IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(ADMIRALTY JURISDICTION)

Present:
Justice Sikder Mahmudur Razi

ADMIRALTY SUIT NO. 26 of 2025

IN THE MATTER OF:
Falvey Insurance Group
... Plaintiff-Petitioner.
VERSUS
BM Container Depot Ltd. and others.
... Defendants.

Mr. M. Belayet Hossain, Sr. Adv. with
Mr. M. Mahmudul Hasan, Adv. with
Mr. M. Aminul Islam Nazir, Adv. with
Mr. Shubho Shattha Rafiq, Adv.
…For the defendant Ns. 1 & 2/applicants.

Mr. Mohiuddin Abdul Kadir, Adv. with
Ms. Zinia Amin, Adv. with
Mr. Noor Mohammad Mozumder Roni, Adv.
…For the plaintiff/opposite party.

Heard on: 16.02.2026, 23.02.2026, 25.02.2026 & 04.03.2026 And
Order passed on: The 10th March, 2026

1. This application under Order VII Rules 10 and 11(d) of the Code of Civil Procedure, 1908, has been filed by defendant Nos. 1 and 2 praying for return or in the alternative for rejection of the plaint.

2. The plaintiff instituted the instant suit seeking a decree for damages and compensation in respect of insured cargo alleged to have been totally destroyed by a massive fire that occurred at the inland container depot of Defendant No. 1 prior to shipment. The plaintiff claims to have indemnified the cargo owner, Roochi Traders Inc, for the loss suffered and has brought the suit as subrogated insurer of the assured.

2.1 The case of the plaintiff, in short, is that the plaintiff, Falvey Insurance Group, is an international insurance company engaged in

underwriting transportation insurance risks worldwide, including maritime and inland carriage of goods. The plaintiff brings the present suit as the subrogated insurer of the cargo owned by the policy holder, Roochi Traders Inc.

According to the plaintiff, the policy holder/importer, Roochi Traders Inc., entered into contracts with several exporters for the purchase of ready-made garments and colour books/swatches on FOB Chittagong terms. For the purpose of transporting the cargo to its destination at Long Beach, USA, the importer engaged defendant No. 3, WAC Logistics Limited, as the freight forwarder and logistics service provider to arrange carriage of the goods by sea.

It is stated that after receiving the goods from the exporters, defendant No. 3 issued ten separate combined transport Bills of Lading and arranged for the cargo to be stuffed into three sealed containers bearing Nos. WHSU6273950, TRHU7194165 and MOTU1424440. The export formalities were completed and the containers were delivered to the premises of defendant No. 1, BM Container Depot Limited (BMCDL), an inland container depot at Chattogram, for temporary storage and onward shipment by sea.

The plaintiff further states that the containers were duly received at the depot on 02.06.2022 and 03.06.2022 under terminal receipts issued by the depot authorities. Defendant No. 3 had also arranged shipment of the containers on board vessels MV WAN HA1613, MV ONE MINATO and NYK ORION for carriage to the destination once loading commenced.

However, on 04.06.2022 a catastrophic fire and explosion broke out at the BM Container Depot in Chattogram. According to the plaintiff, the fire originated from containers storing hydrogen peroxide in plastic canisters and rapidly spread throughout the depot, causing a series of explosions and extensive destruction of containers and cargo stored therein. The plaintiff alleges that the incident occurred due to the negligence of the depot authorities who stored hazardous chemical substances without proper safety

measures and in violation of the International Maritime Dangerous Goods (IMDG) Code.

At the time of the fire, the containers carrying the insured cargo were present at the depot premises. The fire destroyed a large number of containers, including the containers carrying the insured goods. According to the survey findings, the cargo in containers WHSU6273950 and TRHU7194165 was completely burnt and rendered a total loss.

Subsequently, surveyors were appointed to investigate the cause and extent of the damage. Reports prepared by MARINECARE Consultants Bangladesh Ltd. and Lloyd's Sub-Agency JF (Bangladesh) Limited assessed the loss and concluded that the goods in the relevant containers had been completely destroyed by fire. Upon valuation based on the selling price of the goods, the surveyor assessed the loss at USD 624,641.44.

The plaintiff states that under the insurance policy covering the shipment, it indemnified the policy holder Roochi Traders Inc. and paid an amount of USD 500,000 towards the insured loss. By virtue of subrogation and assignment of rights executed by the policy holder, the plaintiff became entitled to pursue recovery of the loss from the parties responsible for the incident.

The plaintiff alleges that the fire and resulting damage were caused by the gross negligence of defendant No. 1 and other responsible parties in failing to properly handle and store hazardous chemicals and in not maintaining adequate safety measures within the depot premises. Despite requests made by the plaintiff to settle the claim, the defendants allegedly failed to compensate the loss.

Hence, the plaintiff has instituted the present admiralty suit claiming a total sum of USD 674,641.44 as compensation for the loss and damages suffered due to the destruction of the insured cargo, along with interest and costs.

3. Defendant Nos. 1 and 2 entered appearance in the suit and they have filed the present application seeking return and/or rejection of the plaint, contending that the suit is not maintainable in admiralty jurisdiction and is barred by law.

The principal grounds taken by that defendant No. 1 are that it operates a land-based inland container depot recognized under port and customs laws and does not function as a shipowner, carrier, or maritime operator. It is contended that the alleged loss occurred entirely ashore, within the inland container depot, prior to delivery of the cargo to any sea-going vessel.

It is further asserted that there was no contract of carriage by sea between the plaintiff or its assured and defendant Nos. 1 and 2, nor was any bill of lading or charterparty was issued. According to the defendants, section 3(2)(h) of the Admiralty Court Act, 2000 applies only where the claim arises from an operative agreement relating to carriage of goods in a ship, and mere anticipation of future sea carriage does not confer admiralty jurisdiction.

On these premises, it is contended that the plaint, at best, discloses a civil claim for warehouse negligence or bailment, triable by an ordinary civil court, and therefore the plaint is liable to be returned under Order VII Rule 10 CPC or, alternatively, rejected under Order VII Rule 11(d) CPC as barred by law.

4. Against the said application the plaintiff filed a written objection contending inter alia thatthe suit is fully maintainable in admiralty jurisdiction.The plaintiff contends that the statutory phrase *"any claim arising out of any agreement relating to the carriage of goods in a ship"* appearing in section 3(2)(h) of the Admiralty Court Act, 2000 is of wide import and covers claims in contract or in tort that are connected with such agreement, even if not arising directly under it.

It is further contended that the cargo was received, stuffed, and held by defendant No. 1 specifically for shipment on specified vessels, as evidenced by terminal receipts, thereby establishing the existence of an agreement relating to sea carriage.

It is further contended that the commencement of a maritime adventure does not depend upon actual loading on board the vessel or issuance of a bill of lading, and the maritime character of the transaction attaches once the goods are committed to a specific sea carriage arrangement.

The plaintiff also asserts that the inland container depot functioned as an integral extension of port operations, holding the cargo pursuant to a sea carriage contract, thereby creating a sufficient maritime nexus.

On such grounds, the plaintiff prays for dismissal of the defendants' application.

