



2026 INSC 1055

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2026
(Arising out of SLP (C) No. 23834 OF 2026)**

Owners and Parties Interested in
M.V. Nereus Progress

... Appellant

Versus

Om Freight Forwarders Ltd.

... Respondent

JUDGMENT

SURYA KANT, CJI

Leave granted.

- 2.** The instant appeal preferred by the registered owner of the vessel *M.V. Nereus Progress* is directed against the Judgment dated 30.04.2026 (**Impugned Judgment**) passed by a Division Bench of the High Court of Madras (**High Court**) whereby the Order dated 06.02.2026 passed by a learned Single Judge of the High Court (**SJ Order**) was affirmed and the arrest of the Appellant's vessel, *M.V.*

Nereus Progress (**the Vessel**) has been sustained.

3. The fulcrum of the dispute herein lies in respect of the continued arrest of the Vessel, effected at the instance of the Respondent, in exercise of the admiralty jurisdiction of the High Court. Before advertng to the respective contentions of the parties, we deem it appropriate to briefly narrate the factual background leading to the present appeal.

A. FACTUAL MATRIX

4. The instant controversy arises out of conflicting claims pertaining to the Vessel between the Appellant — the registered owner of the Vessel, and the Respondent — a creditor of Nereides Marine Services (**Nereides**). Nereides was the erstwhile demise charterer of the Vessel under a charterparty with the Appellant.

- 4.1 By way of a Bareboat Charterparty dated 03.10.2024 (**BBC**), executed on the BIMCO BARECON 2017 Form, the Appellant let out the Vessel on demise charter¹ to Nereides, a UAE-based shipping operator. Contemporaneously, and independent of the aforesaid transaction, the Respondent, under a separate Bareboat Charterparty dated 24.07.2024 (**Respondent's BBC**), had also let out its own vessel, *M.V. Bharadwaj*, to Nereides.

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.

4.2 It appears that Nereides repeatedly failed to discharge its payment obligations towards the Appellant under the BBC. This led to the issuance of a series of demand notices by the Appellant between 22.09.2025 and 27.10.2025, calling upon Nereides to clear the outstanding dues.

4.3 The defaults having continued, the Appellant issued the Anti-Technicality Notice dated 06.11.2025, granting Nereides a three-day grace period to regularise the default. Upon expiry of the said period, the Appellant issued a Termination Notice dated 13.11.2025 (**Termination Notice**), invoking Clause 31 of the BBC and calling upon Nereides to disclose the whereabouts of the Vessel and to place it at the Appellant's disposal. This was followed by a Repossession Notice dated 19.11.2025, issued under Clause 32 of the BBC, whereby the Appellant asserted its right to repossess the Vessel upon its berthing at Colombo, Sri Lanka.

4.4 In the subsequent communications exchanged between the Appellant and Nereides between 20.11.2025 to 28.11.2025, the Appellant was informed that the Vessel was in the vicinity of the Indian coast and was experiencing a technical issue with its engine. Thereafter, on 02.12.2025, Nereides informed the Appellant that the Vessel had reached Tuticorin, and sought instructions

regarding redelivery at the V.O. Chidambaranar Port, Tuticorin (**Tuticorin Port**), within the next three to four days.

4.5 Parallely, it appears that Nereides had also defaulted in the payment of hire due to the Respondent under their Bareboat Charterparty dated 24.07.2024. This led the Respondent to institute Commercial Suit No. 314/2025 before the High Court, invoking Section 5(1)(b) read with Section 5(2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (**Admiralty Act**). The Respondent, whose maritime claim had arisen from Nereides' default under a separate charter of M.V. Bharadwaj, sought arrest of the Vessel on the footing that Nereides continued to be its demise charterer as well, rendering the Vessel liable *in rem*, by way of sister-ship arrest under Section 5(2) of the Admiralty Act.

4.6 Before the Appellant could complete the taking of physical possession of the Vessel at Tuticorin, in terms of its communication dated 02.12.2025 with Nereides, the Respondent, on 04.12.2025, obtained an *ex-parte* interim order of arrest of the Vessel, lying at Tuticorin Port, on the assertion that Nereides continued to be the demise charterer of the Vessel.

