
(1983) 01 BOM CK 0021
In the Bombay High Court
Case No : Adm. Suit No. 24 of 1982

Dimitrios Paizis and Others

APPELLANT

Vs

Motor Vessel "Nicos" and Others

RESPONDENT

Date of Decision : 12-01-1983

Acts Referred:

Colonial Courts of Admiralty (India) Act, 1891 — Section 2
Constitution of India, 1950 — Article 225, 372
Merchant Shipping Act, 1958 — Section 47, 51

Citation : AIR 1983 Bom 178 : (1983) 85 BOMLR 250

Hon'ble Judges : Lentin, J

Bench : Single Bench

Advocate : S. Baptista and Aspi Chinoi, for the Appellant; D.C. Gomes and V.O. Meghani, for the Respondent

Judgement

1. I am directed by this learned Chief Justice to try the preliminary issue of jurisdiction. That I hereby do. To that end, I briefly state the pertinent facts, recording at the outset Mr. Meghani's insistence that it be clarified that his clients, namely the 6th and 7th defendants, do not admit the plaintiffs' allegations in the pleadings. Neither party opted to lead any evidence.

2. The plaintiffs' case is as follows :--

(A) Plaintiffs 1, 2 and 3 are Greek Nationals and possessed the entire shareholding of the 2nd defendant-Company in respect of the 1st defendant vessel (referred to hereafter as "the Vessel") of which 22 shares are held by the 1st plaintiff, 39 shares by the 2nd plaintiff and 39 shares by the 3rd plaintiff, making an aggregate of 100 shares in respect of the Vessel. The Vessel is registered in Panama and belongs to the 2nd defendant which is a foreign company organised under Greek Law. the 3rd defendant was the President/Director of Defendant No. 2-Company till his demise. which learned counsel state took place prior to the filing of the suit. The 4th defendant who is the widow of the 3rd defendant, is the Director/Vice President of the 2nd defendant-Company.

The 5th defendant is the Secretary/Treasurer of the 2nd defendant-Company. The 6th defendant is a Company incorporated under the Companies Act, 1956 and carries on business at Bombay. The 7th defendant was at his own behest later impleaded in the suit in the circumstances set out a little later in this judgment.

(B) In April 1982, plaintiffs 1, 2 and 3 sold their holdings of 100 shares in the 2nd defendant-Company to the 3rd defendant for a total consideration of U. S. \$ 4,10,000. The 3rd defendant paid plaintiffs 1, 2 and 3 U. S. \$ 2,85,000 and requested 6 months' time to pay the balance amount of \$1,25,000. By a Transfer of Shares Agreement dated 30th April, 1982, the 3rd defendant having received the said 100 shares, agreed to pay the balance amount of \$1,25,000 by 3 instalments of \$35,000, \$45,000 and \$45,000 on or before 30th June, 1982, 30th Aug. 1982 and 30th Oct. 1982 respectively with interest at 20% per annum.

(C) On 30th April 1982 the 2nd defendant-Company as owner of the Vessel executed in Greece in favour of plaintiffs 1, 2 and 3 as mortgagees, a First Preferred Mortgage of the Vessel and her appurtenances charging the Vessel and appurtenances as security for the due repayment of \$1,25,000 and interest by the 3 instalments aforesaid. In order to further secure the said debt of \$1,25,000 and interest, the 2nd defendant-Company also executed in favour of plaintiffs 1, 2 and 3 other Security Documents including a Guarantee and assigned the freight, earnings and insurance of the Vessel to plaintiffs 1, 2 and 3. It was provided in the Mortgage document that in the event of the 2nd defendant-Company failing to comply with the obligations contained therein and the Security Documents, plaintiffs 1, 2 and 3 would be entitled to enforce their rights under the Mortgage and Security Documents as also all their other rights as mortgagees under the mortgage and as creditors under the Security Documents and also to take possession of the Vessel and pay all costs, charges and expenses arising out of the incidental to the exercise of their rights in respect of the vessel.

(D) Clause 16B of the Mortgage Deed gave liberty to the mortgagees, namely plaintiffs 1, 2 and 3, to take any proceedings in the Courts of any country for the protection and enforcement of the security or for the enforcement of the provisions of the Security Documents or to recover the outstanding indebtedness and stipulated that --

"..... for the enforcement of the security created by this Mortgage and/or the Guarantee, the Owner hereby submits to the jurisdiction of the Court of any country of the choice of the mortgagees".

