Bombay High Court Snp Shipping Services Pvt. Ltd. & ... vs World Tanker Carrier Corporation ... on 10 September, 1999 Equivalent citations: AIR 2000 Bom 34, 2000 (1) BomCR 511, (2000) 1 BOMLR 56, 2000 (2) MhLj 570 Author: S Nijjar Bench: S Nijjar ORDER S.S. Nijjar, J. 1. The plaintiffs have filed this suit seeking a two fold relief (a) decree in favour of the plaintiffs and against the defendants for a sum of Rs. 50 crores being the damages suffered by the plaintiffs and (b) for a declaration to the effect that plaintiffs being a company incorporated under the Companies Act, 1956 are exclusively owned and controlled by the second and third plaintiffs who are Indian Shareholders, citizens of India and are in no manner whatsoever linked, owned or controlled, legally or beneficially by the Merali family. Further declaration is sought to the effect that the legal and beneficial ownership of the vessels managed by the first plaintiffs vests with the entities/owners unconnected with the plaintiffs. 2. The plaintiffs have taken out Notice of Motion No. 1663 of 1999 for an order of injunction restraining the defendants from making any further publication or claims in the media with regard to the unseaworthiness of the vessel m.v. YA MAWLAYA or to the effect that plaintiffs being an alter ego of Merali family. On the other hand, defendants have taken out Notice of Motion No. 1638 of 1999 for striking out the plaint as being unnecessary, scandalous, frivolous and vexatious and also being an abuse of the process of Court under Order 6, Rule 16 read with section 151 of the Code of Civil Procedure and Article 215 of the Constitution of India. The defendants have also taken out Notice of Motion No. 1272 of 1999 for dismissal of the suit under Order 7, Rule 11-A of the C.P.C; as being without jurisdiction. It is prayed that the issue of jurisdiction be decided as a preliminary issue. 3. The first plaintiffs, SNP Shipping Services Pvt. Ltd., are a Private Limited Company registered under the Companies Act, 1956 having its registered office in Mumbai, hereinafter referred to as "SNP". The second and third plaintiffs are Indian citizens and carry on business in the name and style of the first plaintiff company. Second and third plaintiffs are the only Directors and shareholders and beneficial owners of the first plaintiff firm. The first defendants, World Tanker Carriers Corporation are a company registered in Monrovia, Liberia, hereinafter referred to as "WTCC". The vessel "New World" is owned by WTCC. This vessel is registered in Hongkong. It flies the flag of Hongkong, M.B. Malavia represents WTCC as their Constituted Attorney/Recognised agent in Mumbai within the jurisdiction of this Court. The second defendants Company Eridania S.P.A. are a foreign company registered in Italy, hereinafter referred to as "Cereol". Birendra Trivedi represents Cereol as their Constituted Attorney/Recognised Agent in Mumbai. 4. SNP, inter alia, act as Managers of various foreign flag vessels, for which purposes, various management agreements are entered with the owners/charterers, as the case may be, of these foreign vessels. The services rendered by SNP include technical ship management, crew management, commercial management, sale/purchase of vessel, port cargo operations etc. SNP primarily supply complement of competent and licenced crew on board the vessels under their management who are duly licenced and certified under the provisions of the Indian Merchant Shipping Act, 1958. As a company incorporated under the Companies Act, 1956,

SNP are also assessed to Income tax in accordance with the provisions of the Indian Income Tax Act, 1962. Thus, it is stated that SNP are an Indian Company governed under the provisions of the Indian Companies Act, 1956. 5. On 11-4-1994 SNP had entered into a management agreement with one M/s. Kara Mara Shipping Co. Ltd., hereinafter referred to as "Kara Mara", a company registered in Cyprus. Kara Mara was the owner of a vessel m.v. Ya Mawlaya, registered in Cyprus. On 20-10-94 Kara Mara sold the vessel m.v. Ya Mawlaya to Vestman Shipping Co. Ltd., a company registered in Cyprus. Kara Mara thereafter became bare boat charterers of Ya Mawlaya. Under the agreement dated 11-4-94 SNP manned Ya Mawlaya with Indian crew and officers. SNP was also to provide for technical management of the ship. SNP had subcontracted with one Holbud Shipping Management Co. Ltd., a company registered in the United Kingdom, for commercial management of the vessel. Its holding company Holbud Ltd. is also a company registered in United kingdom. Thus it becomes apparent that SNP is the only company registered in India. All the other companies are foreign. None of them carry on business in India. 6. The present controversy arises out of a collision that took place in the early hours of 20/21st December, 1994 between the vessel m.v. Ya Mawlaya and the vessel m.t. "New World". The collision" took place in international waters, about 200 nautical miles off the coast of Portugal. At the time of the collision the vessel m.v. Ya Mawlaya was laden with cargo of soyabeans consigned to Cereol. The cargo had been loaded at New Orleans. As a result of the collision extensive damage was caused. Human lives were lost. Several proceedings came to be filed in the District Court of Louisiana, U.S.A., hereinafter referred to as "the New Orleans Court", against the vessel m.v. Ya Mawlaya in remand against M/s. Kara Mara Shipping Co. Ltd., Holbud Ship Management Ltd., Holbud Ltd., Hydery (P) Ltd. in personam. Thereafter by an amendment and supplementary complaint, the second defendants impleaded the plaintiffs as well as Mr. Hasnain Merali, Mr. Shaukat Akbarali Merali and Roshanali Rajabali Merali Devji as party defendants. In the complaint filed before the New Orleans Court it is alleged that the first defendant along with Holbud Ship Management Ltd., Holbud Ltd. and Hydery (P) Ltd. are all related companies owned and controlled by one Roshan Merali, all having roles in ownership and management of Ya Mawlaya. It is also alleged that all of these business entities beneficially owned by Merali family are liable, jointly and severally to satisfy the claims of the defendants to the extent of U.S.$ 45 million. Along with the actions instituted by the first and second defendants, the legal heirs of the deceased crew members on board m.t. "New World" have also filed proceedings for recovery of death compensation. The first defendants are said to be in control of the proceedings as all the actions have been consolidated. Kara Mara thereafter filed an action for limitation of liability in the Supreme Court of Hong Kong against WTCC and all possible claimants. The Court at Hong Kong has, however, stayed the writ in Hong Kong on the ground of Hong Kong being a forum non conveniens by an order dated 6-9-1995. Kara Mara also made a conditional application for limitation of its liability before the District Court at New Orleans. Kara Mara and all Ya Mawlaya interests have filed a common defence, infer alia, pleading that the