4.7 Upon learning of the arrest, the Appellant preferred an application before the High Court seeking recall of the Order dated 04.12.2025.

After hearing the parties, the learned Single Judge, by way of the SJ Order, dismissed the application, sustained the arrest and held that the Respondent had made out a *prima facie* case for the continuation of the arrest. In doing so, reliance was placed on the decisions of the Singapore High Court in ***The Chem Orchid***² and the Sri Lankan Court of Appeal in ***Navi-Bunkering Corp v. M.V. Evangeli***³ (***Navi-Bunkering Corp***), holding that a demise charterer's status under the bareboat charter does not stand extinguished merely upon issuance of a termination or repossession notice, and continues until actual physical repossession of the vessel is handed over to the owner.

4.8 The aggrieved Appellant preferred an appeal before the Division Bench of the High Court. *Vide* the Impugned Judgment, the Division Bench dismissed the appeal and refused to vacate the arrest, reiterating the findings in the SJ Order that ordinarily a demise charter does not cease to operate immediately upon its contractual termination, and as such physical re-delivery is generally required to bring that status to an end.

4.9 It is in these circumstances that the Appellant has approached this Court by way of the instant appeal.

² [2015] SGHC 50

³ CA Case No. CA/REM/02/2018

B. CONTENTIONS ON BEHALF OF THE APPELLANT

5. Shri Atmaram Nadkarni and Shri Shikhil Suri, learned Senior Counsel, appearing on behalf of the Appellant, submitted that the Impugned Judgment proceeds on a fundamentally erroneous premise that the Respondent has an enforceable maritime claim against the Vessel in view of the fact that Nereides continued to be the demise charterer of the Vessel. The arrest of the Vessel, sustained on such a misguided foundation, is consequently unsustainable in law.
6. The following submissions were advanced on behalf of the Appellant to assail the Impugned Judgment:
 - a. The Appellant was neither impleaded as a party to the suit nor issued any notice or afforded an opportunity of hearing before the learned Single Judge passed the order for arrest of the Vessel.
 - b. The Respondent does not possess any maritime claim, either against the Vessel or against the Appellant. The arrest was founded on the misconceived notion that Nereides continued to be the demise charterer of the Vessel, and that the Respondent consequently held a maritime claim enforceable against the Vessel.

- c.** Section 5(1)(b) of the Admiralty Act imposes a twin requirement for a valid arrest: **(i)** the demise charterer must be liable for the claim; and **(ii)** it must continue to be the demise charterer of the vessel when the arrest is effected. In the instant case, the second limb stood unfulfilled, as the demise charterparty between the Appellant and Nereides had already been terminated before the arrest was effected on 04.12.2025.
- d.** The BBC between the Appellant and Nereides, executed on the BIMCO BARECON 2017 form, under Clause 31 expressly entitled the Appellant to terminate the charter upon default in payment of hire. Clause 32 further provided that after such termination and pending physical repossession, the charterer would hold the Vessel only as a gratuitous bailee for the owner, and not as a demise charterer.
- e.** The Appellant had invoked Clause 31 as early as 13.11.2025, while contemporaneously following up with Nereides regarding the Vessel's whereabouts. This was followed by the issuance of a repossession notice dated 19.11.2025, wherein the Appellant sought repossession of the Vessel upon its berthing at Colombo. The Vessel, however, did not arrive at Colombo; instead, the Appellant was informed of the Vessel's arrival at Tuticorin Port on 02.12.2025. Thereafter, within less than 48

hours thereof, i.e. on 04.12.2025, the Respondent obtained the *ex-parte* order of arrest even before the Appellant could complete the process of physical repossession already set in motion.