5. Mr. M. Belayet Hossain, learned Senior Advocate appearing for Defendant Nos. 1 and 2 submit that admiralty jurisdiction is purely statutory and cannot be enlarged by judicial interpretation. The learned advocate argued that the plaint itself admits that the cargo was never delivered to a vessel and that the loss occurred ashore. The learned advocate next submitted that no maritime contract existed between the plaintiff or its assured and the defendants-applicants, who are neither carriers nor shipowners, and that no maritime obligation was ever triggered. According to the learned advocate, treating a warehouse fire as a maritime claim would obliterate the distinction between admiralty law and ordinary civil jurisdiction.Mr. Hossain further submitted that the choice of court depends on whether a contract of carriage (B/L) was already in effect, bringing the case under maritime law. If fire occurred in the midst of loading/unloading or during voyage, rem proceedings could be choice for the Plaintiff, otherwise, it is a civil tort. He further argued that loss and damage in the instant suit, if there is any, shall be within exclusive jurisdiction of an appropriate commercial/civil court as there is no ingredient for invoking

admiralty jurisdiction. Traditional civil court or newly inducted commercial court of Bangladesh may be invoked. He next submitted that there was no concluded carriage contract, no bill of lading was issued here, fire did not break out at the point of loading or unloading or during the voyage, thus the defendant is not within the privity of any carriage contract. The Depot is a mere licencee who holds the goods as a temporary bailee / licencee having no nexus with the carriage contract. There is no "contractual foundation" to invoke 3(2)(g) or (h), as there is no express or implied agreement for carriage of goods by sea.The learned advocate further submitted that the Plaintiff failed to produce any piece of seaway bill or Ocean Bill of Lading till now, thus, there is no cogent reason for believing that any bill of lading was ever issued and moreover, in absence of such a crucial instrument of carriage contract, no Admiralty Court can entertain such an action. The issues shall be within the domain of supply contract, Sale of Goods Act, civil tort for negligence, breach of contract of warehousing etc, not at all within the domain of Admiralty Court. The learned advocate further submitted that B M container did not function as a sea- carrier and party to an agreement involving the carriage of goods "in a ship", BM Container exclusively confined it in inland depot operation, they bore no contractual or maritime responsibility in relation to intended carriage. The learned advocate concluded by submitting that there is no maritime performance attributable on B M container, no maritime performance ever occurred in the instant case as the cargo was not placed on board the vessel and therefore, the plaint should be returned to the Plaintiff.

In support of his submissions the learned advocate relied upon the case of *Port Jackson Stevedoring Pty Ltd vs Salmond & Spraggon (Aust) Pty Ltd. reported in MANU/AUSH/0059/1978; Gatoil International Inc. vs. Arkwright-Boston Manufacturers Mutual Insurance Company and others, reported in MANU/UKHL/0001/1984; Wilson Vs. Darling Island Stevedoring & Lighterage Co. Ltd, reported in MANU/AUSH/0072/1956; Chittagong Port Authority vs. M/s. Hong Kong Shipping Lines & others, reported in LEX/BDHC/0174/1989; The "Catur Samudra" [2010]SGHC*

18; Southampton Cargo Handling Plc vs. Lotus Cars Ltd & others, reported in MANU/UKWA/0207/2000.

5.1 Per Contra, Mr. Mohiuddin Abdul Kadir, learned advocate for the plaintiff submits that admiralty jurisdiction under section 3(2)(h) of the Admiralty Court Act, 2000 is not confined to completed voyages or the issuance of bills of lading. The learned advocate argued that a contract of carriage is concluded prior to shipment and that all pre-carriage services integrally connected with such contract fall within admiralty jurisdiction. The learned advocate further submitted that Defendant No. 1 held the cargo as a bailee pursuant to a specific maritime adventure and not as a general warehouseman, and that the loss is inseparably linked to the contemplated sea carriage. In support of his submissions the learned advocate relied upon relevant commentary by Nigel Messon in his authoritative book titled as, "Admiralty Jurisdiction and Practice" 3rd edition, in the case of *Samick Lines Co Ltd vs Owners of Antonis P Lemos, reported in [1985] A.C. 711, Heilrunn vs. Lightwood PLC., reported in [2007] 164 FCR1:MANU/AUFC/0567/2007, and Pyrene Co Ltd vs Scindia Navigation Co. Ltd., reported in [1954] 2 Q. B. 402*.

6. Based on the argument and counter argument of the respective parties it appears to this court that the sole question that arises for determination in this admiralty suit is:

> Whether the plaint, on a meaningful reading, discloses a maritime claim within the meaning of section 3(2)(h) of the Admiralty Court Act, 2000, so as to confer admiralty jurisdiction upon this Court.

7. For a proper determination of the issue, it is of seminal importance to consider the relevant legal provisions and the authorities relied upon by the respective parties in support of their submissions.

7.1 The plaintiff claims that the fact of the case attracts section 3(2)(h) of the Admiralty Court Act, 2000. The said provision runs as follows:

(2) The Admiralty Court shall have jurisdiction to hear and determine any questions or claims of the following namely:

xxxx

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

7.2 In support of the submissions that Admiralty Court has jurisdiction to entertain the instant suit, the learned advocate for the plaintiff relied upon the case of *Samick Lines Co Ltd vs Owners of Antonis P Lemos, reported in [1985] A.C. 711, Heilrunn vs. Lightwood PLC., reported in [2007] 164 FCR1:MANU/AUFC/0567/2007, and Pyrene Co Ltd vs Scindia Navigation Co. Ltd., reported in [1954] 2 Q. B. 402*. Now, let us briefly examine the facts and the ultimate decisions of the cited judgments.

(i) **Samick Lines Co Ltd vs Onwers of Antonis P Lemos, reported in [1985] A.C. 711**

Fact of the Case: By a charterparty dated 16 October 1981 between the plaintiffs as charterers and Sammisa Co. Ltd. of Seoul, described as owners, the plaintiffs **chartered** the defendants' vessel Antonis P. Lemos for one time chartered trip. The **charterparty** provided that the charterers were to have liberty to sub-let the vessel but were to advise owners of any sub-letting. At that time the vessel was on time charter to Sammisa Co. Ltd., under a **charterparty** dated 22 February 1980 between Sammisa and a company called Containertank Corporation, who were described therein as disponent owners. That charterparty too contained a liberty to sub-let with an obligation to advise of any sub-letting. All that is known of therelationship between Containertank and the defendants is that the defendants had **by agreement** entrusted the operation of the vessel to them. Shortly before the charterparty of 16 October, namely on 21 September, the plaintiffs had entered into a **voyage charterparty** with Agri Industries **for the carriage of a cargo** of 25,000 metric tons of heavy grains and/or sorghums and/or soyabeans, 10 per cent. more or less in the plaintiffs'

option, from America to one or two safe berth/anchorages Alexandria or in the charterer's option, one or two safe berths/anchorages Port Said. By such **charterparty** the plaintiffs guaranteed the vessel's maximum arrival draught not to exceed 32 ft. in salt water. The charterparty did not name the vessel but provided that the performing vessel was to be declared "at least 10 days prior to E.T.R. load port."The vessel Antonis P. Lemos was duly declared under the voyage charter and on 20 and 21 October loaded a cargo at Houston. She arrived in Alexandria on 11 November but her draught then exceeded 32 ft. As a result she was unable to berth until lightened and delay was thereby caused. As a result of the breach of the guarantee of maximum draught, the plaintiffs had to pay the costs of lightening and incurred certain other expenses and loss. In order to recover such losses they issued on 20 May 1983 a writ in rem in the Admiralty Court against the owners, at the same time obtaining a warrant for the arrest of the vessel pursuant to which she was duly arrested. (*Bold supplied*)

By notice of motion dated 24 May 1983, the defendants sought an order that the writ and warrant of arrest be set aside and the vessel released from arrest on the ground that the High Court had no jurisdiction in respect of the plaintiffs' claim and/or that such claim did not fall within section 20(2) of the Supreme Court Act 1981. The defendants' motion was heard by Sheen J. on 26 May 1983. He made the order sought.

Decision of Sheen J: Sheen J. held that the Admiralty Court had no jurisdiction over the plaintiffs' claim and therefore set aside the writ *in rem* and the warrant of arrest issued against the vessel. He took the view that, for a claim to fall within section 20(2)(h) of the Supreme Court Act 1981, the claim must arise out of an agreement between the plaintiff and the defendant themselves**.** Since there was no direct contractual relationship between the sub-charterers (plaintiffs) and the shipowners (defendants)**,** the claim did not fall within the statutory provision and was therefore not maintainable in Admiralty jurisdiction.