Court at New Orleans lacks jurisdiction and the action should be dismissed on the ground of forum non conveniens. 7. Thereafter, SNP filed Admiralty Suit No. 26 of 1995 on or about 12th May, 1995, seeking a declaration that they are entitled to limit the liability because they were not privy to or at fault in relation to the collision between the vessels m.v. Ya Mawlaya and m.t. "New World". On 15/16th November 1995 the vessel Ya Mawlaya was brought to the Port of Bombay under ballast. Three Admiralty suits were filed by the Second Officer, the Third Officer and the Chief Engineer of Ya Mawlaya in respect of their claims for wages and loss of future wages. At the instance of SNP in Suit No. 26 of 1995 and on applications of the plaintiffs in the other three suits the vessel Ya Mawlaya was arrested. One Galaxy Multinational Ltd. also got the vessel arrested by filing an application in Admiralty Suit No. 26 of 1995 on the ground of nonpayment for supply of necessaries. On 22-3-1996 Kara Mara filed Admiralty Suit No. 28 of 1996 seeking limitation of their liability and setting up of a Limitation Fund in respect of their liability arising from the collision of Ya Mawlaya with 'New World'. In both Admiralty Suits No. 26 of 1995 and 28 of 1996, this Court granted anti suit injunctions against WTCC restraining it from proceeding with its claims in the New Orleans Court. WTCC pleaded that this Court had no jurisdiction to entertain the Admiralty Suits No. 26 of 1995 and 28 of 1996. Both Single Bench and Division Bench held that this Court had the jurisdiction to entertain the suits. Against the aforesaid order, WTCC filed Special Leave Petition which was converted into Civil Appeal No. 8534 of 1997. WTCC had also filed C.A. No. 8535 of 1997 against the orders of this Court dated 20-8-97/21-8-97 in contempt proceedings. C.A. No. 8536 of 1997 was filed by WTCC against the order dated 21-11-1997 directing WTCC to deposit in this Court a sum of U.S.$ 12.3 million and interest accrued thereon to secure compliance by WTCC of orders passed by this Court. SLPs. (C) Nos. 3 and 4 of 1998 had been filed against orders dated 4-12-1997 in Admiralty Suit No. 26 of 1995 and Admiralty Suit No. 28 of 1996 posting these suits for ex parte hearing in January, 1998. All these matters were decided by a common judgment. The Supreme Court after considering the various issues raised in the appeal held that the Bombay High Court had no jurisdiction to entertain the suits filed by SNP and Kara Mara World Tanker Carrier Corporation v. SNP Shipping Services Put. Ltd., and others, hereinafter referred to as "the WTCC case". According to SNP this judgment merely decided that the Bombay High Court had no jurisdiction to decide the matter at that stage. The Supreme Court had clarified that if in future any liability action is at all filed or likely to be filed in the Bombay High Court, the plaintiffs would be entitled to file an independent limitation action. The Supreme Court vacated the orders passed by the Bombay High Court restraining the first and second defendants from proceeding with the matters in the New Orleans Court. As a result thereof the first defendant activated the proceedings in the New Orleans Court and on 23rd July, 1998 an order was passed by which SNP were censured by sanctioning an amount of U.S.$ 45 million against the present plaintiffs. The order also permitted the WTCC to arrest and/or attach property of SNP wherever found as security for a judgment in personam. This order came to be passed as a re-

sult of SNP's failure to appear and defend the proceedings in the New Orleans Court. The order of sanctions was passed on 16th September, 1998. 8. SNP thereafter instituted Admiralty Suit No. 58 of 1998. Prayer Clauses (e) and (f) in the aforesaid suit are as follows "(e) That it be declared that the plaintiffs are exclusively owned and controlled by Indian Shareholders, residents of India and are in no manner whatsoever linked, owned or controlled legally or beneficially by the Merali family or any other entity as alleged by the second and the sixth defendants; (f) That it be declared that the legal and beneficial ownership of the vessels managed by the plaintiffs vests with entities/owners unconnected with the plaintiffs or the Merali family as alleged by the second defendants". These are identical to the prayer Clauses (b) and (c) in the present suit which are as under : "(b) That it be declared by an order and decree of this Hon'ble Court that the plaintiffs being a company incorporated under the Companies Act, 1956 are exclusively owned and controlled by the second and the third plaintiffs who are Indian shareholders, citizens of India and are in no manner whatsoever linked, owned or controlled legally or beneficially by the Merali family or any other entity as alleged by the first and the second defendants; (c) That this Hon'ble Court be pleased to declare by an order and declaration of this Honourable Court that the legal and beneficial ownership of the vessels managed by the first plaintiffs vests with the entities/owners unconnected with the plaintiffs save and except to the extent, as stated, of the plaintiffs management of the vessels". 9. The WTCC took out Motion for Summary Judgment in the New Orleans Court. By its judgment dated 3rd March, 1999 the New Orleans Court has recorded certain findings of fact and granted certain reliefs to defendants Nos. 1 and 2. Under the heading of "LIABILITY" it is held that the bridge equipment aboard the m.v. Ya Mawlaya although defective was not serviced or repaired during the vessel's port call in New Orleans. As a consequence the m.v. Ya Mawlaya departed from New Orleans with two defective radars, in that neither was functioning at all or ceased to function shortly after her departure, and with defective VHP radios, in that only one of her two VHP radios was functioning, though poorly and inefficiently. The other VHP radio set could receive, but could not transmit. It is held that the collision was directly and proximately caused by the failure of Ya Mawlaya's radars and VHP radios which constituted an unseaworthy condition of the m.v. Ya Mawlaya arising from the defendant's negligence in Louisiana. Incompetent officers and crew were placed on Board the vessel during the change in personnel in New Orleans. The owners, managers, submanagers, operators and all the defendants were aware that the vessel Ya Mawlaya departed from New Orleans without completing essential repairs. Thus all the defendants were privy to and had knowledge of the negligent actions and unseaworthy condition of Ya Mawlaya which were the direct and proximate causes of the collision. SNP was an employer of Ya Mawlaya's crew and had responsibility for and control over the operation, maintenance, repair, safety, navigation and seaworthiness of the vessel, the adequacy of her crew, and the safe handling, safe keeping, care and custody of all cargoes aboard the vessel Ya Mawlaya, including the Cereol cargo. At all material times, HSM and SNP were named as additional assureds under the Ya Mawlaya's insur-