The mortgage was registered by the 2nd defendant-Company in favour of plaintiff 1, 2 and 3 at Panama. A continuing guarantee dated 30th April 1982 in respect of the liability of \$ 1,25,000 was also executed by the 2nd defendant-Company in favour of plaintiff 1, 2 and 3.

(E) In June/July 1982 the Vessel arrived at Madras where she unloaded cargo

and thereafter loaded cargo for the Persian Gulf. However, the freight earnings of the Vessel at Madras were received and utilised by the 2nd defendants agent, namely the 6th defendants, despite the latter's knowledge that the freight earnings amounting to \$ 70,000 (Rs. 6,65,000/-) were to be held on behalf of plaintiff 1, 2, and 3 as mortgagees and creditors, as the 2nd defendant-Company had failed to pay the first instalment of \$ 35,000 on or before 30th June, 1982.

(F) After loading cargo at Madras, the Vessel arrived at Bombay on 4th Aug. 1982. Despite the request of plaintiff 1, 2 and 3 to the 6th defendants to pay them the freight collected at Madras, the 6th defendants failed to do or to give an account thereof. The second instalment of \$ 45,000 which became due on 30th Aug. 1982. was also not paid.

3. According to Tanubai plaintiff, in these circumstances they filed the present suit against defendants 1 to 6, (a) for recovery of the first and second instalments of \$ 35,000 and \$ 45,000 aggregating to Rs. 7, 76,624.99 P. inclusive of interest on the first instalment, (b) for arrest and sale of the Vessel and other reliefs.

4. On 17th Sept., 1982 an order was passed for the arrest of the Vessel on the failure of defendants 1 to 6 to deposit in Court a sum of Rs. 7,94,490.00 P. as security towards satisfaction of the plaintiff claim. On 23rd Nov. 1982 an order was passed for maintenance of the Vessel by plaintiff 1, 2 and 3 depositing with the Sheriff a sum of Rupees 90,000/- and making provision for insurance. Against that order the plaintiff preferred an appeal and obtained an interim stay pending admission.

5. During the pendency of the suit the 7th defendants claiming to be the owner of the Vessel, took out a Chamber summons on 17th Sept. 1982, for being added as a party to the suit. According to the 7th defendants pursuant to an agreement dated 7th Nov. 1981 entered into at Bombay between himself and plaintiff 1, 2, and 3, he that is the 7th defendants. became the owner of the Vessel for the consideration of \$ 2,75,000 plus certain additional amounts and that on his paying plaintiff 1, 2, and 3 \$ 50,000 and making certain further payments thereafter amounting to \$ 3,31,302, in all aggregating \$ 3,63,000, he received possession of the Vessel from plaintiff 1, 2 and 3. On the 7th defendants Chamber Summons an order was passed on 5th Oct. 1982. directing the plaintiff to implead the 7th defendants in the suit. That is how the 7th defendants come into the picture.

6. On 21st Oct, 1982 defendants 6 and 7 took out a Notice of Motion for release of the Vessel and other reliefs. In the affidavit-in-support of that motion, inter alia a plea of want of jurisdiction was raised. On 28th Oct. 1982 an order was passed for trial of the preliminary issue of jurisdiction. Hence for that limited purpose, the matter comes up before me.

7. Mr. Meghani, the learned counsel appearing on behalf of defendants 6 and 7, invited me to raise the preliminary issue framed by him as under:--

"Whether this Honourable Court has jurisdiction to try the plaintiff suit on the

ground that the plaintiff by their suit seek to enforce claim based on a disputed mortgage executed according to the plaintiff in the State of Greece and registered according to the plaintiff in the State of Panama?"

If framed the following preliminary issue as is normally done-

"Where this Court has the jurisdiction to entertain and try the suit?"

8. Mr. Meghani. crystallised three grounds of challenge to the Court jurisdiction. He urged (A) that the Court jurisdiction does not extent to adjudication of the validity of a mortgage registered in a foreign country. with the result that this Court would have no jurisdiction to try a claim based on such a mortgage; (B) the Court jurisdiction is circumstance by the Merchant Shipping Act, 1958 which does not enable the Court to try a suit such as the present; and (C) consent by the 2nd defendants to the jurisdiction of the Court of any country of the plaintiff choice would not, under Indian Law vest jurisdiction in this Court, as under Indian law parties could not by consent or acquiescence or estoppel confer jurisdiction on a Court which it does not otherwise have.