- f.** The High Court failed to consider that at no stage did the Appellant permit Nereides to ply the Vessel commercially after the termination, and the Appellant acted with due promptitude upon the default having occurred.
- g.** The judgment of the Federal Court of Australia in ***Programmed Total Marine Services Pty Ltd. v. The Ships Hako Fortress, Hako Endeavour, Hako Excel and Hako Esteem***⁴ (***The Hako Fortress***), squarely applies to the facts at hand, wherein it was held that a termination clause of this nature is capable of operating of its own force, independent of the owner's physical repossession of the vessel. Reliance was also placed on the judgment of the Court of First Instance, Hong Kong in ***Gulf Marine and Industrial Supplies Inc v. Demise Charterers of the Ship or Vessel Mv 'Trident Dawn'***⁵ (***Mv 'Trident Dawn'***), wherein the Court categorically

⁴ [2013] FCAFC 21

⁵ [1992] HKEC 460

noted that the recovery of possession from the charterer is not crucial to the termination of the charterparty.

- h.** The High Court, in the Impugned Judgment, neither considered nor distinguished the aforesaid judgment, nor furnished any independent reasoning in support of the contrary view it adopted. A substantial body of case law from various common law jurisdictions, supporting the Appellant's position that a termination clause may operate independently of physical repossession, was placed before the High Court, which it failed to deal with altogether.
- i.** In any event, the decisions relied upon by the High Court, namely ***The Chem Orchid (Supra)*** and ***Navi-Bunkering Corp (Supra)***, arose on materially different facts and were, therefore, not applicable to the dispute at hand.
- j.** The continued arrest of the Vessel, being unsustainable in law for the reasons aforestated, is causing grave and irreparable loss to the Appellant, who is being kept out of the use and disposal of its own property.

C. CONTENTIONS ON BEHALF OF THE RESPONDENT

- 7.** *Per contra*, Shri Ashwin Shanker, learned counsel appearing on behalf of the Respondent, opposed the Appellant's submissions and

contended that the Impugned Judgment does not warrant any interference.

8. Shri Shanker canvassed the following submissions in support of the Impugned Judgment:

a. At the outset, the Appellant is not a necessary or proper party to the proceedings before the High Court. The right to arrest a vessel under the Admiralty Act is a statutory right *in rem*, and in enforcing that right, the Respondent was not obligated to implead the owner or the bareboat charterer of the vessel as a party to the suit. The arresting party's claim is against the vessel, and it is not concerned with the arrangement *inter se* between the owner and the charterer.

b. The BBC between the Appellant and Nereides was never terminated. Nereides continued, at all material times, to exercise firm control over the Vessel and to employ it commercially. Hence, the conduct of the parties is wholly inconsistent with the Appellant's claim of termination and repossession.

c. On the merits, the Respondent has made out a *prima facie* and reasonably arguable case for the arrest of the Vessel. Under Section 5(1)(b) of the Admiralty Act, an order of arrest may be

made where the Court has *reasons to believe* that the demise charterer is liable for the claim when the maritime claim arose and remains either the demise charterer or the owner when the arrest is effected.

- d.** In the present case, the learned Single Judge was called upon only to determine, *prima facie*, whether Nereides was the demise charterer, or whether the Appellant had resumed the status of owner in possession, at the time of the arrest. Upon appreciating the documents, correspondence and conduct of the parties, the High Court correctly rejected the Appellant's contention that Nereides was holding the Vessel merely in the capacity of a gratuitous bailee.
- e.** In any event, whether Nereides held the Vessel as a gratuitous bailee, as opposed to a demise charterer, at the relevant time is a mixed question of fact and is subject to trial. Such issues ought not to be resolved in summary proceedings for recall of the arrest order.
- f.** The High Court correctly held that physical re-delivery and repossession are essential to the termination of a bareboat charterparty, and rightly placed reliance on ***The Chem Orchid (Supra)*** and ***Navi-Bunkering Corp (Supra)*** for that proposition.

- g.** Even assuming, without admitting, that physical repossession is not a precondition for termination, the burden lay upon the Appellant to establish both that the Bareboat Charter stood terminated and that Nereides was holding the Vessel only as a gratuitous bailee. The Appellant has failed to discharge this burden on either count.