Decision of Court of Appeal: The Court of Appeal reversed the decision of Sheen J. and held that the Admiralty Court did have jurisdiction over the claim. The essence of its findings can be summarized as follows:

The Court of Appeal held that the claim of the plaintiffs fell within the Admiralty jurisdiction of the High Court under section 20(2)(h) of the Supreme Court Act 1981. It was observed that the expression "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship" is to be construed broadly and is not confined to claims founded on a contract between the plaintiff and the defendant. **A claim in tort may also fall within the provision if it arises out of or is sufficiently connected with a relevant charterparty or carriage agreement.** Since the plaintiffs' claim for negligence in loading the vessel was intrinsically connected with the charterparty arrangements governing the carriage of goods, the action was held to be maintainable in Admiralty jurisdiction. (*Bold supplied*)

Reasoning of Parker L.J.: In arriving to the conclusion as mentioned earlier Parker L.J. assigned amongst others the following reasonings:

> "Section 20(2)(h) contains no words of limitation restricting the agreements mentioned to agreements between the plaintiff and the defendant. It would have been simple so to limit them if any such limitation had been intended. The Convention contains no words of limitation either. I am unable to find any sufficient reason for importing such words, and would only do so if compelled by authority. In the absence of such authority I would accordingly hold that, if the plaintiff can establish that his claim arises out of an agreement of the relevant kind, i.e. an agreement relating to the carriage of goods in a ship or to the use or hire of a ship, then even if such agreement is not one between himself and the defendant, that claim falls within paragraph (h)."

He further explained the connection of the negligence claim with the charter agreements:

"If that claim is sustainable… it can only be, because (a) the plaintiffs had under the voyage charter guaranteed the maximum draught on arrival; (b) the master or the defendants were aware of that guarantee; and, probably, (c) the charterparty… included provisions that the master should be under the orders and directions of the plaintiffs as regards employment and that loading should be under the supervision of the master… In the absence of the contractual guarantee… it would… be quite impossible to contend that there was a duty to load only such quantity as would enable the vessel to arrive… with a maximum draught of 32 ft."

He further observed that:

".....It is sufficient for the purposes of this appeal to say that on the ordinary meaning of the words the plaintiffs claim is, in my view, a claim arising out of a relevant agreement notwithstanding that such agreement is not between the plaintiffs and the defendants, and on that simple ground I would allow this appeal."

(ii) **Heilrunn vs. Lightwood PLC., reported in [2007] 164 FCR1:MANU/AUFC/0567/2007**

Fact of the case: The plaintiff owned a vintage Vauxhall motor car which had been transported from Australia to England for a vintage car rally. After the rally, **arrangements** were made to ship the car back to Australia. The plaintiff delivered the car to the defendant warehouse man in North Weald, Essex. The defendant was engaged to load the car into a 40-foot shipping container, and transport the container to Tilbury portfor shipment to Australia. While an employee of the defendant was driving the car into the container, the car was damaged. Repairs later cost about $32,000. The defendant's contemporaneous documents admitted the damage occurred due to "error by the staff." The plaintiff later sued for damages in bailment and tort. However, the defendant challenged the proceedings on three grounds:

i) The claim was not a maritime claim, so the court lacked jurisdiction.

ii) The claim was time-barred.

iii) The proceeding should be stayed due to an English exclusive jurisdiction clause.

Thus the main legal issue became whether the claim fell within section 4(3)(f) of the Admiralty Act 1988, namely a claim, “arising out of an agreement that relates to the carriage of goods by a ship.” (*Bold supplied*)

Reasoning and Decision of the court: The court rejected the argument that only contractual claims qualify and held that-

> “Thus, for these reasons, the fact that the plaintiff's claim is in tort and bailment does not mean that it cannot arise out of an agreement of the character described in s 4(3)(f).”

In the said judgment it was further observed as follows:

> 42. Lord Brandon then went on to reject the second contention of the owners propounded by Mr Saville QC, that even if claims in tort were covered, only those which were "directly connected" with an agreement covered by the provision (that is one that related to the carriage of goods in a ship) and that such agreement was one between the plaintiff and defendant. His Lordship rejected this argument for the reasons Parker LJ had rejected it in the Court of Appeal: see, in the Court of Appeal, the Antonis P Lemos[1985] AC at 715- 720, and in the House of Lords, [1985] AC at 732. That reasoning and Lord Brandon's reasoning and conclusions on both contentions permit the following to be stated: the Claim which may be non-contractual need only arise out of, in the sense of be connected with, some agreement having the relevant relationship with The carriage of goods in a ship (or other relational fact in s 4(3)(f)) even if that agreement is one to which the plaintiff is not a party. Thus, in The Antonis P Lemos [1985] AC 711 the claim in tort could be seen to arise out of, that is be connected with any and all of the

> sub-sub-voyage charter, the sub-time charter and the head time charter.
>
> 43. Here, the claim by the plaintiff undoubtedly **arose out of the agreement** between Planetwide and the defendant to load the cargo into the container. **It can also be seen to be connected with the agreement between Planetwide and Mr Seymour evidenced by the bill of lading**. It also can be seen to arise out of, that is be connected with, the agreement between Planetwide and Vantage for the former to arrange for the transportation of the cars from England to Australia. It may also be seen to arise out of, that is be connected with, the agreement between Mr Seymour and Vantage to attend to the transportation of the car to and from England.(*Bold supplied*)

The judge concluded that the work done by the warehouseman had a direct connection with sea transport:

> "52....The cars had to be loaded into the shipping container in preparation for sea transport… The agreement to load the shipping container between the arranger of the carriage and its subcontractor had a reasonably direct relationship with the carriage of goods by the ship."
>
> Further:
>
> "54....In short, the agreement was to load a shipping container for transport by road to port and then by sea to Australia. That has reasonably direct connection with the anticipated sea carriage by ship."

(iii) **Pyrene Co Ltd vs Scindia Navigation Co. Ltd., reported in [1954] 2 Q. B. 402**

Fact of the Case: The plaintiffs, Pyrene Co. Ltd., contracted to sell to the Government of India, represented by the Ministry of Supply, a number

of ‘fire tenders’ for delivery f.o.b. London, the price including dock and harbour dues and freight to be paid by the buyers. Under the contract the sellers were to give notice to the buyers when the goods were ready for shipment. The buyers then nominated a vessel and the sellers were to deliver the goods alongside the vessel. The buyers’ agents, Barbehrend & Co., made all arrangements for the shipment. One fire tender was delivered to the dockside and while it was being lifted by the ship’s tackle from the quay to the vessel it was dropped and damaged. **Under the contract of sale the property had not then passed to the buyers.** The tender was subsequently repaired by the plaintiffs and shipped in another vessel. **A bill of lading in respect of the tender had been drawn up but was not issued**. **The plaintiffs claimed £966 4s., the cost of repairing the tender, as damages for negligence against the defendants, the shipowners**. The shipowners admitted liability but claimed that the amount was limited by article 4 (5) of the Hague Rules. The sellers contended, inter alia, (1) that, as the tender had not crossed the ship's rail it was never loaded on to the ship and therefore, since the accident occurred outside the period specified in article 1 (e), the rules did not apply; (2) that the rules were not incorporated in the contract of carriage because no bill of lading had been issued; and (3) that even if the rules could be applied to the operation of loading at the time of the accident, they had no application as between themselves and the shipowners because they were not a party to the contract of affreightment. (*Bold supplied*)

Reasoning and Decision of the Court: Held, (1) that the rights and liabilities under the rules did not attach to a period of time but attached to a contract or part of a contract, their operation being determined by the limits of the contract of carriage by sea, and however restricted a meaning were given to the words "carriage of goods by sea" the loading of the goods related to the carriage on the voyage and therefore was within the contract of carriage; that the reference to "loaded on" in article 1 (e) did no more than define the first of the operations in the series which constituted the carriage of goods by sea to which article 2 applied; that "loading" in article. 2 was not confined to that stage of loading occurring after the goods had crossed the ship's rail but covered the whole operation and, accordingly, the

shipowners' rights and immunities under the rules extendedto the operation of loading being carried out at the time of the casualty.

