(2001) 05 BOM CK 0030

In the Bombay High Court

Case No : Admiralty Suit No. 3 of 1994

ICICI Ltd. APPELLANT

Vs

M.F.V. ''Shilpa'' and Others RESPONDENT

Date of Decision : 03-05-2001

Acts Referred:

Evidence Act, 1872 — Section 41
General Clauses Act, 1897 — Section 3(42)
Merchant Shipping Act, 1958 — Section 51
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(1), 18, 2, 34

Citation : AIR 2002 Bom 371 : (2002) 2 ALLMR 191 : (2002) 1 BomCR 724 : (2002) 2 MhLj 563

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : V.C. Kotwal and Rishab Shah, instructed by Naranjan Jagtap and Co, for the Appellant; A. Ramakrishna and A. Satyanarayanan, for the Respondent

Judgement

D.K. Deshmukh, J.—This is a suit filed by the plaintiff financial institution which claims to be a Company registered under the provisions of the Companies Act. According to the averments in the plaint, the business of the plaintiffs is to grant financial assistance by lending or granting loans or advances to industrial, commercial, professional or trading enterprises. According to the plaintiffs, it has advanced loan to the defendant No. 3 for the purchase of the defendant Nos. 1 and 2 vessels and defendant Nos. 4 to 7 have entered into agreements guaranteeing the repayment of the loan. According to the plaintiffs, the defendant Nos. 1 and 2 are mortgaged with the plaintiffs. The plaintiffs have in paragraph 33 of their plaint stated that the plaintiffs'' claim against the defendant Nos. 1 and 2 vessels is on the basis of the mortgage of defendant Nos. 1 and 2 vessels and that the plaintiffs are entitled to proceed for recovery of their claim in admiralty jurisdiction of this Court. It is further stated that the claim of the plaintiffs against the defendant No. 3 is on the basis of the loan agreements executed by the defendant No. 3. It is further stated that the claim against the defendant Nos. 4 to 7 is on the basis of deed of joint, several and personal guarantee executed by them. The plaintiffs have valued their claim at Rs. 4,16,15,421/-. It is further stated that the defendant Nos. 1 and 2 vessels are in the admiralty jurisdiction of this Court as the said vessels are within the territorial waters of India. It is further stated that the loan agreements and the guarantee agreements between the plaintiffs and the defendant Nos. 3 to 7 were executed at Bombay, the amounts were advanced at Bombay, the loan was also repayable at Bombay. Therefore, a part of the cause of action has arisen at Bombay and the plaintiffs are entitled to file this suit in the admiralty jurisdiction of this Court as the plaintiffs claim is secured by statutory mortgage of the vessels. The plaintiffs seek an order of arrest of the vessels, it also claims money decree against the defendant No. 3 as also the defendant Nos. 4 to 7.

2. On the basis of the written statement filed by the defendants, issues have been framed and parties have agreed that following issues which are relating to the jurisdiction of this Court to entertain the suit can be tried as preliminary issues and that for that purpose, it is not necessary for this Court to-record any oral evidence. The issues that the parties have agreed can be decided as preliminary issues are as under:--

"(6) Whether this Court has jurisdiction to decide the above matter?

(7) Whether this Court can entertain the above suit in view of the fact that all the defendants including the vessels are from the State of Andhra Pradesh which is outside the territorial jurisdiction of this Court?

(8) Whether this Court can entertain the above suit when the charge of mortgaged property is registered in the State of Andhra Pradesh?

(9) Whether this Court has jurisdiction to entertain the above suit in view ''of the fact that the vessel itself is registered in the State of Andhra Pradesh?

(10) Whether this Court can entertain the above suit in view of the establishment of Tribunals under Recovery of Debts due to Banks and Financial Institutions Act (51 of 1993)?"

3. It is clear from the above referred issues that first objection that is raised by the defendants is that because of the provisions of the Debt Recovery Tribunal Act (for short, D.R.T. Act), this Court loses the jurisdiction to entertain this suit and second objection is that because all the defendants are from Andhra Pradesh and as the vessels are also from Andhra Pradesh, this Court will not have the jurisdiction to entertain the suit.