D. ISSUES FOR CONSIDERATION

- 9.** Having regard to the rival submissions, we find that the following principal issues arise for our consideration:

- (a) Whether the termination of the BBC by the Appellant *vide* the Termination Notice dated 13.11.2025 was proper and valid?
- (b) If so, whether Nereides continued to be the demise charterer of the Vessel as on the date of the arrest, i.e., 04.12.2025, *sans* physical repossession of the Vessel by the Appellant?

E. ANALYSIS

E.1. Whether the termination of the BBC by the Appellant vide the Termination Notice dated 13.11.2025 was proper and valid?

- 10.** It was contended on behalf of the Appellant that Nereides was in continuing default of payment of hire under the BBC. Repeated demand notices were issued calling upon Nereides to clear the outstanding dues, including Notices dated 22.09.2025, 24.09.2025

and 27.10.2025, but no payment was made pursuant to any of them.

11. Having exhausted the remedial measures, the Appellant issued the Anti-Technicality Notice dated 06.11.2025, granting Nereides a further grace period of three (3) banking days to regularise the default. It was only upon expiry of the said grace period that the Appellant issued the Termination Notice on 13.11.2025 invoking Clause 31(a)(i) of the BBC. Thus, according to the Appellant, the termination was preceded by due compliance with every contractual pre-condition and was, in the circumstances, entirely proper and valid.

12. *Contrarily*, the Respondent, although not disputing the existence of a contractual right of the Appellant to terminate its BBC with Nereides, submitted that the Termination Notice itself could not be treated as a clean and final termination. The Respondent relied on the conduct of the parties to contend that Nereides continued to exercise firm control over the Vessel and to use it commercially, which is wholly inconsistent with the Appellant's claim of termination and repossession.

13. Before we proceed to analyse the rival contentions urged on this issue, it would be apposite to briefly note the nature of the contractual instrument under which the Vessel came to be

chartered. The BBC dated 03.10.2024 was executed on the BIMCO BARECON 2017 form, a standard form bareboat charterparty published by the Baltic and International Maritime Council (**BIMCO**). The BIMCO BARECON 2017 form is widely adopted in the shipping industry for the demise chartering of vessels, which incorporates standardised clauses governing hire, default, termination and repossession, besides such special provisions as the parties may append thereto by way of rider clauses.

- 14.** It is on the strength of this contractual framework that the Appellant terminated the charter *vide* the Termination Notice. Clause 31(a) of the BBC, insofar as relevant, reads as under:

“31. *Termination*

(a) *Charterers’ Default*

*The **Owners shall be entitled to terminate this Charter Party by written notice to the Charterers under the following circumstances** and to claim damages including, but not limited to, for the loss of the remainder of the Charter Party:*

(i) **Non-payment of hire** (see Clause 15(Hire)) ...”

[Emphasis Supplied]

- 15.** We have also perused the earlier correspondence exchanged between the Appellant and Nereides, which bears out a clear and continuing default in payment of hire. By its formal demand notices dated 22.09.2025 and 24.09.2025, the Appellant called upon Nereides to clear arrears aggregating to USD 696,500, expressly

reserving its right to terminate the BBC in the event of continued default. Despite a phased repayment proposal made by Nereides on 24.09.2025, no actual payment was forthcoming, prompting the Appellant to reiterate its demand on 27.10.2025, and placing Nereides on express notice of its continuing right to terminate.

- 16.** Upon this persisting default, the Appellant, on 06.11.2025, issued the Anti-Technicality Notice granting Nereides a grace period of three (3) banking days to rectify the breach of the BBC and to regularise the payment, failing which the Appellant would exercise its right to withdraw the Vessel and terminate the Charterparty.
- 17.** It is not in dispute that no payment was made by Nereides within the grace period so afforded. Upon the expiry of the said period, the Appellant issued the Termination Notice expressly invoking Clause 31(a)(i) of the BBC for non-payment of hire, and, in the alternative, treating Nereides' conduct as repudiatory of the BBC. The sequence borne out by the record thus establishes that the Appellant did not resort to termination abruptly or without notice, but only after affording Nereides successive opportunities, spanning nearly two months, to cure the admitted default.
- 18.** Significantly, at no stage in its correspondence did Nereides dispute the factum of its default in payment of hire, nor did it contend that the Anti-Technicality Notice or the grace period thereunder was in

any manner non-compliant with the terms of the BBC. In fact, in its communication dated 14.11.2025, Nereides candidly acknowledged the notice of termination, and sought a further extension of one month, expressly assuring that, failing payment within the extended period, it would “*accept and abide by the owners’ decision regarding termination*” and arrange for an orderly handover of the Vessel. In our view, this unequivocal acknowledgement forecloses any serious challenge to the validity of the termination on facts.