ance coverage afforded by the Newcastle Protection and Indemnity Association. Timely steps were not taken by SNP and HSM to remove the cargo from the ship. By virtue of their alter ego relations, all defendants in both actions had joint and several responsibility and liability for the acts and omissions of HSM and SNP concerning the operation, maintenance, repair safety, navigation and "seaworthiness of the vessel, the adequacy and competency of her crew and the safe handling, safe keeping, care, and custody of the subject cargo. It is further found that on the night of the collision the Watch Officer on Ya Mawlaya did not take collision avoidance action. The collision caused an explosion and fire on board the m.t."New World". The explosion and fire caused by the collision resulted in eight deaths and several personal injuries, severe property damage to both vessels and loss of and/or damage to cargo on both vessels. Immediately following the collision, the surviving crew members of the m.t."New World" were trapped in the wheelhouse of their vessel, with fires burning around them in the superstructure and in the water around the vessel, as the m.t. "New World" continued to turn in the wind and sea. M.T. "New World" transmitted distress called by radio, which were responded to by vessels m.t. Berge Stavanger, m.t. New Wisdom, m.t. Captadimitris and others but not by m.v. Ya Mawlaya. Despite the fact that Ya Mawlaya suffered much lighter damage than m.t. "New World" and no person on board m.v. Ya Mawlaya were injured or missing, the vessel made no effort to stop and aid the m.t. "New World" or to inquire into her need for assistance as required by applicable international maritime regulations. The judgment also takes notice of the fact that as a result of the collision, m.v. Ya Mawlaya became a constructive total loss. She was nonetheless taken in the shipyard at Malta where she was repaired. After repairs, this vessel was taken to the Port of Bombay, India in ballast solely to enable her arrest in an effort by her owners, operators, managers and others of the defendants to obtain jurisdiction in Indian Courts. In paragraph 98 of the judgment, some relevant portions of the judgment of the Supreme Court in the WTCC case have been noticed. It is held that the Hong Kong and Indian actions were wrongly and vexatiously brought by the defendants for the purposes of harassment, oppression and delay and in effort to wrest jurisdiction from the New Orleans Court and/or to enjoin WTCC from proceeding in the New Orleans Court. Under the heading "CONCLUSIONS OF LAW" it has been held that the Master and the Watch Officer on the Ya Mawlaya on the night of the collision were incompetent. This incompetence created an unseaworthy condition. The Master had to be incompetent to allow the Ya Mawlaya to proceed at night with only one man on the bridge, unassisted by any look out, in violation of the IMO watch standing regulations and the COLREGS. This error is made even more egregious in the light of the fact that both the radars on the vessel were faulty. As set out above, the watch officer violated all applicable COLREGS. Either he ignored these most important rules or he did not know them. In either case, he must also be considered incompetent. It is further held that defendants are liable jointly and in solido. All of these business entities are related companies having roles in ownership and management of Ya Mawlaya and are beneficially owned by individual defendants Roshanali Rajabali Merali Dewji, Hasnain Merali and

Shaukat Merali, who control and operate the companies and the vessel. Defendants have admitted that they are all beneficial owners of Ya Mawlaya and all acted as one in her ownership. One party may be held liable for faults of another if it can be shown that one acted as the "alter ego" of the other. Therefore, all defendants in WTCC's action are properly liable for faults of their vessel in causing the collision with the m.t. "New World". The Court further held that SNP as manager of Ya Mawlaya and HSM as sub manager are legally liable for the full amount of the cargo damage claimed by Cereol, because the damage was caused by their own negligence and the negligence of those for whom they are responsible. Likewise, by virtue of their "alter ego" relationship with HSM and SNP, defendants, Holbud, Hydery, Vestman and Sperex are jointly and severally liable for the subject cargo damage along with HSM and SNP. It is further held that the evidence reveals that the defendants foreign litigation campaign was specifically designed and calculated to deprive the New Orleans Court of its proper jurisdiction by seeking injunctions against WTCC in suits brought in bad faith in Hong Kong and India. WTCC's Motion for Summary Judgment on liability has been granted. 10. In this suit the plaintiffs challenge the findings given by the New Orleans Court. It is stated that the New Orleans Court has wrongly held that all the defendants including SNP are jointly and severally liable to WTCC and Cereol. The joint and several liability has been determined by the New Orleans Court on the basis of the failure on the part of SNP to answer the requests in the nature of interrogatories. This has led the New Orleans Court; to conclude that SNP and others are "alter egos" of the Merali family. Adverse inferences have been wrongly drawn by the New Orleans Court solely on the basis of the failure on the part of SNP to respond to the interrogatories. It is stated that the adverse inferences wrongly drawn by the New Orleans Court on the basis of non- participation by SNP and non-response to the said interrogatories has resulted in grave injustice. It is stated that there was no material before the New Orleans Court to support its finding that SNP was the "alter ego" of Roshan Merali and beneficially owned and controlled by persons other than the second and the third plaintiffs. There was also no documentary evidence to support the defendants assertion that various vessels including the vessel m.v. Ya Mawlaya were beneficially owned and controlled by the individuals mentioned above. This part of the plaint refers to the facts which are relevant for the relief of declaration. 11. Thereafter it is pleaded that as a result of the New Orleans Court judgment, the defendants supplied data to the newspapers. On that basis defamatory reports have been published. Lloyd's List on 9th March, 1999 published a report under the title "Patriarch dies after US Court case –Merali firm struck by double blow". The plaintiffs claim that the contents of this report are wrong, mischievous and aimed at causing disrepute and has caused serious damage to the plaintiffs. It is stated that a reference to the effect that the vessel m.v. Ya Mawlaya was manned by in competent/inadequate complement in the said report is erroneous, malicious and libellous. The plaintiffs claim that the officers and crew members were duly certified by the Mercantile Marine Department, Bombay, by which the said complement was governed. Thereafter report in the Trade Winds in

its issue dated 12th March, 1999 under the caption "Merali vessels face action in collision case" has been published. The plaintiffs claim that by this report, the defendants have alleged that incompetent master and officers were engaged on board the vessel m.v. Ya Mawlaya thereby attacking the statutory body, the Mercantile Marine Department, Bombay, who has certified the said complement prior to their engagement on board the vessel m.v. Ya Mawlaya to be competent. Moreover, according to the plaintiffs, the said article implies that SNP and the vessel m.v. Ya Mawlaya are Merali linked entities and vessels. The third report is by a person called John Mclaughlin, New York Correspondent of Lloyd's List dated 11th March, 1999 under the caption "Chilling events that should shame the shipping industry". With regard to this report, the plaintiffs state that in this Article once again it has been wrongly implied that SNP in their capacity as managers of the vessel Ya Mawlaya were part of the Merali group/family. According to the plaintiffs, this assertion is designed to malign the plaintiffs when, to the knowledge of the defendants, the correct position was otherwise. It is stated that these reports are apparently published at the behest and motivation of the defendants. This is stated to be obvious by virtue of the fact that constant references are made to the Attorneys of the first defendants. It is stated that the publication in the newspapers smack of malicious motives. By an amendment in paragraph 21-A the plaintiffs have stated that the aforesaid articles have been published in well known and widely read shipping trade journals viz. Lloyds List and Trade Winds. These publications have a large international subscription and are read widely by persons in India who carry on business in the shipping industry. These articles have also featured on the internet thus making them freely available to an even wider readership. It is stated that due to the baseless allegations and malicious falsehoods supplied by the defendants through the aforesaid publications, grave harm and injury has been caused to the plaintiffs reputation and business. The plaintiffs goodwill in the shipping business has been dealt great harm. The allegations which have been formented by the defendants even led to the wrongful arrest of another vessel Ya RAB which has further injured the reputation and goodwill of the plaintiffs. It is also pleaded that the decree of the New Orleans Court dated 3rd March, 1999 is an ex parte decree. The plaintiffs reserve their right to challenge the decree as and when the defendants seek its implementation/execution/recovery. Without prejudice to the above, the plaintiffs pleaded that the New Orleans Court had no jurisdiction. The purported exercise of jurisdiction by the New Orleans Court was based on the "long arm" theory of jurisdiction and in particular the "trade links" connection of the defendant with the U.S.A. It is stated that due to the wide publication of the defamation in India, this Court has jurisdiction to entertain the suit. It is stated that in view of the conduct of the defendants is has now become necessary to seek declaration from this Court to the effect that SNP is an Indian Company, owned and controlled by plaintiff Nos. 2 and 3 and it has no connection with the Merali family. 12. Very lengthy arguments have been addressed by the learned Counsel on both the sides. Mr. Manohar, learned Senior Counsel appearing for the defendants in support of the Notices of Motion, has submitted that the suit filed by the plaintiffs is vexatious, frivolous