4. Now, taking up the first issue regarding the ouster of the admiralty jurisdiction of this Court to entertain the suit, it is submitted on behalf of the defendants that there is no dispute that the provisions of the D.R.T. Act are applicable to the plaintiffs. The defendants rely on the provisions of Section 2(g) of the D.R.T. Act and submit that the claim of the plaintiffs against the defendants is a debt within the meaning of provisions of Section 2(g) of the D.R.T. Act. It is further

submitted that Section 17 of the said Act confers jurisdiction on a Tribunal constituted under that Act to entertain and decide applications from the Banks and financial institutions for recovery of debt due to such Banks and financial institutions. It is further urged that Section 18 of the said Act ousts the jurisdiction of all Courts including this Court to exercise any jurisdiction in relation to the matters specified in Section 17. It is urged that as the claim made in this suit by the plaintiffs is a debt within the meaning of Section 2(g) of the said Act and as the plaintiffs are a Bank or financial institution in terms of provisions of Section 17, it is the Tribunal constituted under the D.R.T. Act which will have jurisdiction to entertain this suit and as it is the Tribunal under the D.R.T. Act which has jurisdiction to entertain this suit, the jurisdiction of this Court to entertain the suit is barred by the provisions of Section 18 of the said Act. It is further urged on behalf of the defendants that the provisions of the D.R.T. Act have been given overriding effect over all the laws for the time being in force and therefore, relying on the provisions of Section 34 of the said Act, it is urged that the statutes conferring admiralty jurisdiction on this Court will cease to have any effect insofar as the claims which are within the jurisdiction of the Tribunal constituted under the D.R.T. Act.

5. On behalf of the plaintiffs, in reply, it is urged that admiralty jurisdiction was first conferred on the Supreme Court of Judicature at Bombay, established by Letters Patent issued under the Charter of 1823. The Charter of 1823 was superseded and the High Court of Judicature at Bombay was established by Letters Patent of 1862. Clause 31 of the Letters Patent of 1862 conferred on the High Court of Judicature at Bombay admiralty and vice admiralty jurisdiction which was exercised by the Supreme Court of Judicature at Bombay. By Letters Patent of 1865, the admiralty jurisdiction of the High Court of Judicature at Bombay was maintained the same as it was under the Letters Patent of 1862. It is further urged that in 1890, by an Act of the British Parliament viz. Colonial Courts of 1890 the Legislatures in British India were empowered to enact the law designating certain Courts to be the Colonial Courts of admiralty. In exercise of that power, the Indian Legislature passed Act 16 of 1891 which declared the High Court of Judicature at Bombay to be Colonial Court of admiralty and it was invested such admiralty jurisdiction as was exercised by the High Courts of Admiralty in England under any statute or otherwise. Thus, by reason of the provisions of Admiralty Act 1890, the Bombay High Court has the same admiralty jurisdiction as the High Courts in England. It is urged that thus at the commencement of the Constitution, the Bombay High Court was possessed of the admiralty jurisdiction, Relying on a judgment of the Supreme Court in the case of M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, , it is urged that by virtue of the provisions of Article 225 of the Constitution of India, the admiralty jurisdiction of this Court has been saved. It is urged that in terms of the provisions of Article 225 of the Constitution of India, the existing jurisdiction of this Court is subject only to the provisions of the Constitution of India and to the