19. At this stage, it would also be pertinent to note that this Court, in ***M/s Tomorrowland Limited v. Housing and Urban Development Corporation Limited & Anr.***,⁶ through one of us (Surya Kant, J.), has held that it is imperative to maintain the sanctity of the terms of the agreement entered into between the parties. It is thus a settled position of law that a commercial document must be interpreted in a manner that gives full effect to the original intention of the parties. Courts must be astute to give commercial efficacy to the terms of the contract as the parties themselves understood and intended them. Where the language employed by the parties is clear and their conduct consistent with such

⁶ 2025 INSC 207

language, the court's task is to give effect to the bargain struck, not to rewrite it.

- 20.** Keeping the contractual arrangement between the Appellant and Nereides in view, the undisputed series of events and the settled position of law, we find that the termination of the BBC by the Appellant, *vide* Notice dated 13.11.2025, was preceded by due compliance with the contractual pre-conditions prescribed under Clause 31(a) read with the anti-technicality mechanism incorporated in the BBC. We accordingly hold that the termination of the BBC was proper and valid.

E.2. Whether Nereides continued to be the demise charterer of the Vessel as on the date of the arrest, i.e., 04.12.2025, sans physical repossession of the Vessel by the Appellant?

- 21.** Having held that the termination of the BBC by the Appellant was proper and valid, we now proceed to answer the more substantial question, namely, whether Nereides continued to be the demise charterer of the Vessel as on the date of the arrest, i.e. 04.12.2025, on the ground that physical repossession of the Vessel had not been taken by the Appellant.
- 22.** It was contended on behalf of the Appellant that the decisions of the Federal Court of Australia in ***The Hako Fortress (Supra)*** and

the Court of First Instance, Hong Kong in ***Mv ‘Trident Dawn’ (Supra)***, squarely apply to the facts at hand wherein the courts have held that a termination clause of the present nature is capable of operating on its own force upon service of notice and independent of the owner’s physical repossession of the vessel. It was also emphasised that Clause 32 of the BBC itself contemplates that upon termination of the charter, the charterer holds the vessel only as a gratuitous bailee and not as a demise charterer.

23. On the other hand, the Respondent contended that the decisions of the Singapore High Court in ***The Chem Orchid (Supra)*** and Sri Lankan Court of Appeal in ***Navi-Bunkering Corp (Supra)*** correctly lay down that a demise charterer’s status does not stand extinguished merely upon issuance of a notice of termination, and that such status continues until physical possession of the vessel is actually restored to the owner. It was further urged that for all practical purposes, Nereides continued to have firm control of the Vessel and, as such, the Impugned Judgment has rightly followed this line of authority.

24. At the outset, we may note that the precise question, i.e., *whether physical repossession of a vessel is a prerequisite for the effective termination of a demise charter, or whether a notice of termination validly issued under the charterparty is sufficient*, does not appear

to have been authoritatively settled by an Indian court. In aid of their respective persuasive submissions, both sides have drawn upon the jurisprudence of foreign courts.

25. The Singapore High Court in ***The Chem Orchid (Supra)*** and the Sri Lankan Court of Appeal in ***Navi-Bunkering Corp (Supra)*** have taken the view that a demise charterer's status under a bareboat charter is not extinguished by the mere issuance of a notice of termination or of repossession, and that such status subsists until actual physical possession of the vessel is handed over to the owner. According to this line of authority, the demise charterer continues to bear the liabilities attached to that status for so long as it remains in physical control of the vessel, notwithstanding any notice purporting to terminate the charter.