and abuse of the process of Court. He submits that the issue with regard to jurisdiction of this Court stands concluded by this Court as well as the Supreme Court. Now the same issue is sought to be raised on the ground that a new cause of action has arisen as the New Orleans Court has entered summary judgment against the plaintiffs on 5th March, 1999. He further submits that the plaintiffs cannot be permitted to seek a declaration as the same relief has been claimed in Admiralty Suit No. 58 of 1998. Such a course is barred by the provisions of Order 2, Rule 1, Order 2, Rule 2 read with Order 23, Rule 1 of the C.P.C., 1908. The plaintiffs cannot pursue the claim for declaration without obtaining leave of the Court in Admiralty Suit No. 58 of 1998 under Order 23, Rule 3. In the present suit, the plaintiffs cannot be permitted to say that they are not pressing for the relief in terms of prayers (e) and (f) in the Admiralty Suit No. 58 of 1998. Thus the plaint has to be rejected in view of Order 7, Rule 11(d) of the C.P.C. He further submits that this Court would not grant the relief of declaration, as it would serve no useful purpose. Declaration made under section 34 of the Specific Relief Act is only binding inter parties. Therefore, the Indian Authorities would not be bound by such a declaration. With regard to the relief of damages for defamation, learned Counsel Mr. Manohar has very fairly stated that this Court will have the jurisdiction to entertain the suit as according to the amended plaint wrong has been done within the territorial jurisdiction of this Court. He, however, submits that a look at the plaint together with the documents on the basis of which claim of defamation is made, would make it clear that the plaint is liable to be rejected as not disclosing a cause of action. Learned Counsel submitted that a bare perusal of the newspaper reports shows that they are fair, accurate and contemporaneous reports of the findings returned by the New Orleans Court. Thus the reports are covered by the doctrine of absolute privilege. There is an absolute defence to the case set up in the plaint with regard to libel. The plaint is, therefore, also liable to be rejected on the ground of being unnecessary, scandalous, frivolous and vexatious. According to the learned Counsel the suit deserves to be dismissed as it is an abuse of the process of the Court. 13. Mr. Sundaram, learned Counsel appearing for the plaintiffs, submits that the plaint can be rejected at the threshold only in the rarest of rare cases. The phrase "does not disclose a cause of action" in Rule 7(11)(a) has to be very narrowly construed. Rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power has therefore to be used in exceptional circumstances. The Court has to be absolutely sure that on a reading of the plaint, it does not make out any case. For deciding this question the Court will not travel beyond the plaint. The Court will not look at the documents on which the plaint may be based in order to decide that the plaint does not disclose a cause of action. He submits reading the plaint in this manner, the Court ought to permit the plaintiff to go to trial. Similarly, he argues, the defendants cannot succeed on the point that the plaint deserves to be rejected under Order 7, Rule 11 (d). He submits that in the present case the plaintiffs having averred in the plaint that they will not be pressing for the relief of declaration in Admiralty Suit No 58 of 1998, provisions of Order 23, Rule 3 would not be applicable. The claim for declaration is also not barred by

Order 2, Rule 2 of C.P.C. The plaintiffs have not omitted to sue. They have also not relinquished any party of the cause of action. With regard to the issue of jurisdiction he submits that the same has not been finally decided either by this Court or by the Supreme Court. The learned Counsel has relied on observations made by the Supreme Court in paragraph 35 of the WTCC judgment. He submits that the Supreme Court has clearly held that if in future any action is filed. SNP would be entitled to set up a limitation action or to file an independent limitation action. Now that the defendants have made their intention clear that they intend to enforce the judgment given by the New Orleans Court, the plaintiffs are entitled to seek protection by way of a declaration that the SNP is an entirely Indian Company. According to Mr. Sundaram the' judgment given by the Supreme Court in the WTCC case was confined only to the jurisdiction of the Admiralty Court in a limitation action. Thus according to Mr. Sundaram the issue of jurisdiction will have to be decided keeping in view the impact of the findings of "alter ego" given by the New Orleans Court. With regard to the relief of damages, he submits that this Court clearly has the jurisdiction to entertain and decide the suit. The plaint cannot be rejected on the ground that the defence of privilege is a complete answer to the claims in the plaint. At this stage it cannot be said that the plaint is frivolous or vexatious. He further submitted that the plea of privilege would be available to the defendants as a defence. Mere raising of this plea at this stage would not render the plaint an abuse of the process of the Court. Both the learned Counsel have referred to a large number of authorities which would be adverted to a little later. 14. I have anxiously considered the arguments put forward by the learned Counsel. I find much substance in the submission of Mr. Manohar that the issue of jurisdiction with regard to the declaration part of the suit has been conclusively decided by this Court and the Supreme Court in the WTCC case. A perusal of the facts narrated in the earlier part of the judgment would make it abundantly clear that this Court as well as the Supreme Court has held in no uncertain terms that this Court has no jurisdiction to entertain the suit against the defendants. On the point of jurisdiction, certain paragraphs of the judgment of the Supreme Court in the case of WTCC make it abundantly clear that the case put forward by the plaintiffs is patently false. Reference can be made to paragraphs 20, 35, 36, 37 and 38. The same read thus: "20. Under principles of Private International Law, a Court cannot entertain an action against a foreigner resident outside the country or a foreigner not carrying on business within the country, unless he submits to the jurisdiction of the Court here. This principle applies to actions in personam". "35. Admiralty Suit No. 26 of 1995 is filed by SNP, a Company registered in India, claiming to be the managers of the vessel YA Mawlaya and hence falling within the definition of owner under section 352-F. Others who are subsequently transposed as plaintiffs are foreign companies or foreigners. The claimants are some of the defendants. They are all foreigners. Other defendants are other owners, all of whom are foreigners or foreign companies. None of the claimants in respect of whose claims a limitation fund is sought to be set up, is within the jurisdiction of the Bombay High Court; nor do they carry on business within the jurisdiction of the Bombay High Court, nor have they filed