provisions of any law of the appropriate legislature made by virtue of powers conferred on that Legislature by this Constitution. It is urged that therefore, the admiralty jurisdiction of this Court can be curtailed by the Union Parliament by enacting a law in exercise of its legislative powers under Entry 95 of List I of Schedule VII of the Constitution because Entry 95 confers legislative powers on the Union Parliament to make a law in relation to the admiralty jurisdiction of the Courts. The D.R.T. Act cannot be termed, according to the plaintiffs, as an enactment made by the Union Parliament under Entry 95 List I of Schedule VII and therefore, it cannot be said that it takes away the jurisdiction of this Court. It is further submitted that the Parliament has enacted the Merchant Shipping Act, 1956. Section 2 of that Act, lays down that unless otherwise expressly provided the provisions of the Merchant Shipping Act apply to any vessel which is registered in India. It is further urged that the provisions of the Merchant Shipping Act also apply to the vessels which are not registered in India and the vessels which are not owned wholly by persons who are citizens of India or Companies or Body Corporates which are incorporated in India. Thus the provisions of the Merchant Shipping Act also apply to the vessels which are not registered in India or are not owned by the citizens of India or Body Corporates incorporated in India while such vessels are within India including territorial waters thereof. It is urged that the D.R.T. Act is a general legislation providing for recovery of debts by Banks and financial institutions generally. The Merchant Shipping Act is a special law dealing with the vessels which are registered in India owned by Indian citizens as also other vessels which are within the territorial waters of India and therefore, the provisions of Merchant Shipping Act would apply and not the provisions of the D.R.T. Act. It is urged that Section 51 of the Merchant Shipping Act confers jurisdiction on the High Court to entertain a claim for recovery of the amount against mortgaged ship. There is thus a special provision made in Section 51 for recovery of mortgage amount against a ship, special procedure has also been prescribed and the jurisdiction has been conferred on the High Court, It is further submitted that the term "High Court" has also been defined by Section 3(15) of the Merchant Shipping Act and the High Court has been defined in relation to a vessel. It is further urged that this Court has also framed rules which are called "Rules for Regulating Procedure and Practice in Cases brought before the High Court under the Colonial Courts of Admiralty Act 1890 (35-34 Victoria CH 27)" which regulate the procedure for exercise of the admiralty jurisdiction by this Court. It is submitted that the jurisdiction conferred on the D.R.T. cannot be termed as a substitute of the admiralty jurisdiction of this Court. It is urged that admiralty law confers upon a claimant a right in rem to proceed against a ship or cargo as distinguished from right in person am to proceed against the owner. It is submitted that an action in rem is directed against ship itself to satisfy the claim of the plaintiff out of the res, the ship for this purpose is treated as a person. It is submitted that thus, the admiralty law and jurisdiction of this Court confers on a claimant a right to proceed against a vessel for recovery of his claim by initiating an action in rem. There is no such provision to be found in the D.R.T. Act and therefore, it cannot be termed as a substitute for the admiralty jurisdiction of this Court. It is further urged that Section 41 of the Evidence Act lays down that a final decree or an order made by the Admiralty Court which confers upon any person, any legal character, then such judgment or order is conclusive proof of that legal character which is conferred by that decree or order. It is submitted that by virtue of the provisions of rules framed by this Act, procedure has been framed for sale of vessel. By virtue pf that procedure, when a vessel is sold in the admiralty jurisdiction, the buyer of the vessel gets a clear title to the ship or vessel and by virtue of the provisions of Section 41 of the Evidence Act, the decree passed by this Court and the sale certificate issued in favour of the owner is conclusive proof of his ownership of the vessel. Because of this procedure, when a vessel is sold in the admiralty jurisdiction, the price that it fetches is the real market price because a buyer gets clear title to the vessel. That will not be so in relation to a sale of a vessel by the D.R.T. and therefore, for this reason also, the jurisdiction conferred on the D.R.T. cannot be said to be a substitute of the admiralty jurisdiction of this Court. It is further urged that it is clear from the preamble of the D.R.T. Act that the Act has been brought into force for establishment of Tribunals for expeditious adjudication and recovery of debts due to the Banks and financial institutions. The admiralty jurisdiction of this Court affords to the claimants including the Banks more expeditious and effective remedy for recovery of its claims against the vessels if the provisions of the D.R.T. Act are as read to mean, that they exclude the operation of the admiralty jurisdiction of this Court in relation to the Banks, then such a reading will be contrary to the very purpose for which the D.R.T. Act has been enacted and therefore, according to the plaintiffs, such a construction cannot be put on the provisions of the D.R.T. Act which will result in depriving the Banks and financial institutions of a more effective, efficacious and potent remedy.

6. So far as the question of the jurisdiction of this Court to entertain the suit because the vessel is registered in Andhra Pradesh is concerned, it is urged on behalf of the defendants that as the vessel is registered in Andhra Pradesh and is lying at Visakapatnam within the jurisdiction of the Andhra Pradesh High Court, it will be the Andhra Pradesh High Court which will have jurisdiction to entertain this suit. For that purpose, reliance is also placed on the judgment of the Supreme Court in M. V. Elisabeth''s case. In reply, it is urged on behalf of the plaintiffs that it is Section 51 of the Merchant Shipping Act which confers jurisdiction on High Court to entertain a claim in relation to mortgage of a ship or vessel. Section 3(15) of the Merchant Shipping Act lays down that High Court in relation to a vessel means the High Court within the limits of whose appellate jurisdiction the port of registry of the vessel is situate or the vessel is for the time being or the cause of action wholly or in part arises. It is submitted that part of the cause of action for this suit against the defendant Nos. 1 and 2 vessels had arisen because of the mortgage of the vessels, the agreements by which the mortgage was effected was admittedly at Bombay, the payment of the amount was also made at Bombay and the money was also repayable at

Bombay. Therefore, in terms of provisions of Section 51 read with Section (3) of Section 15, it is this Court which will have also the jurisdiction to entertain the suit.