(2) That whenever a **contract of carriage was concluded** and it was contemplated that a bill of lading would be issued in due course, that contract was from its creation "covered" by a bill of lading and was therefore, from its inception, a contract of carriage within the meaning of the rules and one to which they applied. (*Bold supplied*)

7.3 On the other hand, in support of his submissions to the effect that the instant suit is not maintainable in admiralty jurisdiction, the learned advocate for the defendant-applicant relied upon the case of *Gatoil International Inc. vs. Arkwright-Boston Manufacturers Mutual Insurance Company and others, reported in MANU/UKHL/0001/1984; Port Jackson Stevedoring Pty Ltd vs Salmond & Spraggon (Aust) Pty Ltd. reported in MANU/AUSH/0059/1978; Wilson Vs. Darling Island Stevedoring & Lighterage Co. Ltd, reported in MANU/AUSH/0072/1956; Chittagong Port Authority vs. M/s. Hong Kong Shipping Lines & others, reported in LEX/BDHC/0174/1989;The "Catur Samudra" [2010]SGHC 18; Southampton Cargo Handling Plc vs. Lotus Cars Ltd & others, reported in MANU/UKWA/0207/2000*. Now, let us examine briefly the fact and decision taken in those judgments.

(i) <u>Gatoil International Inc. vs. Arkwright-Boston Manufacturers Mutual Insurance Company and Others, reported in MANU/UKHL/0001/1984;</u>

Fact of the case: The dispute arose when six insurance companies and an insurance broker (the respondents) initiated an action in the Sheriff Court at Lerwick against Gatoil International Inc. (the appellants), a Panamanian company. The respondents sought payment of premiums allegedly due under a policy of insurance over a cargo of oil shipped from Kharg Island, Iran. To establish jurisdiction over the foreign appellants and provide security for their claim, the respondents obtained an arrest order to

found jurisdiction against the vessel M.*V. Sandrina*, which was lying at Sullom Voe in the Shetland Islands.

Importantly, neither the *Sandrina* nor any other vessel owned by the appellants had any physical involvement with the carriage of the oil cargo that was the subject of the insurance premiums. Gatoil subsequently raised an action to recall the arrestments, arguing that the claim for insurance premiums did not fall within the specific list of maritime claims defined in Section 47 of the Administration of Justice Act 1956. The Sheriff at Aberdeen and the Second Division of the Inner House of the Court of Session both initially ruled in favor of the insurers, leading to the appeal to the House of Lords.

Reasoning and Decision of the Court: The central issue before the House of Lords was the interpretation of Section 47(2)(e) of the Administration of Justice Act 1956, which applies to "any agreement relating to the carriage of goods in any ship whether by charterparty or otherwise". The insurers argued for a broad reading, suggesting that since an insurance policy relates to cargo being carried in a ship, it must be an agreement "relating to" the carriage of goods.

Lord Wilberforce and Lord Keith of Kinkel delivered the leading speeches, focusing on the degree of connection required between the agreement and the physical operation of carriage. Lord Wilberforce characterized the statutory language as "loose-textured" and "ambiguous" in a legal sense, as it did not indicate the necessary criterion for a "relationship". The court analyzed whether the agreement must be for the carriage of goods or whether it was sufficient that the parties contemplated such carriage as a consequence of the agreement.

The Law Lords reviewed historical English authorities dating back to the County Courts Admiralty Jurisdiction Amendment Act, 1869. These cases consistently showed a judicial reluctance to extend Admiralty jurisdiction to agreements that were only tangentially or economically connected to a vessel's use. For instance, in *The Zeus* (1888), an agreement

to load a ship with coal was held not to be an agreement relating to its use or hire. Similarly, the House considered and ultimately overruled the decision in *The Sonia S.* (1983), which had incorrectly allowed container hire to fall within this jurisdiction.

A decisive factor in the court's reasoning was the provenance of the 1956 Act. The Act was passed to enable the United Kingdom to ratify the International Convention Relating to the Arrest of Seagoing Ships (Brussels, 1952). Lord Scarman and Lord Wilberforce argued that the interpretation of the Act was legitimately aided by the *travaux préparatoires* (preparatory records) of the Convention.

The proceedings of the 1951 Naples Conference and the 1952 Brussels Conference provided clear evidence of legislative intent. A proposal by the Netherlands delegation to explicitly include "premiums of insurance" as a maritime claim justifying ship arrest was debated and rejected. The British delegation had opposed the proposal, arguing that insurance policies provided sufficient protection and that arrestment was unnecessary as a matter of policy. Consequently, Article 1 of the Convention was agreed upon without the addition of insurance premiums. The House of Lords reasoned that the 1956 Act must be interpreted consistently with this deliberate exclusion.

The House of Lords allowed the appeal and recalled the arrest order of the M.*V. Sandrina*. The court held that an agreement for the payment of marine insurance premiums is not an "agreement relating to the carriage of goods in any ship" within the meaning of Section 47(2)(e) of the 1956 Act.

This judgment is significant for two main reasons. First, it definitively excludes financial claims such as insurance premiums from the scope of arrestable maritime claims in Scotland and England, narrowing the reach of Admiralty jurisdiction to **claims with a direct nexus to a vessel's operation**. Second, it establishes a robust precedent for using treaty history (*travaux préparatoires*) to resolve linguistic ambiguities in domestic

legislation that is intended to implement international conventions.(*Bold supplied*)

(ii) <u>Port Jackson Stevedoring Pty Ltd vs. Salmond & Spraggon (Aust) Pty Ltd, reported in MANU/AUSH/0059/1978;</u>

Facts of the Case: In 1970, the Schick Safety Razor Company shipped 37 cartons of razor blades from St. John, New Brunswick, Canada, to Sydney, Australia, aboard the vessel New York Star. The shipment was covered by a bill of lading issued by the Blue Star Line (the carrier) and accepted by the consignee, Salmond & Spraggon. The carrier engaged Port Jackson Stevedoring (the appellant) as an independent contractor to discharge the vessel and handle the cargo on the wharf in Sydney.Upon the ship's arrival, the stevedores discharged the 37 cartons and placed them in a part of the wharf shed known as "the dead house," a secure area intended to prevent pilfering. Despite these security measures, a thief posing as a delivery driver managed to obtain 33 cartons. The thief spoke to a tally clerk and, through a combination of audacity and a weakness in the stevedore's control system, was permitted to load the cartons onto a truck and drive away without presenting a bill of lading or a delivery order. The value of the stolen cargo was $14,684.98. The consignee sued the stevedore for negligence. The stevedore defended the action by relying on the **bill of lading's Clause** 2 (the Himalaya clause) and Clause 17 (a one-year time bar). Clause 2 explicitly provided that no servant or agent of the carrier, including every independent contractor, should be under any liability to the consignee for any loss or damage. Clause 17 required that any suit be brought within one year of the delivery of the goods or the date they should have been delivered. The consignee had initiated the suit well after the one-year period had expired.(*Bold supplied*)

Reasoning and Decision of the Court: The case traveled through the Australian court to the Privy Council, with each level grappling with whether the stevedore was truly a party to the contract of carriage and whether it had provided consideration for the immunity. The High Court of

Australia initially ruled for the consignee. The majority (Stephen, Mason, Jacobs, and Murphy JJ) reasoned that the stevedore was not acting in performance of any of the carrier's obligations under the bill of lading at the time of the loss. They argued that the carrier's responsibility terminated when the goods left the ship's tackle or were placed over the ship's rail. Since the theft occurred while the goods were in storage awaiting collection, the majority viewed the stevedore as an independent bailee whose actions were not covered by the carrier's contractual immunities. They also found a "fatal gap" in consideration, as the stevedore was already contractually bound to the carrier to unload the ship.

Barwick C.J. dissented, providing a reasoning that the Privy Council later adopted. He argued that the **bill of lading was an arrangement** that intended to protect all participants in the handling of the cargo from loading to delivery. He maintained that "delivery" is the final act of the contract of carriage and that sorting and stacking are essential components of the delivery process.

The Privy Council, consisting of Lords Wilberforce, Diplock, Fraser, Scarman, and Roskill, unanimously reversed the High Court's decision. They applied the principles established in *New Zealand Shipping Co Ltd v. A. M. Satterthwaite & Co Ltd (The Eurymedon)*. They reasoned that the bill of lading brought into existence a bargain that was initially unilateral but became a full mutual contract when the stevedore performed the services for the benefit of the shipper/consignee.