26. On the other hand, the Federal Court of Australia in ***The Hako Fortress case (Supra)*** and the Court of First Instance, Hong Kong in ***Mv 'Trident Dawn' (Supra)*** have taken the contrary view, holding that a termination clause of this nature is capable of operating of its own force upon the happening of the stipulated default and the service of notice. According to this approach, termination and repossession are treated as distinct incidents wherein the former is complete upon service of notice, and the latter

is merely the mechanism by which the owner thereafter recovers physical control.

27. We find ourselves confronted with two divergent streams of persuasive authority, neither of which is binding on this Court. We are of the view that in such a situation, the resolution of the issue must turn upon the express language of the contract between the parties and the facts relevant to the instant case, rather than upon a mechanical importation of the ratio of one foreign precedent over the other. The need for such an approach is particularly relevant where the text of the charterparty considered in those decisions has not been placed before us for comparison, and each was decided in its own peculiar facts.

28. It would be useful, at this stage, to notice the reasoning of the Division Bench of the High Court in the Impugned Judgment, holding that ordinarily, a demise charter does not cease to operate immediately upon its contractual termination. According to the High Court, physical re-delivery is generally required to bring that status to an end and restore possession and control of the vessel to its owner. To buttress its ratio, the High Court has placed express reliance on ***The Chem Orchid (Supra)*** and ***Navi-Bunkering Corp (Supra)*** and treated the reasoning in those decisions as determinative of the question.

29. However, the High Court does not appear to have engaged with the contrary view taken in ***The Hako Fortress (Supra)*** or ***Mv 'Trident Dawn' (Supra)***. Nor did the High Court consider the specific language of Clause 32 of the BBC, which directly addresses the character in which a charterer holds a vessel after termination but before the owner's physical repossession. It may be apposite to note that in ***Chem Orchid (Supra)*** and ***Navi-Bunkering Corp (Supra)***, the foreign Courts were not dealing with a BIMCO BARECON bareboat contract containing Clause 32, which unequivocally states that upon the termination of the contract, the owner shall have the right to repossess the vessel and, pending physical repossession, the charterers shall hold the vessel as a gratuitous bailee to the owner and not demise charterer. The High Court failed to consider this vital distinguishing fact and incorrectly relied on the aforesaid authorities to return an erroneous finding that the Respondent continued to be the demise charterer of the Vessel at the time of the arrest.

E.2.1. Maintainability of the Arrest of the Vessel in terms of the Admiralty Act

30. We therefore consider it necessary to note the statutory provision under which the arrest of the Vessel was sought and sustained. It is relevant to mention that the maritime claim set up by the

Respondent arose under the Respondent's BBC with Nereides in respect of *M.V. Bharadwaj* and not under any charter of the Vessel. The Respondent, in seeking arrest of the Vessel, invoked Section 5(1)(b) read with Section 5(2) of the Admiralty Act, which reads as under:

"5. Arrest of vessel in rem.—(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that:

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

...

***(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):** Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4."*

[Emphasis Supplied]

- 31.** It may be seen that Section 5(1)(b) of the Admiralty Act permits arrest of a vessel where "the demise charterer of the vessel at the time when the maritime claim arose is liable for such claim and is the demise charterer or the owner of the vessel when the arrest is effected." Section 5(2) extends this power to permit arrest of a sister

vessel “*in lieu of*” the vessel against which the maritime claim has actually arisen, but expressly makes this power *subject to the provisions of sub-section (1)*. The effect of this qualification is that the jurisdictional pre-conditions of Section 5(1)(b) must be independently satisfied *qua* the vessel sought to be arrested.

32. Applied to the case at hand, for the arrest of the Vessel to sustain under Section 5(2) read with Section 5(1)(b), the Respondent was required to demonstrate: (i) that Nereides was the demise charterer of the Vessel, as distinct from M.V. Bharadwaj, at the time the Respondent’s maritime claim arose; and (ii) that Nereides continued to be the demise charterer of the Vessel on 04.12.2025, the date on which the arrest was effected.