7. Now, taking up the first question whether because of the provisions of the D.R.T. Act the admiralty jurisdiction of this Court to entertain suits filed by the Banks and financial institutions for recovery of their claims against the vessels and owners is ousted or not. It is to be seen that the admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior Court of record, administering justice in relation to persons and things within its jurisdiction. Section 51 of the Merchant Shipping Act reads as under :--

"51(1) Where there is only one registered mortgagee of a ship or share, he shall be entitled to recover the amount due under the mortgage by selling the mortgaged ship or share without approaching the High Court. Provided that nothing contained in this Sub-section shall prevent the mortgagee from recovering the amount so due in the High Court as provided in Sub-section (2).

(2) Where there are two or more registered mortgagees of a ship or share they shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(3) Every registered mortgagee of a ship or share who intends to recover the amount due under the mortgage by selling the mortgaged ship or share under Sub-section (1) shall give an advance notice of fifteen days relating to such sale to the registrar of the ship''s port of registry.

(4) The notice under Sub-section (3) shall be accompanied with the proof of payment of the wages and other amounts under Clause (a) of subsection (2A) of Section 42."

It is clear that a mortgagee is entitled to recover the amount due on a mortgage of a ship by moving the High Court and the High Court can direct the sale of the ship in execution of the decree. The Supreme Court in paragraph 46 of its judgment in M. V, Elisabeth''s case has observed thus :--

"46. Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a right in person am to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment." In paragraph 56, the Supreme Court has observed thus:--"An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose is treated as a person."

It is thus clear that under admiralty law, a vessel or ship itself is treated as a person and a suit can be instituted only against the vessel against which the plaintiff has a claim and its owner who may not be named. Thus, under the admiralty law, the ship or vessel itself can be held liable for a claim and it is a peculiar feature of the admiralty jurisdiction that a vessel or ship is treated as a person against which a Civil Suit can be filed which is capable of being arrested for satisfying the claim of the plaintiff. When a plaintiff brings an action against a vessel for recovery of his claim, the suit is called as an action in rem and in such a suit, an application is made for arrest of the ship. Thus, for the purpose of admiralty jurisdiction, the vessel itself is treated as a person from whom an amount is due to the plaintiff. Perusal of the provisions of Section 17 shows that jurisdiction has been conferred on the Tribunal constituted under the D.R.T. Act to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such Banks. Sub-section (1) of Section 17 of the D.R.T. Act reads as under :--

"17. Jurisdiction, powers and authority of Tribunals. -- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions."

The term ''Debt'' has been defined by Section 2(g) of the D.R.T. Act which reads thus:--

"(g) ''debt'' means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable on, the date of the application."

It is clear from the definition of the term ''debt'' that debt means any liability which is claimed as due by Bank or financial institution from any person. The D.R.T. Act does not define the term ''person'' but the term is defined by the General Clauses Act. The definition is to be found in Section 3(42) of the General Clauses Act which reads as under :--

"3(42) --''person'' shall include any company or association or body of individuals, whether incorporated or not."

It is thus clear that a person is a living person as also a company or association or body of individuals can also be treated as person. Thus, in my opinion, for the purpose of the provisions of the D.R.T. Act, a vessel cannot be treated as a person and therefore, when a financial institution brings an action in rem in the admiralty Court against a vessel, it cannot be said that the claim that Bank or financial institution is making in the admiralty suit insofar as the vessel is concerned, is a debt within the meaning of Section 2(g) of the said Act. Thus, a suit instituted by a Bank or financial institution for recovery of its claim against a vessel in the admiralty jurisdiction of the High Court, cannot be termed as a debt and therefore, the D.R.T. will not have jurisdiction to entertain that suit in terms of the provisions of Section 17 of the Act.

8. Now, even if it is assumed that a claim made in an action in rem brought in the admiralty jurisdiction of this Court amounts to debt within the meaning of Section 2(g), then the question arises whether the jurisdiction of this Court to entertain that claim is ousted because of the provisions of Section 18 and Section 34 of the D.R.T. Act. Section 18 and Section 34 of the D.R.T. Act read as under:--

"18. Bar of Jurisdiction. -- On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

34. Act to have overriding effect. -- (1) Save as provided under subsection (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948, the State Financial Corporation Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984, and the Sick Industrial Companies (Special Provisions) Act, 1985."