The Privy Council emphasized that the commercial reality of the shipping industry must be prioritized over "pedantic" or "narrow" technical distinctions. They held that the carrier acted as the stevedore's agent in bargaining for the protection, and the stevedore provided valid consideration by performing the very act of discharging the goods, even if it was also bound to do so under a separate contract with the carrier.

The Privy Council held that the stevedore was entitled to the benefit of the Himalaya clause and the time bar, and because the suit was not brought within one year, it was dismissed. The final conclusion of this case

consolidated the "Eurymedon Doctrine" in international maritime law. It established that meticulously drafted clauses can extend the carrier's immunities to third parties like stevedores, provided they are acting "in the course of or in connection with" their employment by the carrier. This decision provided a higher level of commercial certainty and insurance predictability for port operations globally.

(iii) Chittagong Port Authority vs. M/S Hong Kong Shipping Lines & Ors, reported in LEX/BDHC/0174/1989:

Fact of the case: The dispute originated from an import transaction in August 1963, when M/s. Md. Haji Gani Ltd. commissioned the shipment of a substantial quantity of Soyabean Oil from the United States of America to the Chittagong Port in Bangladesh. The oil was shipped under two separate bills of lading, Nos. 35 and 36, dated August 30, 1963, representing 512 drums and 769 drums respectively. The vessel carrying the cargo was the S.S. Argo Ellas, owned and controlled by the first defendant, M/s. Hong Kong Shipping Lines. Upon arrival at the Chittagong Port Jetty, the cargo was discharged under the local agency of M/s. Maritime Agencies Ltd., the second defendant.

The core of the litigation arose when the representative of the importer attempted to take delivery of the consignments and discovered that 13 drums were missing out of which 3 from the first lot and 10 from the second. The non-delivery was formally notified to all concerned parties, and the Port Authority subsequently issued two short landing certificates. The resulting loss to the consignee was valued at Tk. 3,900. The cargo had been insured with the plaintiff, M/s. South British Insurance Co. Ltd., who indemnified the importer for the loss and thereafter filed a suit for the realization of the amount under a letter of subrogation.

The trial court decreed the suit against the shipowner (Hong Kong Shipping Lines) and its agent (Maritime Agencies Ltd.) while dismissing it against the Chittagong Port Authority (defendant No. 3). The lower appellate court, however, reversed this decision, holding the Port Authority liable and

dismissing the case against the shipping line and its agent. This prompted the Port Authority to file a second appeal.

Reasoning and Decision of the Court: The High Court Division's reasoning was anchored in two primary areas: the substantive liability of the Port Authority under the Chittagong Port Act and the procedural mandate of Section 109 of the same Act.The court first addressed the Port Authority's role as a statutory bailee. Under Section 50A of the Chittagong Port Act, 1914, the Port Authority is responsible for goods once they have landed and remain in its possession or control. Its liability in this capacity is governed by Sections 151, 152, and 161 of the Contract Act, 1872. However, the court observed that this general liability is subject to specific rules and schedules for the working of the port. Specifically, evidence showed that 209 drums of the consignment landed from the ship under nil or obliterated marks. Out of these 209 drums, only 54 were available in the jetty premises at the time of a joint checking, while 155 were unavailable.

Under Rule 64(f) of the General Rules and Schedules for Working of Chittagong Port (Railway) Jetties, the port administration is not responsible for goods landed under nil or wrong marks and is not liable for mis-delivery or loss of such cargo. Furthermore, Rule 64(g) specifies that if an owner fails to remove cargo from the jetty premises within seven clear working days of landing without fault on the part of the jetty administration, the goods remain at the owner's sole risk and expense. The court reasoned that since 54 nil-marked drums were still available, the consignee should have followed the "nil mark procedure" to identify and claim the 13 missing drums. Because the Port Authority had informed the owner of the situation and there was no fault on the part of the Port in locating the goods, the court held that the Port Authority was absolved from liability.

The second and more definitive pillar of the court's reasoning concerned Section 109(1) of the Chittagong Port Act, 1914. This section provides that no suit shall be brought against the Trustees (the Port Authority) until one month after a written notice has been delivered to their office, stating the cause of the suit and the name of the intending plaintiff.

The law explicitly mandates that "unless such notice is proved, the Court shall dismiss the suit".

The plaintiff-respondent argued that the Port Authority had waived the right to this defense by not raising it in the lower courts. The Supreme Court rejected this contention, affirming that the notice requirement is a mandatory statutory obstruction to the right to sue. It is a question of law that relates to the maintainability of the suit and can be raised at any stage, even in the court of last resort. Citing established precedent in *Trustees of Chittagong Port v. Sadharan Bima Corporation and others, reported in 32 DLR 99*, the court noted that the defendant is not even required to take up the defense of lack of notice, as it is not competent for any party to waive this mandatory requirement.

The High Court Division allowed the appeal, set aside the judgment and decree of the lower appellate court, and dismissed the suit against all defendants.

(iv) <u>Southampton Cargo Handling Plc v. Lotus Cars Ltd & Ors, reported in MANU/UKWA/0207/2000;</u>

Facts of the Case: In August 1994, the claimant, Lotus Cars Ltd, arranged for the export of 12 Lotus Esprit sports cars to Canada via the vessel *Rigoletto*, which was operated by Wallenius Lines. The cars were delivered in two batches to the Southampton docks. The first defendant, Southampton Cargo Handling (SCH), was the appointed cargo handler for Wallenius Lines and acted as the "receiving authority" at the port. When the cars arrived, SCH signed a "standard shipping note" prepared by Lotus. This note stated that the goods were received "subject to your published regulations and conditions," referring to the SCH Conditions of Business March 1992. Under these conditions, SCH accepted liability for loss if negligence was proven against them. The cars were then stored in a fenced and locked compound known as the Deep Sea Ro/Ro Terminal, which was owned and operated by the fourth defendant, Associated British Ports (ABP). SCH was a licensee of ABP and paid an annual fee of £25,000 for

the authority to carry out stevedoring operations. On the night of August 25/26, 1994, thieves cut through the compound's mesh fence and stole one Lotus Esprit car. The theft occurred approximately six days before the *Rigoletto* was scheduled to depart. Lotus sued both SCH and ABP for the value of the vehicle.

Reasoning and Decision of the Court: The Court of Appeal's reasoning focused on whether SCH and ABP were bailees and whether SCH could rely on a Himalaya clause in the Wallenius **bill of lading**.

SCH argued that they were not bailees because their possession of the car was merely as agents for Wallenius. They contended that control resided with the shipowner, not themselves. The court rejected this, holding that an independent contractor's agency is not incompatible with bailment. SCH had taken physical possession of the cars under a direct contract (the shipping note) and was therefore a bailee with a personal responsibility to take care of the cargo.

Furthermore, SCH sought to invoke the Himalaya clause (Clause 16) in the Wallenius bill of lading, which provided a total exclusion of liability. The court held this clause inapplicable for two reasons. First, by signing the shipping note and electing to receive the goods on their own standard terms, SCH had already chosen their contractual regime. Lord Justice Rix reasoned that where a sub-bailee speaks for themselves and defines the terms of their own willingness to accept possession, they are taken to have made a choice that overrides any potential inconsistent contract brought about indirectly through another party. Second, the bill of lading’s Clause 2 specifically stated that the carrier or its agents would not be liable for loss "during the period before loading". The court interpreted this not as an immunity for the adventure, but as a limitation of the carrier's responsibility. Since the theft occurred during pre-shipment storage, the Himalaya clause could not be activated to shield SCH.

Regarding ABP, the trial judge had initially exonerated them, finding they were merely "occupiers" who provided a license to SCH. The Court of

Appeal reversed this finding. Rix L.J. noted ten factors indicating ABP's control, including that ABP owned the compound, maintained the perimeter, provided the mobile security patrols through Shorrock Guards, and required the surrender of all compound keys every evening. The court concluded that ABP had voluntarily assumed possession or a duty of care as a bailee or sub-bailee. ABP was found negligent because the fencing was flimsy and they had failed to install more solid barriers (like concrete posts) despite their knowledge of general security risks at the docks.