9. Elaborating his first ground of challenge, Mr. Meghani urged that the English Court of Admiralty exercised jurisdiction that was conferred under the earlier Admiralty Court Act of 1840 Mr. Meghani emphasised that neither under the 1840 Act not the 1861 Act, and at no time till 1890, did English Court assume jurisdiction and entertain actions involving adjudication of the validity of a mortgage registered in a foreign country unless and until that foreign country, by its duly constituted representative, invoked or consented to and thereby invited the exercise of jurisdiction, Reliance was place by Mr. Meghani on S. 3 of the 1840 Act, which reads as under:--

"III. (And be it enacted, that after the passing of this Act (b), whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship of vessel and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively (c)".

Mr. Meghani urged that S. 3 of the 1840 Act did not entitle the mortgagee to come to Court in order to enforce his mortgage unless the vessel was fist arrested or its sale proceeds were brought into the Court registry. Reliance was also placed by Mr. Meghani on S. 11 of the 1861 Act which reads as under:--

"XI. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of the Merchant Shipping Act, 1854, whether the ship or the proceeds thereof be under arrest of the said Court or not".

Mr. Meghani urged that S. 11 gave jurisdiction to the Court only in respect of

mortgages registered according to the provisions of the Merchant Shipping Act,, 1854.

10. Reliance was also placed by Mr. Meghani to *The See Reuter* (1811) 165 ER 1219, decided on 14th Feb. 1811 and *The Evangelistria* (1876) 2 PD 241. In the *See Reuter* case, it was held that without consent of the parties or sanction of the representative of the foreign State the Court generally declines to interfere in a case of possession between foreigners. That case was instituted on behalf of a majority of the owners of the vessel, which was a Rostock Ship, for the purpose of dispossessing the master, who was also a part owner. The vessel has been arrested by the English Court at the instance of one Martens, an attorney and agent of several Rostock residents, claiming to be the proprietors of fourteen-sixteenth shares of this vessel. The master, claiming to be the owner of five-sixteenths as alleged by the principal owners, appeared under protest denying the Court jurisdiction and seeking to suppress the warrant of arrest on the ground that the Court had no authority to decide on the law of the country to which the vessel belonged, that the case did not depend upon a question of the law of nations but upon the municipal law of the city of Rostock and that the Court was not competent to entertain a cause of possession between foreigners without the consent of the parties or of the accredited minister of the country in which the parties resided, Holding that the judicial order passed by the Rostock Court, which was produced at the trial, directing the Master to deliver possession of the ship to a Martens, armed the English Court with sufficient authority to exercise jurisdiction. it was observed as under:--

".....If there be any case where British interests are not concerned, that would justify the interference of the Court, it is a case similar to the present, where the master refuses to return to the ports of that country to which all the parties belong, and where the question between them might with the greatest propriety be decided, I think it is a very powerful ingredient in this case, that the master has detained this ship five years together in foreign ports, and still refuses to return to Rostock to abide the decision of the Court there, though called upon by a large majority of the owners so to do. At the same time, it is with the greatest reluctance that this Court takes up question of this kind where foreigners are alone concerned. These are questions which do not properly belong to the *jus gentium*, but depend on the municipal regulations of different countries, with which this Court can be but very imperfectly acquainted. The Court, therefore, is very unwilling to enter upon such question, and has never, I believe, entertained suits of this kind, unless the cases have been referred to its decision by the consent of parties, or by the intervention of the representative of the foreign state devolving the jurisdiction of his own country on this Court....."