claims before it in respect of the occurrence in question or have submitted to the jurisdiction of the Court. Some claims in respect of Ya Mawlaya have been lodged, no doubt, in the Bombay High Court by SNP itself and by some crew members of Ya Mawlaya and others. But these claims do not fall within section 325-A and are not capable of being limited. There is also no likelihood of any claim being filed there since all claims arc already filed before the Courts in the U.S.A. The Bombay High Court has, therefore, no jurisdiction in respect of Admiralty Suit No. 26 of 1995. There is also misjoinder of causes of action in the suit looking to the prayers in the suit. But we need not examine this aspect since in any event the Bombay High Court has no jurisdiction to entertain the limitation action. Of course, in theory, if in future any liability action is at all filed there which is capable of limitation, SNP would be entitled to set up limitation as a defence or file an independent limitation action. But the present suit is without jurisdiction." "36. SNP has claimed that the Bombay High Court has jurisdiction because a part of the cause of action has arisen within its jurisdiction. SNP under its management agreement with Kara Mara claims to have recruited the crew of the vessel YA Mawlaya in Bombay. Since the owner is required to establish" no fault or privity, on his part in respect of the "occurrence", one of the relevant factors for this purpose is recruitment by the owner of a competent crew. Since recruitment was in Bombay, SNP claims that a part of the cause of action has arisen in Bombay. Therefore, SNP contends that the Bombay High Court has jurisdiction. However, in view of what we have held above, this does not confer jurisdiction on the High Court in an admiralty action of the present type. 37. In the present case the collision which gave rise to the owner's liability has occurred on the high seas off the coast of Portugal. Neither of the vessels involved in the collision is an Indian vessels. The owners of both these vessels arc also foreigners. The charterers and sub-managers are also foreign Companies. Only one out of several managers/sub-managers of YA Mawlaya is an Indian Company. And the only act of management in Bombay is said to be the recruitment of the crew. For reasons already stated this factor alone will not confer jurisdiction. 38. Moreover, when the right to set up a limitation fund is a right which is common to all persons coming within the category of "owner" under section 352-F and a common limitation fund has to be set up, an act of management only by one of the "owners" when all the other owners are outside the jurisdiction of the Bombay High Court and all their acts are outside the jurisdiction of the Bombay High Court, will not be sufficient to confer jurisdiction. It is difficult to consider the Bombay High Court as the domiciliary Court of the owners of Ya Mawlaya when the persons/companies to whom the vessel belongs are domiciled outside India and out of the entire body of persons/companies falling within the term "owner" under section 352-F, only one manager is an Indian Company, and the vessel is registered in a foreign country." The Supreme Court further observed as follows: 40. Admiralty Suit No 28 of 1996 is filed by Kara Mare, for the purpose of setting up a limitation fund and to obtain an anti-suit injunction in respect of all pending litigations against it in foreign courts. In the case of Kara Mara which is a foreign company registered in Cyprus, no part of the cause of action has arisen within the

jurisdiction of the Bombay High Court. The vessel which met with the collision giving rise to liability is a foreign vessel. The collision took place in the high seas off the port of Portugal. All the claims against Kara Mara have been filed in foreign courts and the claims which have now been filed before the Bombay High Court are not the claims which can be subjected to limitation. 41. Kara Mara, however, claims jurisdiction on the ground that its vessel Ya Mawlaya was in the Bombay Harbour at the time when it filed its suit for limitation. Reliance is placed on section 2(2) of the Merchant Shipping Act for this purpose. Section 2(2) however, has no application to a limitation action per se, as stated earlier. A limitation action is not directed against the ship nor can the action be instituted by the arrest of the foreign vessel present in the territorial waters of the Country where the action is instituted. It is an action by the owner acting personally against his claimants who arc seeking damages in respect of the loss or injury caused by the owner's vessel. Therefore, the presence of a foreign vessel in the territorial waters will not give the Court jurisdiction to entertain a limitation action by its owner unless the presence of the foreign vessel has given rise to an admiralty action by a claimant in that Court, which claim is subject to limitation or the presence of the vessel has created a likelihood of such action being taken there, or the Court is a domiciliary Court of the owner attracting such claims there. That is not the case here. In fact, at the time when Kara Mara filed the suit all claims were already filed against it in the foreign Court at New Orleans. U.S.A. No doubt Kara Mara had challenged the jurisdiction of that Court and had succeeded in the first round. But that was by no means a final adjudication. Nor can one legitimately conclude from this the likelihood of claims being filed in Bombay. In the present case, the Bombay High Court is not the domiciliary Court of Kara Mara or its vessel. Nor is any claim for liability which can be limited, filed against Kara Mara in the Bombay High Court. None of the defendants to the suit is within the jurisdiction of the Bombay High Court. The fortuitous presence of the ship in the Bombay harbour will not entitle the owner to file a limitation action in the Bombay High Court in the absence of any claim being made or apprehended against him or the vessel in that Court. "42. Therefore, bringing the ship to the Bombay Port, in order to confer jurisdiction on the Bombay High Court, has the character of forum shopping, rather than anything else. 43. The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the Court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the Court, it is not possible to hold that the Court will have jurisdiction against a foreign defendant. See in this connection K. Viswanathan v. Rukn-ul-Mulk Syed Abdulwajid, and Raj Rajendra Sardar Maloji Marsingh Rao Shitole v. Sri Shankar Saran, . This factor also therefore, is against the respondents in the present appeals." I have reproduced the findings of the Supreme Court extensively to illustrate the absurdity of the interpretation which is sought to be placed on the following observations contained in para 35 of the judgment. "Of course, in theory, if in future any liability action is at all filed there which is capable of limitation, SNP would

be entitled to set up limitation as a defence or file an independent limitation action. But the present suit is without jurisdiction." The aforesaid observations have to be read in the light of the findings given in the other paragraphs which make it clear that this Court has no jurisdiction to entertain a claim against the defendants. The observations are not limited to the Admiralty Jurisdiction of this Court. In paragraph 20, general principle with regard to jurisdiction has been set out. That principle, when applied to the facts of this case, clearly rules out the jurisdiction of this Court to entertain the present suit. It has been held that except for SNP, the owners of both the vessels are foreigners. It is held that the acts of both the owners are outside the jurisdiction of the Bombay High Court. It is further observed that the conduct of SNP and Kara Mara has not been above board. They have indulged in "forum shopping". The observations in paragraph 35 relied upon by Mr. Sundaram clearly state that SNP and Kara Mara would be at liberty to defend any action filed by the defendants for enforcement of their rights. At that stage they may set up a limitation action or file a fresh action. The Supreme Court contemplated defensive action by SNP and Kara Mara and not fresh prosecution on some concocted cause of action. There is no scope for any confusion as to the meaning of the observations of the Supreme Court. To accept Mr. Sundaram's interpretation of the observations of the Supreme Court in paragraph 35, would amount to rewriting the same beyond recognition. The interpretation suggested by Mr. Sundaram is a complete distortion of the observations made by the Supreme Court. 1, therefore, hold that the declaration part of the suit has to be rejected on the short ground that this Court has no territorial jurisdiction to entertain and try the suit. 15. At this stage it would be appropriate to consider the question : Whether the plaint (with regard to the declaration) is barred under any provision of the law? The plaintiffs on their own showing are not pursuing the relief of declaration in Admiralty Suit No. 58 of 1998. They have, according to Mr. Sundaram, elected to pursue the relief in the present suit. In my opinion, this course is not open to the plaintiffs. Order 2, Rules 1 and 2 of the C.P.C. are as under:- "Order II. 1. Frame of suit:—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. 2. Suit to include the whole claim:—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. (2) Relinquishment of part of claim: Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of several reliefs:- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted." A bare perusal of the aforesaid provisions make it clear that they are mandatory in nature. The term "shall" and not "may" occurs in all the rules. Thus under Order 2, Rule 1, the plaintiffs are duty bound to claim the entire relief. The suit has to be so framed as to afford ground for