The Court of Appeal dismissed SCH's appeal against its liability to Lotus but ordered ABP to contribute 60% of the damages, leaving SCH with a 40% share of responsibility. The final conclusion established that while a stevedore is liable under its own direct receiving terms, a port authority can also be held liable as a bailee if it exercises substantial control over the storage environment. The case emphasizes that a Himalaya clause is not a universal defense and can be superseded by direct contractual dealings between the cargo owner and the service provider.

(v) <u>Wilson vs. Darling Island Stevedoring & Lighterage Co. Ltd., reported in MANU/AUSH/0072/1956</u>

Fact of the case: In late 1953, the plaintiff, G.M. Wilson, arranged for the importation of one case of silk tulle from Marseilles to Sydney aboard the vessel *Tremayne*. The defendant, Darling Island Stevedoring & Lighterage Co. Ltd., was engaged by the carrier's agent to act as stevedore and to discharge, sort, stack, and store all of the vessel's cargo. It was common practice in the Port of Sydney for stevedores to handle and store cargo pending its removal by the consignee. On January 21, 1954, while the stevedores were in the process of sorting and stacking the silk tulle in the wharf shed at No. 9 berth, Woolloomooloo Bay, a mobile crane operated negligently by the defendant's servants struck and fractured the main pipe of the overhead water sprinkler system. As a result, water flowed onto the plaintiff’s goods, causing mildew and rot that rendered the silk tulle worthless. The total loss was agreed at £394 19s. 4d. **The bill of lading**

under which the goods were shipped contained a "Period of Responsibility" clause (Clause 1), which stated that the carrier would not be liable for loss or damage to the goods while in its custody before loading or after discharge, and that such goods were held at the "sole risk of the owners". The stevedore sought to rely on this clause to avoid liability for the negligence of its crane operator.*(Bold supplied)*

Reasoning and Decision of the Court: The High Court's reasoning was driven by a strict interpretation of the doctrine of privity, led by the judgment of Fullagar J.. The court first addressed the general principle that only parties to a contract can sue or be sued upon it. The contract of carriage was between the shipper (F. J. Hawkes & Co. Ltd.) and the shipowner (Peninsular & Oriental Steam Navigation Co.). The stevedore, was a "complete stranger" to this contract. He rejected the idea that a contract between two parties could, of its own force, relieve a third party from the consequences of a tortious act committed against one of the contracting parties.

Fullagar J. also critically analyzed the House of Lords decision in *Elder, Dempster & Co. Ltd. v. Paterson, Zochonis & Co. Ltd.* (1924), which the defendant had cited as a precedent for third-party protection. Fullagar J. contended that *Elder Dempster* was an anomalous exception confined to the unique relationship between shipowners and charterers. He argued that in *Elder Dempster*, the shipowner received the goods into his own ship and thus the "bailment upon terms" was made directly with him. This, he reasoned, did not apply to a stevedore who was merely hired to perform a specific service on a wharf.

The court further emphasized that "vicarious immunity" is not a recognized common law principle. Even though the parties contemplated that the carrier would perform its obligations through servants or independent contractors, this did not mean those third parties became parties to the contract or inherited the carrier’s exemptions. The court noted that provisions excluding liability for negligence must be construed strictly and

should not be extended to anyone who is not clearly a party to the agreement.

The High Court ruled in favor of the plaintiff, entering judgment for the full value of the damaged goods. The *Wilson* decision reaffirmed the doctrine of privity in Australian law and demonstrated that stevedores could not shelter behind limitation clauses **in bills of lading** to which they were not parties.*(Bold supplied)*

(vi) <u>The Catur Samudra, [2010]SGHC 18:</u>

Fact of the case: The dispute in *The "Catur Samudra"* arose from a complex sale andleaseback arrangement involving several corporate entities under the Humpuss Group umbrella, an Indonesian conglomerate. The Plaintiff was the registered owner of the vessel *Mahakam*. On 11 December 2007, the Plaintiff purchased the *Mahakam* from Heritage Maritime Ltd, SA ("Heritage") for a total consideration of US$67 million. On the same day, pursuant to a Bareboat Charterparty ("Bareboat C/P") under an amended BARECON 2001 form, the *Mahakam* was leased back by the Plaintiff to Heritage for a period of 60 months. A critical component of this commercial transaction was the provision of security for the charterhire payments. It was a condition precedent under Clause 36 of the Bareboat C/P that PT Humpuss Intermoda TransportasiTbk ("HIT"), the parent company, execute a guarantee in favor of the Plaintiff to secure the due performance and payment of Heritage's obligations. Without this guarantee, the Plaintiff would not have entered into the chartering agreement. Under the terms of the Bareboat C/P, Heritage was obligated to pay charter hire at US$38,500 per day, maintain and repair the vessel, and keep the vessel insured. The charterparty proceeded without significant incident until April 2009, when Heritage defaulted on the charterhire payments. On 22 June 2009, following a sustained period of non-payment, the Plaintiff issued a notice to terminate the Bareboat C/P. The *Mahakam* was redelivered to the Plaintiff on 23 June 2009. Following the default, the Plaintiff embarked on an extensive global litigation strategy to recover outstanding charterhire and damages, which

totaled approximately US$30,777,566.44. This multi-jurisdictional approach illustrates the complexities of modern maritime debt recovery. In May 2009, the Plaintiff commenced an action in New York against Heritage and HIT seeking damages for breach of the Bareboat C/P. They initially obtained an ex-parte order to restrain Heritage and HIT from dealing with property in the hands of garnishee banks, a mechanism known as a Rule B Order. However, following the Second Circuit Court of Appeals decision in *Shipping Corporation of India v Jaldhi Pte Ltd*, which held that Rule B Orders could not attach electronic fund transfers in intermediary banks, the New York order was set aside in December 2009. A similar Rule B Order obtained in Connecticut remained in place. On 12 June 2009, the Plaintiff arrested the *Mahakam* in Malaysia in respect of their claim against Heritage under the Bareboat C/P. The vessel was released on 24 June 2009 after redelivery was finalized. The parties agreed that the substantive claim under the Bareboat C/P would be referred to arbitration in London pursuant to the contract's dispute resolution clauses. The Plaintiff served Points of Claim in the London arbitration on 31 August 2009.Seeking more effective security against the parent company, the Plaintiff arrested the *Catur Samudra* in Singapore on 5 September 2009. It was undisputed that HIT was the owner of the *Catur Samudra*. The Plaintiff's invocation of admiralty jurisdiction in Singapore was founded on two primary assertions: that their claim under the guarantee fell within Section 3(1)(h) of the HCAJA as a claim arising out of an agreement relating to the use or hire of a vessel, and that HIT was in possession or control of the *Mahakam* at the time the cause of action arose.

Reasoning and Decision of the Court: The court identified two distinct connecting phrases within Section 3(1)(h): "arising out of" and "relating to". The Plaintiff argued for a broad and liberal construction, leaning heavily on the "arising out of" limb. They cited *The Antonis P Lemos* AC 711, where the House of Lords held that "arising out of" should be given a wide meaning of "connected with" rather than the narrower "arising under," thereby encompassing claims in tort as well as contract.

However, the court noted that while "arising out of" might broaden the types of claims (e.g., tortious negligence by a sub-sub-charterer), the second phrase"relating to"restricts the types of agreements that can ground jurisdiction. The court emphasized that the **agreement itself** must have a direct nexus to the maritime activity of using or hiring a ship. *(Bold supplied)*

The court determined that the guarantee provided by HIT was strictly a collateral contract for financial protection. It was not an agreement that was intrinsically related to the use or hire of the *Mahakam*. The sole purpose of the guarantee was to protect the Plaintiff against the risk of default by Heritage.

The High Court ultimately concluded that the Plaintiff had wrongly invoked the admiralty jurisdiction of the court against the *Catur Samudra*. The Plaintiff failed to satisfy the "Subject Matter" limb under Section 3(1)(h) because the guarantee was a collateral financial contract lacking a direct connection to the ship's use or hire.

