of address of the 2nd respondent. It reveals that the 2nd respondent is having substantial interest in the registered owner of MSC ELSA III also. I, prima facie, find that these documents would prove that MSC ELSA III and MSC AKITETA II are registered in the name of two sister/subsidiary companies of the 2nd respondent and both the vessels are managed, operated, controlled and owned by the 2nd respondent. Accordingly, both these vessels are, prima facie, sister vessels.

10. Since the 1st respondent vessel is anchored at Vizhinjam Port within the territorial jurisdiction of this Court, this Court has admiralty jurisdiction over the same as per the provisions of the Admiralty (Jurisdiction and settlement of Maritime Claims) 2017. I prima facie find that averments in the plaint and in the Affidavit in support of this Application and

the documents produced by the Applicant would make out a maritime claim against the respondents 1 and 2 under S.4(1) of the Admiralty (Jurisdiction and settlement of Maritime Claims) 2017 to invoke the admiralty jurisdiction of this Court conferred under S.5 for the arrest and detention of the 1st respondent vessel in order to obtain security for the plaint claim. I am satisfied that an arguable maritime claim is made out by the Applicant warranting a conditional order of arrest of the 1st respondent vessel till the 1st respondent furnishes security for the plaint claim.

11. Accordingly, the following conditional order is passed.

1. The 1st respondent vessel by name **“MSC” AKITETA II (IMO 9220847)** along with her hull, tackle, engine, machinery spares, gear, apparel, paraphernalia, furniture etc. presently anchored in the Vizhinjam Port is ordered to be arrested until **Rs.9,531 Crores** 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.

2. It is ordered that the 5th respondent shall execute the Warrant and effect the arrest, seizure and detention of the said vessel “**MSC**” **AKITETA II (IMO 9220847)**” along with her hull, tackle, engines, machinery, boards, bunkers, equipment, peripherals and other appurtenances as ordered above.
3. It is made clear that this Order will not in any way prevent the loading and unloading of cargo of the Vessel.

List the I.A for further consideration on **10.07.2025**.

Sd/-

M.A.ABDUL HAKHIM
JUDGE

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