In *The Evangelistria* case 1876 2 PD 241, the contest was between two foreigners each claiming possession of the vessel, one contending that he was the actual possessor and had never parted with the property in the ship by sale

or otherwise, and the other contending that the right to the possession of the vessel had passed on to him. One of the pieces of evidence submitted to the Court was the judgment of the Greek Court at Syra in favour of the plaintiff ownership. The Consul-General of Greece express his desire that the English Court should exercises jurisdiction in the matter. It was urged in that case that the Court had no jurisdiction in question of mortgages, except the jurisdiction conferred by recent statutes, and that whatever jurisdiction the Court might have respecting mortgages of British ships, it ought not to interfere in question arising in respect of foreign ships. In exercise of jurisdiction and alluding to the See Reuters case (1811) 165 ER 1219, and the observations therein, it was observed as under:--

".....That there is a prima facie judgment of a competent Greek Court in a matter where two subjects of Greece are concerned, pronouncing in favour of the plaintiff right to this vessel, and that judgment.....has been..... acted upon by the counsel-general of Greece in this country, and he has said expressly that he wished the jurisdiction of this Court to be exercised. Now, without entering into the argument which appears to me to deserve considerable attention as to the provisions in the Judicature Acts with respect to the jurisdiction of the High Court. I think, for the reasons I have stated, that I ought not to decline to exercise jurisdiction so far as to inquire into the possession of the respective parties, As it is undesirable that the ship should remain under arrest I should allow the arrest to be removed if bail is given".

Reliance was also placed by Mr. Meghani on a passage in Halsbury's Laws of England, Second Edn., Vol, I, at Page 86 as under:--

"All disputes concerning duly registered mortgages of British ships are within the Admiralty jurisdiction of the High Court, where the ship or the proceeds of her sale are under the arrest of the Court or not. The Court has also jurisdiction to determine suits concerning unregistered or equitable mortgages on foreign or British ships where the ship or the proceeds thereof are under arrest".

Mr. Meghani suggested that the implication of this passage is that in the case of a register mortgage the only Court having jurisdiction would be that of the country where are mortgage was registered.

11. Mr. Meghani also relied on a passage in Halsbury's Laws of England, Fourth Edn., I, at page 221 as under:--

"The Admiralty jurisdiction of the High Court includes jurisdiction to hear and determine and claim in respect of a mortgage or charge on a ship or any share therein. This jurisdiction extends to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages or charges created under foreign law".

12. Mr. Meghani referred to S. 2 (2) of the Colonial Court of Admiralty Act, 1890 which reads as under:--

"The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations".

13. Reliance was also placed by Mr. Meghani on the decision in *Yuri Maru v. The Woron* (1972) AC 906, 951, where it was held that the effect of S. 2 (2) of the 1980 Act was to limit the jurisdiction of Colonial Court of Admiralty established under the a to the Admiralty jurisdiction of the High Court of England, as it existed at the time the Act was passed and "what shall from time to time be added or excluded is left of independent legislative determination".

14. Mr. Meghani urged that it was for the first time in the 1926 International convention at Brussels that the contracting parties to the Convention agreed that any one of the contracting States, though is Court, could exercise jurisdiction in respect of claim based on a mortgage registered in a foreign country, provided the country ratified the terms of the Convention and implemented it by its municipal laws, Mr. Meghani further urged that tin the 1952 International Convention at Brussels, jurisdiction was given to the contracting parties though its Court, to arrest a sea-going vessel to enforce a claim based on a disputed mortgage registered in a foreign country. provided the country ratified the terms of the Convention and implemented them by its municipal laws, Mr. Meghani emphasised that neither the 1926 nor the 1952 Convention was ratified by India nor was any effect given to the same in its municipal laws, despite the fact that the first Merchant Shipping Act, 1958 was enacted when the U.S. A by its 1954 amendment, and the English Parliament by its 1956 Judicature Act, gave effect to those Conventions.

15. Now in order to test the correctness of these submission advanced by Mr. Meghani in support of his first challenge, it would not be inappropriate to trace the history of the investiture of Admiralty jurisdiction in this Court from the earliest times. For the first time Admiralty jurisdiction was invested in the Recorder's Court at Bombay established by charter of Feb. 20, 1798. The Recorder's Court was substituted at Bombay which was established by Clause 48 of the Letters Patent issued under the Chapter of 1823. The Court was then entrusted with four jurisdiction, namely civil, criminal, ecclesiastical and Admiralty, Clause 48 of the Letters Patent reads as under:--

"And it is out further will and pleasure, and We document hereby grant, ordain, establish, and appoint. That the said Supreme Court of jurisdiction at Bombay shall be a Court of Admiralty, in and for the said Town and Island of Bombay, and the limits thereof, and the Factories subordinate thereto, and all the territories which now are or hereafter may be subject to, or dependent upon the said Government, And we document hereby commit and grant to the said Supreme