8. Thus, the plaintiff, relying on the decisions cited by them, submits that the facts of the instant suit squarely attract the admiralty jurisdiction of this Court. On the other hand, the defendants, relying on the authorities cited by them, contend that even if the fire incident that occurred at the BM Container Depot may give rise to liability in tort or negligence, such claim is triable before the ordinary civil or commercial court and not before this forum exercising admiralty jurisdiction.

9. Upon perusal of the decisions cited by the respective parties, it appears that the authorities originate from different forums, inasmuch as some of the decisions at the first instance were rendered by Admiralty Courts, while others were delivered by ordinary civil or commercial courts.

9.1 However, a more comprehensive, though not exhaustive, exposition of the types of claims ‘which’ “arise out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship” and “which are

not" may be found in the authoritative work *Admiralty Jurisdiction and Practice* (4th edition, Informa) by Nigel Meeson and John A Kimbell.The relevant discussion has been encapsulated in Chapter 2, paragraphs 2.75, 2.76 and 2.77, which read as follows:

(h)Any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship

2.75 The language of this sub-paragraph is wide enough to cover claims, whether in contract or in tort arising out of any agreement relating to the carriage of goods in a vessel, and it is not necessary that the claim in question be directly connected with some agreement for the carriage of goods in a ship or for the use or hire of a ship or that the agreement be one made between the two parties to the claim. The phrase "arising out of" is in this context to be given the broader meaning of "connected with" and not the narrower meaning of "arising under". However, a claim will only fall within this head of jurisdiction if the claim arises out of an agreement relating to carriage in a particular vessel, and it does not cover claims relating to carriage in unidentified vessels.

2.76 As well as claims obviously within this head, such as claims for damages for breach of a charterparty, freight and demurrage and damages for breach of a bill of lading contract, it is also wide enough to cover the following:

(i) a claim in negligence brought by sub-sub-charterers against shipowners for costs and expenses incurred as a result of the vessel having loaded so much cargo that she exceeded the permitted arrival draughts at her discharge port;

(ii) a claim in negligence or deceit for the ante-dating of bills of lading;

(iii) a claim under an agreement for the mooring and unmooring of a vessel;

(iv) a claim against salvors under an agreement for salvage services;

(v) a claim by stevedores,

(vi) a claim for damages for breach of a towage contract;

(vii) a claim for an indemnity against shipowners under a towage contract for the loss of a tug;

(viii) a claim for the wrongful detention of goods;

(ix) a claim for contribution or indemnity under the Civil Liability (Contribution) Act 1978 arising out of a contract for the carriage of goods in a ship,

(x) a claim for damages for negligent misstatement by the master to sub-voyage charterers as to the cargo capacity of the ship.

It is probably wide enough to cover a claim under a management agreement providing that the managers were solely entitled to enter into charterparties for the owners.

2.77 However, it is not wide enough to cover the following:

(i) a claim for breach of an undertaking by shipowners to use their best endeavours to ensure that cargo owners provide salvage security before the cargo is released;

(ii) a claim for non-payment of container hire under a container leasing agreement;

(iii) a claim for non-payment of insurance premia on a policy over goods to be carried by sea;

(iv) a claim by brokers for commission under a charterparty;

(v) a claim by brokers for commission under a sale and purchase agreement for a ship;

(vi) a claim for demurrage under a contract to load a ship within a specified time,

(vii) a claim for demurrage under a cif contract;

(viii) a claim for rent of land used as a container handling terminal;

(ix) a claim for fees payable under a priority berthing license;

(x) a claim upon an arbitration award made under an arbitration clause in a charterparty.

9.2 As it is the specific case of the plaintiff that the present claim arises out of and gives rise to "a claim relating to the carriage of goods in a ship", and not a claim "relating to the use or hire of a ship," our consideration shall be confined to that limb of the provision alone.

From a careful examination of the decisions cited by the respective parties, as well as from the relevant discussion contained in the aforesaid authoritative work, it becomes evident that a common thread runs through all these authorities. In order to fall within the scope of **"any claim"** under this head of admiralty jurisdiction, such claim must necessarily arise out of **"any agreement"** which bears a **real and reasonably direct connection with the carriage of goods by a ship**. In other words, the existence of an agreement and its nexus with the process of maritime carriage constitutes the essential jurisdictional foundation for bringing a claim within the ambit of admiralty jurisdiction under this category. (*Bold supplied*)

As is evident from the decisions cited on behalf of the plaintiff, in each of those authorities there existed a clearly identifiable contractual framework directly connected with the carriage of goods by sea. For instance, in the case of *The Antonis P. Lemos*, there was both a charterparty as well as a contract of carriage; in the *Heilbrunn* case, there existed an agreement for loading the cargo coupled with a bill of lading; and in the *Scindia* case, there was a contract of carriage along with a bill of lading which had been drawn, though not formally issued.

So far as the *Scindia* case (*supra*) is concerned, it appears that the action was brought by the seller against the shipowner under a contract of sale on **FOB, London** terms. Under the terms of that contract, the property in the goods did not pass to the buyers at the relevant time. In that context, the Court examined the contractual relationship surrounding the shipment. However, having regard to the particular factual matrix of that case, in my considered view the said decision does not materially advance or assist the case of the present plaintiff. (*Bold supplied*)

Additionally, the authority arose in situation where the cargo had already come within the operational control of the carrier and the loading process had commenced in connection with a specific maritime voyage. In that context the court held that the contract of carriage may extend to the loading operations even before the formal issuance of the bill of lading.

Here the alleged loss occurred within an inland container depot before the commencement of any maritime loading operation and before the cargo came within the control of any vessel or shipowner. The principal defendants against whom relief have been sought in the present suit are the depot and its authority rather than carriers and shipowners which is also evident from paragraph no. 25 of the plaint.

9.3 At this stage of the order, this Court considers it useful to examine certain other decisions, particular reference to which has been made in the case of *The "Catur Samudra"*.

In *The "Catur Samudra"* reference has been made in paragraph no.42 of the case of *Port of Geelong Authority v The Bass Reefer* (1992) Federal Court Reports 374 ("The Bass Reefer") which runs as follows:

> **42.** The Australian approach of the "direct connection" test in *Port of Geelong Authority v The Bass Reefer* (1992) Federal Court Reports 374 ("The Bass Reefer") is instructive. In that case, the plaintiff port authority entered into a leasing agreement with the defendant shipowner. Under the agreement, the plaintiff agreed to provide some

land for the defendant's ships to handle container cargo and a priority berthing licence to the defendant. The plaintiff brought an *in rem* claim against the defendant's ship for outstanding fees under the agreement. The court held that both claims fell outside the ambit of the equivalent s 3(1)(h). It held at 381 to 382.

> I ask myself, therefore, whether the agreement for lease in this case relevantly relates to the carriage of goods by the defendant ship or to its use or hire. I apply the test as to whether there is a strong argument for the existence of a reasonably direct connection between either of these agreements and those activities. I am satisfied that there is not. So far as connection with the carriage of goods by the defendant ship, it is not unreasonable to bear in mind that the decision in Gatoil rejected the contention that the contract of insurance of goods so carried was sufficiently connected. In the present case, so far as the lease is concerned, its purpose and effect, as previously indicated, was to provide a conveniently close area for the receipt of cargo from the ship and the assembly of cargo to be taken on board the ship. It might conceivably be said that these procedures had a connection with the operations of loading and unloading cargo to and from the ship. I express no concluded view as to that. However, I am satisfied that there is no reasonably direct connection between them and the actual carriage of goods by the ship. There is even less connection, in my view, between those activities and the use or hire of the ship. The licence agreement, the main feature of which was to provide priority berthing for the ship at the nominated berth has, in my opinion, no reasonably direct connection with the carriage of goods by the ship. Although the licence agreement has the effect of providing a regular berth for the ship, the effect of this is to provide a facility, at best, for use by the ship. It does not have any significant connection with the use of the

ship itself. Finally, I can see no significant connection between the licence agreement and the hire of the ship.