final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. As noticed earlier the plaintiffs have claimed identical relief of declaration in Suit No. 58 of 1998. The plaintiffs could have made an application in that suit to relinquish the relief of declaration with liberty to seek the same relief in the present suit. This application would have to be made under Order 23, Rule 1 of the C.P.C. seeking leave of the Court to pursue the relief of declaration in the present suit. The Court may at its discretion grant liberty to the plaintiffs to pursue the relief of declaration in the present suit. The plaintiffs would have to satisfy the Court that there are sufficient grounds for allowing the plaintiffs to continue with the relief of declaration in the present suit. But that application could have been made in the earlier suit and not in the present suit. This permission cannot be indirectly granted in this suit by accepting the statement of the learned Counsel for the plaintiff that they have "elected" to press for the relief of declaration in this suit rather than in the present suit. Accepting this proposition would render the provisions of Order 2, Rules 1 and 2 read with Order 23, Rules 1 and 3 nugatory. It was incumbent on the plaintiffs to seek leave of the Court in Suit No. 58 of 1998 for liberty to claim the same relief in the present suit. The requisite permission not having been obtained by the plaintiffs in Suit No. 58 of 1998, the present relief of declaration is clearly barred under Order 2, Rule 2. Thus the plaint has to be rejected under Order 7, Rule 11(d). 16. There is yet another reason why the plaintiffs cannot be permitted to continue with this suit. The plaintiffs are seeking the relief of declaration of being an Indian Company, in view of the findings of the New Orleans Court that SNP is "alter ego" of the Merali family. The plaintiffs apprehend that this would be interpreted by the Indian Authorities to mean that Meralis are the beneficial owners of SNP. Therefore SNP would be carrying on business in contravention of the Foreign Exchange Regulation Act, 1947, The Income Tax Act, 1961 and the Securities and Exchange Board of India Act, 1992. SNP would be liable to criminal action. In my view this argument of Mr. Sundaram needs only to be stated to be rejected. Sections 34 and 35 of the Specific Relief Act provide as under: "34. Discretion of Court as to declaration of status or right:— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation—A trustee of property is a"person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee. 35. Effect of declaration.—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the per-

sons for whom, if in existence at the date of the declaration such parties would be trustees." By virtue of section 35 of the Specific Relief Act a declaration given under section 34 is binding only between the parties. It is declaration in personam and not in rem. Thus the Indian Authorities would not be bound by the declaration. It would be of no effect, and thus futile. This apart, even if it is declared that SNP is an Indian Company, legally owned by Indians, it would not automatically mean that it is not an "alter ego" of the Merali family. Thus the declaration would be an empty formality. Courts refrain from passing meaningless orders. Thus this submission of Mr. Sundaram has also to be rejected. In any event, cause of action for seeking such a declaration can, conceivably, only arise on the WTCC filing a suit in this Court to enforce the judgment of the New Orleans Court. The plaintiffs are aware of this legal position as they have reserved their right to "challenge the decree as and when the defendants seek its implementation/execution/recovery". Additionally, therefore the plaint has to be rejected as disclosing no cause of action, under Order 7, Rule 11 (a). 17. However, part of the cause of action with regard to libel has clearly arisen within the jurisdiction of this Court. Inspite of this Court having jurisdiction, in my view, the plaint has to be rejected on the ground that it does not disclose a cause of action and it is an abuse of process of Court. In order to appreciate the rival submissions of learned Counsel on this point it would be necessary to reproduce the relevant provisions of the C.P.C. "Order VI, Rule 16. Striking out pleadings :—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading— (a) which may be unnecessary, scandalous, frivolous or vexatious, or (b)..... (c) which is otherwise an abuse of the process of the Court". "Order VII, Rule 11. Rejection of plaint :—The plaint shall be rejected in the following cases :— (a) where it docs not disclose a cause of action. (b)..... (c)..... (d) where the suit appears from the statement in the plaint to be barred by any law". The aforesaid provisions have been subject matter of discussion by the Indian Courts in a number of cases. Analogous provisions have also been examined by Courts in England. In India under Order 7, Rule 11 the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. For the purpose of deciding that the plaint "does not disclose a cause of action", the Courts generally look only at the plaint. However, there is a rider to this rule, that when the plaint is based on a document, the same can also be looked into. This proposition has been recognised by the Rajasthan High Court in the case of Bhagwan Das v. Goswami Brijesh Kumarji and others, of the aforesaid judgment, it is observed as follows :— "7. Learned Counsel for the opposite party may be right in urging that if the plaint is based on a document, then such a document may be considered as forming part of the plaint itself and the document can also be looked into, while considering the averments of the plaint, for the purpose of deciding the question that the plaint discloses a cause of action or not. But it has to be remembered that the averments made in the plaint as well as the contents of the document which may constitute part of the plaint, can be looked into on the face value thereof and the question relating to the validity or invalidity of the document cannot

be considered at the stage of deciding an application under Order 7, Rule 11 C.P.C." Thus it becomes apparent that in this case the Court would be justified to look at the so called defamatory publications for the limited purpose of finding out as to whether they contain anything other than fair and accurate reports of the findings of the New Orleans Court. A perusal of the various articles relied upon by the plaintiffs shows that references are made to the findings given by the New Orleans Court. A fair and accurate gist of the findings have been reproduced. Alongwith the findings of the Court the intentions of the Counsel for the defendant to pursue the enforcement of the judgment in various parts of the world have also been mentioned. It would, therefore, appear that the statements made in the publications are privileged. The law with regard to privilege has also been settled, Mr. Manohar had referred to commentaries viz. (i) Salmond & Heuston on the Law of Torts (20th Edn.) page 165, (ii) Winfield & Jolowicz on Tort (12th Edn.) and (iii) Gatley on Libel and Slander. AH these commentaries make it clear that there are certain occasions on which public policy and convenience require that a man should be free from responsibility for the publication of defamatory words. The courts are unwilling to extend the number of these occasions on which no action will lie even though the defendant published the words with full knowledge of their falsity and with the express intention of injuring the plaintiff. At the same time it is well settled that absolute privilege attaches to fair and accurate reports in a newspaper of proceedings publicly heard before a Court exercising judicial authority. Applying the aforesaid test, it would have to be held that the publications complained of in the plaint are privileged. Therefore, any claim based on the same shall have to be struck out as "disclosing no cause of action". Mr. Sundaram had cited a number of judgments laying down the circumstances under which the plaint can be rejected. He relied on the case of Bomi Munchershaw Mistry v. Kesharwani Co-op. Housing Society and others, . In this case it is held that power of taking a plaint off the record of the Court as well as the allied power of punishing for contempt which are the attributes of a Court of record, will have to be exercised with utmost caution and only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of the power though arising in Civil Procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the alleged contemnor or the plaintiff, whose plaint is to be branded as an abuse of the process of the Court. In my view, the defendants have an absolute defence to the plaint. There is no doubt in my mind that the plaintiffs do not have even an arguable case. The case of the defendants falls squarely within the parameters of the law laid down by this Court in the above case. Similar proposition is laid down in the case of Wenlock v. Moloney and others, 1965(2) All.E.R. 871. In this case the observations of Lord Herschell in Lawrance v. Lord Norreys, 1886-90 All.E.R. rep. at p. 863 have been reproduced which are as under : "It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases, I do not think its exercise would be justified merely because the story told in the pleadings was