33. As we proceed to examine, the Respondent’s claim falls short on the second count for two reasons. *First*, as discussed in the preceding part, the BBC between the Appellant and Nereides stood validly terminated with effect from 13.11.2025, which is well before the date of arrest. *Second*, independently of the question of termination, Clause 32 of the BBC expressly provides that once the Appellant sought repossession, Nereides would hold the Vessel only as a gratuitous bailee pending physical repossession.

E.2.2. Requirement of Repossession as a Condition Precedent to the Termination

34. The Respondent has placed considerable reliance on the completion of repossession as a precondition to termination of the charterparty. We therefore deem it necessary to examine whether the absence of such completion affirms the finding that Nereides remained as the demise charterer of the vessel. It is in this context that Clause 32 of the BBC falls for consideration, which reads as under:

“32. Repossession

In the event of the early termination of this Charter Party in accordance with the applicable provisions of this Charter Party, the Owners shall have the right to repossess the Vessel from the Charterers at its current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel, the Charterers shall hold the Vessel as gratuitous Bailee only to the Owners. The Owners shall arrange for an authorized representative to board the Vessel as soon as reasonably practicable following the termination of this Charter Party. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners’ representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Crew shall be the sole responsibility of the Charterers.”

[Emphasis Supplied]

- 35.** The opening words of Clause 32, *“in the event of the early termination of this Charter Party”*, make it clear that repossession of the Vessel is treated by the parties as a consequence flowing from a termination already accomplished, and not as an event upon which the termination itself is dependent. Most pertinently, the Clause expressly stipulates that, pending physical repossession, the Charterers shall hold the Vessel “as gratuitous bailee only to the Owners”; a characterisation which is manifestly inconsistent with the continuance of demise charterer status.
- 36.** This characterisation is not a matter of semantics, but goes to the very nature of the possession held. A gratuitous bailee holds the property of another without any right of use, control or commercial employment of its own, whereas a demise charterer holds the vessel as though it were the owner for the time being, with full possession, control and the right to employ it commercially. Given this fundamental distinction, Nereides could not have simultaneously held the Vessel both as a ‘demise charterer’ and a ‘gratuitous bailee’. There can be no doubt that once the charterparty designates the charterers as ‘gratuitous bailees’ upon termination, it necessarily displaces any continuing status as ‘demise charterer’.
- 37.** Clauses 31 and 32 of the BBC, read together, unfold a coherent and internally consistent contractual scheme in which each clause

performs a distinct function while operating in tandem with the other. Termination takes effect immediately upon service of notice under Clause 31, and such termination then alters the legal character of the charterers' possession from that of a 'demise charterer' to that of a 'gratuitous bailee'. Clause 32 thereafter regulates the practical mechanics by which the Owners recover physical control of the Vessel from a bailee who, at that stage, has no independent right of user left to assert.

- 38.** The deeming provision that the Vessel shall be deemed repossessed upon the boarding of the Owners' representative merely fixes the point from which the Owners resume operational responsibility for the Vessel. It does not determine when the demise charter itself comes to an end. To hold otherwise would permit a clause designed to regulate the handover of an already-terminated charter to instead dictate the survival of that very charter, a result the parties could not have intended.
- 39.** We also cannot lose sight of the practical consequences of treating physical repossession as a pre-condition for termination, rather than its consequence. Physical repossession of a vessel in the control of a defaulting charterer may be delayed or frustrated for reasons entirely outside the owner's control. The vessel's location at any given time, genuine or contrived technical difficulties, non-

cooperation of the charterer's crew, and the practical exigencies of berthing at a particular port are all matters that lie beyond the owner's hands. If a charterer's demise status were held to continue for as long as the charterer chooses or is able to withhold physical possession, despite a validly issued termination notice, the owner's contractual right of termination would be held hostage to the very default that occasioned its exercise. Such a construction, in our opinion, cannot have been the intention of the parties to a commercial instrument such as the underlying BBC.