Court of Judicature at Bombay full power and authority to take cognizance of, hear, examine, try and determine all causes, civil and Maritime and all pleas of contracts, debts, exchange, policies of assurance accounts, charter-parties, agreement, loading of ships. and all matters and contracts which, in any manner whatsoever, relate to freight or money due for ships hires and let out, transport money, maritime usury. bottomry or respondentia, or to extortions trespasses, injuries, complaints, demands, and matters, civil and maritime, whatsoever, between merchants, owners, and properties of ships and vessels, employed or used within the jurisdiction aforesaid, or between others, contracted, done, had, or commenced in, upon or by the high seas or public rivers, or ports, creeks, harbours and places overflow within the ebbing and flowing of the sea and high-water mark, within, about, and though out the Town, Island, and territories aforesaid, the cognizance whereof do the being to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called English, together with all and singular their incidents, emergence, and dependencies, annexed and connected causes whatsoever, and to proceed summarily therein, with all possible despatch, according to the course of our Admiralty of that part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact and the equity of the case".

From this clause it is manifest that though several matters were enumerated in respect of which the Supreme Court of Judicature at Bombay had full power and authority to take cognizance, the jurisdiction on the Admiralty side of the Supreme Court of Judicature at Bombay was the same as that in "that part of Great Britain called England". Thus the Supreme Court of Judicature at Bombay was invested with the same jurisdiction on its Admiralty side as the jurisdiction exercised by the High Court of Admiralty in England. The jurisdiction thus conferred by Clause 48 of the Letters Patent issued under the 1823 Charter, was continued by Clause 31 of the Letters Patent of 1862 and thereafter by Clause 32 of the Letters Patent of 1865 which reads as under:--

"And we do hereby further ordain that the said High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the High Court as a Court of Admiralty or of Vice- Admiralty and also such jurisdiction for the trial and adjudication of prize-causes and other Maritime questions arising in India as may now be exercised by the said High Court".

And thence by Ss. 106 and 223 of the Government of India Act 1915 and 1935 respectively and finally by Arts. 225 and 372 of Constitution of India. With this judicial history in the forefront, it is not difficult to come to the conclusion that the plaintiff suit, because on a mortgage executed by the owners of a seagoing vessel employed and used within the jurisdiction of this Court, unmistakably falls within the jurisdiction conferred by clause 48 of Letters Patent issued under the Charter of 1823, which jurisdiction has been continued down the years to the

present day.

16. Coming to the Admiralty Court Act 1840, as is manifest from the preamble, it was enacted "to improve the practice and extend the jurisdiction of the High Court of Admiralty of England". S 3 in terms provides that whenever any ship or vessel shall be under arrest by process issuing from the Court or if the proceeds shall be brought into and be in the Court registry, the Court would have jurisdiction to take cognizance of all claim and causes of action of any person in respect of any mortgage of such ship and to decided any suit instituted by any such person in respect of any such claims of causes of action. The jurisdiction thus conferred by the 1840. Act would extend to "any mortgage of "such ship" and thereby cover registered, unregistered and equitable mortgaged regardless of whether such mortgage was in respect of British or foreign ships. This is brought home by a passage in Willaims & Bruce Admiralty Practice, 1902, at page 44 which reads thus--

"It must not however be forgotten that the jurisdiction conferred by the 3rd Section of the 3 and 4 Vict, C. 65 though limited to cased where the mortgaged ship is already arrested or the proceeds are in Court extends to unregistered and equitable mortgages and well as to registered mortgaged and exists whether such mortgages be upon British or upon foreign ships".