highly improbable, and one which it was difficult to believe could be proved". There is a slight difference between the law in England and the law in India with regard to the rejection of the plaint at the initial stage. In India, plaint can only be rejected, inter alia, if it discloses no cause of action. On the other hand in England the plaint can be rejected if it discloses no "reasonable cause of action". The provision is contained in RSC Order 18, Rule 19, which is as under : "(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that — (a) it discloses no reasonable cause of action or defence, as the case may be; or (b) it is scandalous, frivolous or vexatious; or (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of the process of the Court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be. (2) No evidence shall be admissible on an application under paragraph (1)(a)..." A perusal of the aforesaid provision would show that, literally speaking, the power is a little wider in England. But judicial interpretation has virtually equated the term "no reasonable cause of action" occurring in RSC Order 18, Rule 19 to the phrase "no cause of action" occurring in Order VII, Rule 11(a) of the C.P.C. The Indian as well as the English Courts are very reluctant to reject the plaint at the threshold. Analysing the aforesaid provision in the case of Drummond-Jackson v. British Medical Association and others, 1970(1) A1I.E.R. 1094 Lord Pearson observes : "Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases ....." Similar views expressed by other Judges are also noticed, as follows : In Nagle v. Feilden, 1966(1) All E.R. at page 695 Danckwerts, L.J., observes: The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the Court". Salmon, L.J., at page 697 observes :"It is well settled that a statement of claim should be struck out and the plaintiff driven from the judgment seat unless the case is unarguable". Thus the rule appears to be that the plaint can be rejected in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the Court. The plaint should not be struck out unless the case is unarguable. In the same judgment Sir Gordon Willmer at page 1105 observed as follows :—"The question whether a point is plain and obvious does not depend on the length of time it takes to argue. Rather the question is whether when the point has been argued, it has become plain and obvious that there can be but one result". I have extracted the findings given by the New Orleans Court in paragraph 9 above in order to illustrate that the newspaper reports which are said to be defamatory are nothing but a fair and accurate reporting of the findings returned by the New Orleans Court. There is no distortion of the findings. The newspaper reports are privileged if published contemporaneously. The report need not be a verbatim one. It is enough if it is in substance a fair account of the findings recorded or what took place.

Examined in this light, I do not find the newspaper reports to be beyond the scope of privilege. The findings returned by the New Orleans Court are much more serious than what is printed in the newspaper articles. Thus, in my view, this is a case where the defendants have an absolute defence to the claim of libel put forward by the plaintiffs. It is not a case where the story told in the pleadings was merely"highly improbable". It is a case that even if the plaintiffs are permitted to prove that the statements have actually been made, still the suit, would have to be dismissed as the statements would be privileged. There can be but one result. The dismissal of the suit. Applying the aforesaid principles to the facts and circumstances of this case, I am of the considered opinion that the plaint does not disclose a cause of action and has to be struck out under Order 7, Rule 11(a). 18. Furthermore, it is a settled proposition of law that it is an abuse of process to raise in subsequent proceedings matters which could and should have been litigated in earlier proceedings. I am clearly of the opinion that the plaintiffs have mixed up the prayer for declaration with the prayer for damages in order to avoid the findings of this High Court and the Supreme Court in WTCC case to the effect that this Court has no jurisdiction to entertain the suit. Since the plaintiffs are claiming that the damage of the libel has occurred within the territorial jurisdiction of this Court, the plaintiffs would be entitled to file the suit with regard to damages. But this relief has been deliberately combined with the declaration which is already claimed in Admiralty Suit No. 58 of 1998. The plaintiffs are not even serious about the relief of damages. Mr. Sundaram had very candidly stated during arguments that the plaintiff is more concerned with the relief of declaration, than the relief of damages. The whole effort seems to be to wriggle out of the findings given on jurisdiction by this Court and the Supreme Court in the WTCC case. This attitude of the plaintiffs is apparent from the various proceedings instituted by the plaintiffs in the Supreme Court of India after the judgment was given by the Supreme Court in the WTCC case. The Supreme Court delivered the judgment on 20th April, 1998. On 30th April, 1998, Admiralty Suit Nos. 26 of 1995 and 28 of 1996 filed by SNP and Kara Mara were dismissed by this Court in compliance with the judgment of the Supreme Court. Even this order was challenged by SNP by way of Special Leave Petition in the Supreme Court but it was withdrawn on 28-10-1998 and the Supreme Court passed the following order :—"Learned Counsel for the petitioner seeks leave to withdraw the Special Leave Petitions. We fail to see how such petitions could have been filed. Other writ petitions were also filed as well as Review Applications were also made to review the impugned judgment of this Court. These are not proper practices which should be encouraged. We, therefore, while ordering dismissal of the petitions as withdrawn, direct that the petitioners should pay costs of Rs. 5,000/- to be paid to the Supreme Court Legal Services Committee". A writ petition was also filed by the Maritime Association of Shipowners, Ship Managers and Agents under Article 32 of the Constitution of India challenging the judgment of the Supreme Court dated 20th April, 1998. On 16th October, 1998 the Supreme Court dismissed the writ petition by passing the following order."This petition under Article 32 is wholly misconceived. Article 32 is not

a proper remedy for challenging a decision of this Court or reviewing it. Even otherwise there is no merit in the petition. It is dismissed". On 16th June, 1998 the crew members of Ya Mawlaya made an application for ad-interim anti suit injunction in the three suits filed by them being Admiralty Suit Nos. 4, 17 and 18 of 1996. They even prayed that the Notices of Motion be listed for hearing on 25th June, 1998 since the New Orleans Court proceedings were listed on that day. This was done inspite of the fact that anti suit injunctions earlier passed by this Court in Admiralty Suit Nos. 26 of 1995 and 28 of 1996 had been vacated pursuant to the judgment of the Supreme Court. Admiralty Suit Nos. 4, 17 and 18 of 1996 have also been dismissed by this Court by judgment dated 7th December, 1998 on the ground that this Court has no jurisdiction to entertain the suits. These suits have been decided after taking evidence on the preliminary issue of jurisdiction. Inspite of the categoric findings returned by the Supreme Court and this Court to the effect that this Court has no jurisdiction to entertain the suit, the plaintiffs filed Admiralty Suit No. 58 of 1998. This was done only to drag the defendants into further litigation by seeking an utterly futile declaration. Again the present suit has been filed ostensibly for the reason that the judgment has been pronounced by the New Orleans Court on 5th March, 1999. The cause of action with regard to the declaration had arisen to the plaintiffs even prior to the filing of Admiralty Suit No. 58 of 1998. In my view, the observations made by the New Orleans Court in the Summary judgment does not change the fact situation with regard to the cause of action. The defendants were all along claiming that the plaintiffs are"alter egos" of the Merali family. The New Orleans Court has given clear-cut findings upholding the contentions of the defendants. Thus the situation remains exactly the same as at the time when the plaintiffs had filed Admiralty Suit No. 58 of 1998. I am of the considered opinion that the plaintiffs have filed this suit mala fide and with an intention of harassing the defendants. The litigation has been inspired by oblique motives and is not bona fide. This constitutes clear abuse of the process of the Court. Thus in view of Order 6, Rule 16(a) and (c| the plaint has to be rejected at the threshold. For this conclusion I draw support from the observations made by the Supreme Court in the case of T. Arivandandam v. T.V. Satyapal and another, A.I.R. 1977 S.C. 2421. Krishna Iyer, J., observed as follows: — "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the first Munsif's Court, Bangalore is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11, C.P.C, taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first

hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men. (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shah remarked on the assassination of Mahatma Gandhi :"It is dangerous to be too good". 6. The trial Court in this case will remind itself of section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. 7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the Other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are con strained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A Judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy." In my view the aforesaid observations are squarely applicable to the conduct of the plaintiffs. The suit has been filed to harass WTCC and to get over the judgment of the New Orleans Court without getting rid of the judgment by following due procedure of law. No appeal has been filed against the judgment by the plaintiffs. The correctness or otherwise of the findings of "Alter Ego", incompetent crew and officers given by the New Orleans Court cannot be examined in this suit. The plaintiffs can only oppose the enforcement proceedings of the judgment given by the New Orleans Court. Since U.S.A. is not a reciprocating country as envisaged under section 44-A of the C.P.C. the judgment of New Orleans Court is not executable in India. The defendants would have to file a separate suit to enforce the judgment. At that time plaintiffs would be entitled to raise all legal and technical defences and make any counterclaims. This legal position is settled and well known to the plaintiffs. It is for this reason that they have reserved their right "to challenge the decree as and when the defendants seek its implementation/execution/recovery." In my view present suit has been filed mala fide by the plaintiffs, knowing perfectly well the futility of the claim put forward for libel. Even though the so called libellous articles have been published abroad, no action has been so far taken either against the publications or the authors of the articles. Neither the publications nor the authors of the articles are even impleaded as parties to the suit. In my view these facts clearly show that the suit is frivolous, vexatious and scandalous and abuse of the process of the Court. It is clearly filed out of

vindictiveness against WTCC, perhaps as a pressure tactic for settlement. 19. I am of the considered opinion that it would be a traversity of justice to permit the plaintiffs to enter the portals of the High Court indirectly when their entry has been emphatically barred by the Supreme Court directly. This Court has the power to reject the plaint on the ground that it is an abuse of the process of the Court not only by virtue of Order 6, Rule 16, C.P.C. but also by virtue of the powers conferred on this Court under Article 215 of the Constitution of India. Paragraph 19 of the judgment in Bomi Munchershaw [supra] makes this proposition absolutely clear wherein it is held as under : "19. The above narration indicates that though the words"abuse of the process of the Court" occurred for the first time on 1-2-1977 in Order 6, Rule 16 of the Code of Civil Procedure, this power was immament in and arose from a High Court being a Court of Record under the Letters Patent as well as Article 215 of the Constitution." Thus, it is apparent that Order 6, Rule 16 is not the sole repository for the power of the High Court to reject the plaint for abuse of the process of Court. In my view, the plaintiffs have not come to Court with clean hands. For the aforesaid reasons the plaint has to be rejected. When abuse of process is clearly established before the Court, it is not sufficient merely to dismiss the action. It is the bounden duty of the Court to express its disapproval of the course adopted by the parties. At long ago as 1917 the Divisional Court and the Court of Appeal of England laid down solitary principles to be followed by the litigants while seeking equitable relief from the Court. These principles are laid down in the case of The King v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, reported in 1917 King's Bench Division page 486. Therein the following principles are laid down by Viscount Reading, C. J. : "Before I proceed to deal with the facts I desire to say this: where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the application in a proceeding which has only been set in motion by means of misleading affidavit. The aforesaid principles were affirmed by the Court of Appeal. Whilst dismissing the appeal, it was ultimately observed as follows by Warrington, L.J., :—"..... I express no final opinion, but it may be that the result of this is that the applicant has no further remedy. In the case of Reg. v. Bodmin Corporation (2) Day, J., said: "As I read the authorities, it has always been held, whenever this objection has

been taken, and the attention of the Courts has been called to the point, that no second application for a prerogative writ will be granted when the first application has been discharged. There are many authorities which support this contention; but I think apart from authority, that it is a most convenient view to take of the jurisdiction of the Court in such matters. It is a view which has commended itself to many Judges who have acted upon it, and it commends itself to me. It is no doubt extremely convenient that no second application for a high prerogative writ should be allowed after a first application has been refused. Such a writ is an extraordinary remedy, and persons seeking it may very reasonably be required not to apply for it unless they have sufficient cause for doing so. They must come prepared with full and sufficient materials to support their application, and if those materials are incomplete 1 think it is quite right that they should not be allowed to come again". It may be that the result of our decision is that the applicant loses her remedy. If so, she has only herself and her legal advisors to thank for it." In my view the facts which have emerged in this case clearly fall within the ratio expressed by Viscount Reading, C.J., and Warrington, L.J. The observations made by Krishna Iyer, J., in the case of T. Arivandandam (supra) also make it abundantly clear that if clear drafting has created the illusion of a cause of action then the same should be nipped in the bud at the first hearing. The Court has to remind itself of section 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives. Thus it becomes clear that a dishonest litigant loses his remedy. It is the bounden duty of the parties to the litigation to ensure that the pleadings make a candid and fair statement of facts. The facts must not be stated in a manner to mislead the Court as to the true state of affairs. In the present case the plaintiffs have deliberately distorted the findings of the Supreme Court given in the W.T.C.C. case. They have deliberately mixed up the relief for damages with the relief for declaration in order to give the illusion of a cause of action and that this Court will have jurisdiction to entertain the same. Keeping the aforesaid facts and circumstances in view, I am of the considered opinion that the plaint has to be rejected with heavy costs. 20. In view of the above, Notice of Motion No. 1272 of 1999 is made absolute in terms of prayer Clause (a). Prayer Clause (a) reads as under : "(a) That the suit be dismissed under Order 7, Rule 1 l(a) of the C.P.C., 1908 and other applicable provisions, as being without jurisdiction". Notice of Motion No. 1638 of 1999 is also made absolute in terms of prayer Clause (a). Prayer Clause (a) reads as under : "(a) Order the plaint in Suit Lodging No. 2284/99 to be struck out as being unnecessary, scandalous frivolous and vexatious and also being an abuse of the process of the Court under Order 6, Rule 16 read with section 151 of Code of Civil Procedure and Article 215 of the Constitution of India." The suit as also Notice of Motion No. 1663 of 1999 are dismissed with costs. Costs quantified at Rs. 50,000/-. A sum of Rs. 25,000/- to be paid to each defendants. Certified copy expedited. Private Secretary is permitted to issue an ordinary copy of this order to the parties. 21. Plaint rejected.