40. We have further noticed the correspondence placed before us, which bears out that the Appellant did not remain idle after termination but pursued repossession of the Vessel with persistence. The Termination Notice itself called upon Nereides to disclose the Vessel's location and place it at the Appellant's disposal. This was followed by the Repossession Notice dated 19.11.2025, issued under Clause 32 of BBC, and continuous follow-up in the intervening period between 20.11.2025 and 02.12.2025, wherein the Appellant repeatedly sought updated information regarding the Vessel's location, expected time of arrival and berthing particulars.

41. It is writ large that the delay in physical repossession was attributable to Nereides, and not the Appellant. Nereides first cited

an unresolved technical issue, then a revised time of arrival of the Vessel to Colombo, and finally the Vessel's presence at Tuticorin Port without completion of repairs. In these circumstances, the Appellant cannot be penalised for a state of affairs brought about entirely by the party whose own default had forced the termination.

42. It may not be out of place to mention that Nereides' own communications further demonstrate that it did not regard itself as continuing to be the demise charterer of the Vessel in its own right. Nereides, in its communication dated 14.11.2025, acknowledged the Termination Notice and undertook to arrange an "*orderly handover*" of the Vessel if payment was not made within the extension it had sought. Later, in its communication dated 03.12.2025, Nereides stated that the BBC "*has not concluded by efflux of time but has been terminated by the Head Owners*", and asked where repossession was to take place. These statements were made by Nereides of its own volition, without any compulsion or coercion on the part of the Appellant. It thus illustrates that, with effect from 13.11.2025, Nereides held the Vessel only as a gratuitous bailee awaiting handover, and not as a demise charterer with any independent right to retain or use the Vessel.

43. In light of these findings and analysis, we hold that a validly issued notice of termination under Clause 31(a) of the BBC was sufficient

to bring the demise charter to an end, and that physical repossession thereafter operated only to complete the practical transfer of control of the Vessel. The validity of the Termination Notice, coupled with the demonstrably *bona fide* conduct of the Appellant in pursuing repossession, is sufficient to establish that Nereides had ceased to be the demise charterer of the Vessel well before the date of arrest, i.e., 04.12.2025. This conclusion is further reinforced by the absence of any assertion to the contrary by Nereides itself, which held the Vessel only as a gratuitous bailee under Clause 32.

- 44.** It follows that the foundational premise on which the arrest of the Vessel had proceeded at the behest of the Respondent, namely, that Nereides continued to be the demise charterer of the Vessel on 04.12.2025, stands displaced. As a logical corollary, the order of arrest resting on a contrary and unsustainable footing cannot be sustained and is liable to be vacated.

F. CONCLUSION AND DIRECTIONS

- 45.** For the reasons recorded above, we set aside the Impugned Judgment of the High Court and allow this appeal in the following terms:

- (i)** The termination of the BBC by the Appellant, *vide* the Termination Notice dated 13.11.2025, was preceded by due compliance with the contractual pre-conditions prescribed under Clause 31(a) read with the Anti-Technicality mechanism incorporated in the BBC. The termination was founded upon an admitted and continuing default in payment of hire on the part of Nereides and is accordingly held to be valid;
- (ii)** A validly issued notice of termination under Clause 31(a) of the BBC was sufficient to bring the demise charter to an end, and physical repossession thereafter operated only to complete the practical transfer of control of the Vessel;
- (iii)** The validity of the Termination Notice, coupled with the demonstrably *bona fide* conduct of the Appellant in pursuing repossession, and the absence of any assertion by Nereides itself to the contrary, is sufficient to establish that Nereides had ceased to be the demise charterer of the Vessel well before the date of arrest, i.e., 04.12.2025, and at that point in time held the Vessel only as a gratuitous bailee under Clause 32 of the BBC;
- (iv)** The order of arrest, resting on a contrary and unsustainable premise, cannot be sustained and is accordingly vacated;

46. The appeal is allowed in the above terms. Pending interlocutory applications, if any, shall stand disposed of.

47. Ordered accordingly.

.....CJI.
[SURYA KANT]

.....J.
[JOYMALYA BAGCHI]

.....J.
[V. MOHANA]

NEW DELHI

DATED: 25.09.2026