17. Coming to the Admiralty Court Act, 1861, which came into operation on June 1, 1861, S. 11 thereof provided that the "High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgaged duly registered according into the provisions of "The Merchant Shipping Act, 1895", whether the Ship or the Proceeds thereof be under the Arrest of the said Court or not". As is manifest from the preamble of that Act, it was enacted to "extend the Jurisdiction and improve the Practice of the High Court of Admiralty". The underlining is mine in order to emphasise that the 1861 Act did not and was not intended to repeal. circumvent or circumstance the provisions of the earlier 1840 Act, rather to extend the jurisdiction conferred by that Act. This is unmistakably brought to the forefront in the "Tables Showing The Effect of Year's Legislation" at the commencement of law Reports Statutes 24 and 25 Vict. 1861, the relevant excerpt whereof is as under:--

"24 Vict, and 24 & 25 Vict Effect Act affected Subject of Act affected

x x x x

x x x x

x x x x

x x x x

State. 11 Extends 3 & 4 Vict, C, 65 Admiralty Court Jurisdiction .

x x x x

x x x x

x x x x"

As also observed in Willaims & Bruce Admiralty Practice, 1902, at page 45-

"This jurisdiction is in addition to the jurisdiction already existing under the Act of 1840".

Closer home, it was observed in Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd., that the 1861 Act is complementary to the 1840 Act, It is also not without its own significance that while S. 31 of the 1861 Act expressly repealed Act, No. 2 HEN-4C-11, the Act of 1840 was not repealed but on the contrary extended and improved by the later 1861 Act.

18. The law administered by the Admiralty Court is not the ordinary municipal law of England but is the law which by Act of Parliament, or reiterated decision, traditions and principles has become the English Maritime Law. (The Gaetano and Maria (1882) 7 PD 137 and Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd., There can be no doubt that by virtue of the reiterated principle and decision (to wit. "The See Reuter" 1811 165 ER 1219 and "The Evangelistria" 1876 2 PD 241, English Maritime Act confers on the Admiralty Court jurisdiction in question of mortgage of foreign ships arising between foreigners if the case has been referred to its jurisdiction either by consent of parties by or the intervention of the accredited representative of the foreign State concerned. There is also no doubt that the jurisdiction under the 1840 Act, was extended by the 1861 Act.

19. This jurisdiction was extended by the Colonial Court of Admiralty Act, 1890. S 2 provided for Colonial Court of Admiralty. Sub-section (1) provided that every Court of law in a British possession for the time being declared in pursuance of that Act to be a Court of Admiralty, or which, if no such declaration was in force in the possession. had therein original unlimited civil jurisdiction, would be a Court of Admiralty, with the jurisdiction in that Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possession for the purpose of its other civil jurisdiction. Sub-section (2) provided that the jurisdiction of a colonial Court of Admiralty would, subject to the provisions of the Act, be over "like places, persons, matters. and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise", (the underlining is mine), and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High

Court in England and would have the same regard as that Court to international law and the comity of nations. S. 3 of that Act inter alia empowered that the Legislature of a British possession may by any Colonial law declare any Court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under the Act, and limit territorially or otherwise, the extent of such jurisdiction.

20. In exercise of the powers conferred by the Colonial Court of Admiralty Act, 1890, was enacted the Colonial Court of Admiralty (India) Act, (Act No. 16 of 1891) (referred to hereafter as "the India Admiralty Act of 1891"). By S. 2 thereof, the High Court of Judicature at Bombay was sinter alia declared to be a Colonia Court of Admiralty.

21. The words "whether existing by virtue of any statute or otherwise" (underlined by me a little earlier) appearing in the Colonial Court of Admiralty Act, 1890 have been interpreted in Halsbury's Laws of England Vol. I, at page 139, para 346, which pertains to the jurisdiction of the Colonial Court of Admiralty, and read thus:--

"Within the limitations, if any, laid down by the Colonial Legislatures, or the orders conferring jurisdiction, the Colonial Court of Admiralty have the same jurisdiction and powers as were exercised in Admiralty by the High Court in England at the passing of the Colonial Court of Admiralty Act 1890". Footnote (b) at page 140 indicates that the jurisdiction of the colonial Court of Admiralty has been stabilised as it existed at the time of the passing of the 1890 Act and the extension of the Admiralty jurisdiction of the High Court in England by the Administration of Justice Act, 1920 (10 and 11 Geo, 5 Chap, 81) re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925 (15 and 16 Geo, Chap, 49), S. 22 is not shared by the Colonial Court of Admiralty, this is culled out form the decision of the Privy Council in *The Yuri Maru: The Woron* (1972) AC 906, relied on by Mr. Meghani himself, where it was held that the effect of S. 2 (2) of the Colonial Court of Admiralty Act 1890 is to limit the jurisdiction of the Colonial Court of Admiralty jurisdiction of the High Court of England as it existed at the passing of the Act and that the extension of the Admiralty jurisdiction of the High Court by the Administration of Justice Act, 1920, repealed and re-enacted by the Supreme Court of Judicature (Consolidation) Act 1925, does not apply to Colonial Court of Admiralty.