9.4. It also appears useful to refer to another decision, namely *Petrofina S.A. v. AOT Ltd.*, MANU/UKWQ/0024/1990: [1991] 3 All ER 161:

In Petrofina S.A. v AOT Ltd., the dispute arose out of a **cif sale contract** for 50,000 tons of fuel oil shipped from Odessa to Fiumicino. The sellers began arbitration claiming about US$57,000 as demurrage allegedly due under the cif contract. The cif contract provided for laytime and stated that demurrage, if any, would be payable **"as per C/P rate terms and conditions."** The charterparty of the carrying vessel, *Maersk Nimrod*, contained a 90-day time bar clause for demurrage claims. The buyers argued in arbitration that this time bar was incorporated into the cif contract and therefore the sellers' claim was out of time. The arbitrators rejected that argument and held that the time bar clause was not incorporated. The buyers then sought leave to appeal, but the sellers contended that the parties had already entered into an exclusion agreementbarring appeals. The buyers replied that such an exclusion agreement was ineffective because the claim fell within the Admiralty jurisdiction of the High Court. (*Bold supplied*)

The main issue before Phillips Jwas therefore not the demurrage point itself, but a prior jurisdictional question: **did the sellers' demurrage claim fall within Admiralty jurisdiction** under section 20(2)(h) of the Supreme Court Act 1981 as **"any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship"**? If yes, the pre-arbitration exclusion agreement would be ineffective; if no, the exclusion agreement would stand and the court would have no jurisdiction to grant leave to appeal. (*Bold supplied*)

The buyers' arguments were threefold. First, they argued that the **cif contract itself** was an agreement relating to the carriage of goods in a ship. Second, in the alternative, they argued that even if the whole cif contract was too broad, the demurrage part of the cif contract could be severed and treated

as a separate agreement relating to carriage by sea. Third, they argued that the claim also **arose out of the charterparty**, since the cif contract adopted the charterparty's demurrage rate, terms, and conditions. They relied on authorities such as *The Antonis P Lemos*to argue that a claim may arise out of an agreement even if the claimant is not suing directly on that agreement.(*Bold supplied*)

The sellers' arguments were the opposite. They accepted that the claim arose out of the cif contract, but denied that the cif contract was an agreement "relating to the carriage of goods in a ship" in the statutory admiralty sense. They also argued that the claim did not arise out of the charterparty, because the sellers were not suing on the charterparty at all; the charterparty merely supplied the rate and computational terms for demurrage. Their position was that the claim was simply an **ordinary commercial claim under a cif sale contract**, not an admiralty claim. (*Bold supplied*)

On the question of the cif contract, Phillips J held that a cif contract is fundamentally a contract of sale, not an agreement relating to carriage by sea in the required admiralty sense. Although one part of a cif seller's obligation is to procure a contract of carriage, carriage is not the central matter of the cif contract. The judge accepted that a cif contract may in a broad sense touch upon sea carriage, but held that the statutory phrase requires a **more direct relationship**. Relying particularly on *Gatoil*, he held that the connection must be **"reasonably direct"**, not merely indirect or incidental. Accordingly, the **whole cif contract** did not fall within section 20(2)(h). (*Bold supplied*)

On the question of severance, the judge accepted in principle that one part of a wider contract may be looked at separately if that part can itself amount to an agreement within the admiralty head. So, as a matter of principle, severance was possible. But that did not help the buyers on the facts. The judge held that the **demurrage clause in the cif contract** was still not an agreement relating to carriage of goods in a ship. At most, it was an

agreement relating to delay in discharge and payment consequences flowing from that delay. He considered *The Zeus* especially important: there, an agreement involving payment of demurrage for delay in loading was held not to be an agreement relating to the use or hire of a ship. Phillips J treated that reasoning as applicable here and concluded that the **demurrage arrangement in the cif contract** did not satisfy paragraph (h). (*Bold supplied*)

On the argument that the claim arose out of the charterparty, the judge rejected it. He accepted that the authorities do not provide a rigid definition of "arising out of," but held that, giving ordinary meaning to the words, the sellers' claim did not arise out of the charterparty. It arose out of the **cif contract**, and more particularly the demurrage undertaking contained in that contract. The charterparty was relevant only because it supplied the rate and possibly other computational terms. That was not enough to transform the claim into one arising out of the charterparty itself. (*Bold supplied*)

Accordingly, the decision was that the sellers' demurrage claim did not fall within the Admiralty jurisdiction of the High Court.

The essence of the decision is that a claim does not become an admiralty claim merely because it is commercially connected with a maritime transaction. The agreement sued upon must have a **reasonably direct connection** with the **carriage of goods in a ship** or the **use/hire of a ship**. A **cif sale contract**, and even a demurrage provision inside it, may still remain essentially part of a **sale contract**, not a maritime contract for admiralty purposes. Likewise, merely borrowing a demurrage rate or terms from a charterparty does not mean the claim arises out of the charterparty. (*Bold supplied*)

9.5 The decision in *Petrofina* (supra) is significant inasmuch as in the present suit the sale contract was on "FOB, Chattogram" terms and after completion of export formalities the cargo was stuffed into containers and stored at the premises of BM Container Depot Ltd. awaiting shipment by sea when the fire occurred, and, unlike the cited decisions, there exists no

charterparty, no finalized contract of carriage, and no bill of lading. It is significant to note that in *Petrofina S.A. v. AOT Ltd.* [1991] 3 All ER 161 the transaction in question arose out of a CIF sale contract linked with a charterparty. Even in that context the Court held that the claim did not arise out of an agreement relating to the carriage of goods by a ship within the meaning of the admiralty jurisdiction. The Court emphasized that the agreement relied upon must bear a reasonably direct connection with the carriage of goods by sea. The same principle was reiterated in *Port of Geelong Authority v. The "Bass Reefer"* (1992) 37 FCR 374 where it was held that agreements which merely provide facilities or services connected with maritime trade, but lack a reasonably direct connection with the actual carriage of goods by a ship, fall outside the ambit of admiralty jurisdiction. In the present case the connection is even more remote. The sale contract was on 'FOB, Chattogram' terms and, unlike the authorities cited earlier, there exists neither a charterparty nor a concluded/finalized contract of carriage nor even a bill of lading; the only documents relied upon are (i) two unsigned 'shipping order' [print date 08.11.2022 whereas the fire incident took place on 04.06.2022] which was an instrument to transport goods from Lalbag, Dhaka to BM Depo, (ii) 10 nos. of Ocean/Combined Transport Bill of Ladings which were dated 06.06.2022 & 10.06.2022 whereas fire incident took place on 04.06.2022 which suggests on or before the fire incident there was no bill of landing. In such circumstances it becomes difficult to hold that the present claim against BM Container Depot, which provided off-dock facility prior to issuance of a bill of lading, arises out of an agreement relating to the carriage of goods by a ship so as to attract the admiralty jurisdiction of this Court.

Furthermore, in the absence of a charterparty, bill of lading or concluded/finalized maritime contract, the relationship between the cargo owner and the depot operator is more appropriately characterized as one of bailment, whereby the depot operator acts as a bailee for reward and owes a duty to exercise reasonable care over the goods in its custody. A similar approach was adopted by the High Court Division in *Chittagong Port*

Authority vs. M/s Hong Kong Shipping Lines & Ors, reported in LEX/BDHC/0174/1989: 41 DLR 332.

9.6 In view of the discussions made hereinabove, this Court finds that the plaint does not disclose any maritime claim within the meaning of section 3(2)(h) of the Admiralty Court Act, 2000 so as to invoke the admiralty jurisdiction of this Court. So far as the facts of the instant suit are concerned, the alleged liability of BM Container Depot, if any, arises out of matters which are essentially non-maritime in nature and are, therefore, amenable to adjudication by a competent ordinary civil or commercial court. Consequently, this Court is of the view that the present suit is not maintainable in its admiralty jurisdiction.

10. Accordingly, the application filed by the defendant nos.1-2 for return of plaint is allowed. Hence, the plaint is returned to the plaintiff under Order VII Rule 10 of the Code of Civil Procedure for presentation before the court of competent jurisdiction.

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(Sikder Mahmudur Razi, J:)