22. In *Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd.*, it was also pointed out that the High Court of Judicature at Bombay, in particular being one of the Colonial Court of Admiralty under the India Admiralty Act 1891, exercise at present the same Admiralty Jurisdiction as was done by the High Court of Admiralty in England in 1890 when the Colonial Court of Admiralty Act was passed by the British Parliament. This view was reiterated in a later decision of this Court in *Sahida Ismail Vs. Petko R. Salvejkov and Others*, . It is also not without its own significant that the Rules framed by this Court in Admiralty

jurisdiction are under the Colonial Court of Admiralty Act, 1890, by which the jurisdiction of this Court in Admiralty was stabilised as it existed at the time stabilised as it existed at the time of the passing of that Act.

23. The English Merchant Shipping Act, of 1854 was repealed and repealed by the Merchant Shipping Act, 1894, subsequently followed by the Merchant Shipping Act,, of 1897, 1906, 1921 and 1937, however, inasmuch as the jurisdiction of the Bombay High Court as an Admiralty Court was stabilised as it existed at the time of the assign of the Colonial Court of Admiralty a 1890, the English Merchant Shipping Act, of 1894 or the subsequent Merchant Shipping Act, of 1897, 1906, 1921 and 1937 cannot be read into S. 11 of the Admiralty Court Act 1861. The first Indian Merchant Shipping Act, was passed in 1923. It was repealed and replaced by the Merchant Shipping Act, 1958 where of Ss. 42 of 54 (which deal with mortgages of ships) read with S. 2 (1), makes it clear that the Merchant Shipping Act, of 1958 deal only with mortgages of ships registered in India and does not in any way deal with mortgages of ships which are not registered in India. Having regard to the repeal of the English Merchant Shipping Act 1854, S. 11 of the Admiralty Court Act 1861 must be read as conferring jurisdiction Court the Bombay High Court as an Admiralty Court to entertain and try claims and suits in respect of any ship mortgage, registered or unregistered, and as conferring jurisdiction to try claims and suits relating to mortgage of ships if the mortgage is registered without requiring or restricting the jurisdiction to the mortgages registered under the English Merchant Shipping Act 1854.

24. The reliance placed by Mr. Meghani on an observation in *Neptune* (1834) 3 Hag Adm, 129, (132), that the Admiralty Court has no jurisdiction on question of mortgage, is misplaced. The observation must be read in context with the facts of that case and the circumstance in which it was made and not in it isolation. That was not a case of a mortgagee enforcing anything but was a case where a merchantman claimed priority in lien over the sale proceeds of a ship as against a person who claimed to be a mortgagee in possession and the Court actually considered the properties between the mortgagee and the merchantman, Similar misplaced is the reliance place by Mr. Meghani on be decision in *Sebra M. Bogrt v. The Steamboat John Jay*, (1854-57) 15 Act ed 2d 95, where it was held that the Court of Admiralty has no jurisdiction to decree the sale of a ship for unpaid mortgage. That decision was based upon the *Neptune* decision (*supra*) which in turn had no relevance to the facts of the present case.

25. Reliance was also placed by Mr. Meghani on *State of Kerala Vs. Cochin Chemical Refineries Ltd.*, where it was held that failure of a mortgage to advance money undertaken by him does not invalidate the mortgage transaction, Mr. Meghani. also relied on a passage from *Salmond on Jurisprudence*, 12th Edn. at page 115 that --

"The right vested in a mortgagee has an independent existence, It will, or may, remain outstanding in the mortgagee even after the extinction of the debt. When thus left outstanding it must be re-transferred or surrendered to the mortgage

and the right of the mortgagor to this re-assignment or surrender is called his right or equity of redemption. The existence of such an equity of redemption is therefore the test of a mortgage".

I have alluded to these reference for what they are worth. Further comment is unnecessary.

26. thus the position that emerges is that the jurisdiction of this Court is stabilised as it existed at the time of the passing of the 1890 Act and that this Court exercises the same jurisdiction in Admiralty as was done by the High Court of Admiralty in England in 1890 either "under any statute or otherwise". Thus the non-rectification by India of the Brussels conventions relied on by Mr. Meghani is of no consequence. There can be no doubt that having regard to the Colonial Court of Admiralty Act 1890 and the India Admiralty Act 1891, the High Court of Jurisdiction at Bombay will have jurisdiction to entertain claims, question or suits relating to a mortgage of a foreign ship and arising between foreign are, either if the accredited representative of the foreign State has intervened and consent to the exercise of such jurisdiction of the foreign the parties consented to such exercise of jurisdiction, as done in the present case by clause 16B of the Mortgage Deed.

27. In light of the above discussion, Mr. Meghani. first ground of challenge must stand repelled.

28. Coming to the second ground of Mr. Meghani. challenge he urged that the Court jurisdiction circumstance by the Merchant Shipping Act, 1958. Alluding to Ss. 47 to 51 which pertain to mortgages register in India, he urged that the Act makes no mention of mortgages registered abroad, with the result that the jurisdiction of the Admiralty Court is constrained only to mortgaged registered in India which is permissible only in case of India ships. Mr. Meghani urged that though u/s 443 the Court is empowered to detain a foreign ship which has occasioned damage the Act contains on provision for the arrest of a vessel for enforcement of a foreign mortgage, Thus, according to Mr. Meghani where power to detain a foreign ship is given, it is so provided in the Act itself and that the Merchant Shipping Act of 1958, being confined only to adjudication pertaining to mortgages of India vessels whose mortgages are restored in India, cannot be made applicable to a case as the instant one, where the mortgage is in respect of a foreign vessel and the mortgagee is registered abroad.

29. These submission are based on a misconception. to start, with, the plaintiff invoke jurisdiction not under the Merchant Shipping Act, 1958, but under the Admiralty jurisdiction of this Court the history whereof has been traced in detail, albeit tiresome. earlier. The Merchant Shipping Act, 1958 pertains only to India vessels and none other and has no application to mortgages registered abroad or to foreign vessels, which would be covered by S. 11 of the Admiralty Court a of 1861. Hence, this Court would have jurisdiction to entertain the suit in its Admiralty jurisdiction in which the actually been filed, and would not find itself

inhibited in exercising such jurisdiction as the Merchant Shipping Act, 1958 does not extend to foreign vessel or mortgages registered abroad. Mr. Meghani reliance on the Merchant Shipping Act, 1958 is misplaced and so also is his reliance on an observation in *The Shipping Development Fund Committee Vs. M.V. Charisma and Another*, , namely, that the jurisdiction to be exercised in Admiralty must be within the constraints of that Act. That case dealt only with the jurisdiction of the Court in enforcing a mortgage of a ship registered in India and the effect of the Merchant Shipping Act, 1958 thereon and was in no way concerned with the enforcement of a mortgage of a foreign vessel. Mr. Meghani's second ground of challenge must also stand repelled.

30. That brings me to Mr. Meghani. third and final ground of challenge. Relying on the decision of the Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, in *P. Dasa Muni Reddy Vs. P. Appa Rao*, and in *Jaisingh Jairam Tyagi and Others Vs. Mamanchand Ratilal Agarwal and Others*, Mr. Meghani urged that no amount of consent would confer jurisdiction on a Court where otherwise there was none. As a broad proposition, on possible exception can be found to it. However, this contention does not cater to one important factor. namely, that the effect of the 1890 Act is to make the entire English Maritime Law, which included reiterated decision and principles, a part of the jurisdiction of this Court in exercise of its Admiralty jurisdiction. The Act of 1890 and 1891 gives legislative sanction to the accepted principle of English Maritime Law, namely, that intervention of the representative of the foreign State devolving the jurisdiction of his own country on the Court or consent of parties, would entitle the Admiralty Court to try cases between Admiralty foreigners relating to the mortgage of a foreign vessel. That aspect has been brought into Indian Law by virtue of the Act of 1890 and 1891. Once legislative sanction is manifest, Tanubai position is quite different from parties seeking to confer jurisdiction contrary to law. Thus Mr. Meghani third and final ground of challenge must therefore also stand repelled.

In the result, the preliminary issue of jurisdiction is answered against Mr. Meghani. clients.

31. Ordered accordingly.