It is to be seen that the present suit has been instituted by the Bank in this Court pursuant to the jurisdiction conferred on this Court by Section 51 of the Merchant Shipping Act which empowers a High Court to entertain a claim by a mortgagee for recovery of his dues by sale of the mortgaged ship. Now, a vessel or a ship is a movable property, therefore, under the provisions of the Transfer of Property Act, it is incapable of being mortgaged. Thus, mortgage of a movable property viz. ship is a special feature of the Merchant Shipping Act. Section 2 of the Merchant Shipping Act reads as under :--

"2. (1) Unless otherwise expressly provided, the provisions of this Act which apply to :--

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in Clause (a) or in Clause (b) or in Clause (c), as the case may be, of Section 21 applies. shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in Sub-section (1) shall so apply only while any such vessel is within India; including the territorial waters thereof.

It is clear from the perusal of Section 2 of the Act that the provisions of the Merchant Shipping Act apply to vessels which are registered in India unless otherwise it is expressly so provided. Thus, operation of the provisions of the

Merchant Shipping Act including the provisions of Section 51 in relation to a vessel which is registered in India can be curtailed, abridged or modified only by making an express provision for that purpose. To my mind, therefore, to say that D.R.T. Act curtails the operation of the provisions of the Merchant Shipping Act including Section 51, there has to be an express provision made to that effect in the D.R.T. Act. The provision found in Section 34 is a general provision, it is not an express provision made for excluding the operation of the Merchant Shipping Act and therefore, in my opinion, the jurisdiction of this Court to entertain the suit would not be ousted because of the provisions of the D.R.T. Act.

9. It is to be seen that the D.R.T. Act is enacted by the Union Parliament being Act No. 51 of 1993 and it has come into force on 24th June, 1993. The Merchant Shipping Act was extensively amended by the Merchant Shipping (Amendment) Act, 1993, No. 68 of 1993 and it has come into force from 27th October, 1993-Thus, Act No. 68 of 1993 is a subsequent Act enacted by the same Legislature which enacted the D.R.T. Act. By Section 5 of the Amending Act, Section 51 has been substituted. The original Section 51 as it stood before its amendment in the year 1993 reads as under:--

"51(1) : A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(2) Subject to the provisions of Sub-section (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share."

A comparison of the unamended Section 51 and Section 51 as incorporated by Act No. 68 of 1993 shows that there are drastic changes made in Section 51. Now, a mortgagee of a ship is entitled to recover the amount due under the mortgage by selling the ship even without approaching the High Court. It is further to be seen here that the principal intention behind enacting Section 51 was to make a provision for speedy recovery of the mortgage money by a person who is holding mortgage over a ship or a vessel. Similarly, a special provision for recovery of the amounts advanced by the State Finance Corporation has been made by Section 29 of the State Finance Corporation Act 1951. Perusal of the provisions of Sub-section (2) of Section 34 of the D.R.T. Act shows that the D.R.T. Act has not been given overriding effect over the State Finance Corporation Act 1951. In my opinion, for the same reason for which overriding effect has not been given to the provisions of the D.R.T. Act over the provisions of the State Finance Corporation Act, the provisions of the D.R.T. Act cannot be allowed to prevail over the provisions of Section 51 of the Merchant Shipping Act. It is further to be seen here that the admiralty jurisdiction of this Court extends even to the recovery of amounts advanced by the Banks and other financial institutions for purchase of the riggs, which are most of the time installed in the economic Zone. The jurisdiction of the D.R.T. Act, in my opinion, cannot be extended to the economic zone which lies beyond the territorial waters of India.

10. It is further to be seen here that admiralty jurisdiction was conferred on the Supreme Court of Judicature at Bombay which was established by Letters Patent issued under the Charter of 1823. The Supreme Court of Judicature at Bombay was superseded by the High Court of Judicature at Bombay, established by the Letters Patent of 1862. The Letters Patent of 1862 was superseded by Letters Patent of 1865 but as a result of the Letters Patent of 1865, the admiralty jurisdiction of this Court remained the same as under the Letters Patent of 1862. In 1890, the British Parliament passed the Colonial Courts of Admiralty Act providing that the Legislature of British India may declare certain Courts to be Colonial Courts of Admiralty. It was further provided that the Courts so declared shall have the admiralty jurisdiction. In the exercise of the power conferred by this Colonial Courts Act, the Indian Legislature passed Act No. 16 of 1891 and by Section 2 of that Act, this Court was declared to be Colonial Court of admiralty and was invested with such admiralty jurisdiction as was exercised by the Courts of admiralty in England. By the Indian Independence Act, 1947, the laws in existence at that point of time were continued in force until other provisions were made by the appropriate Legislature of India with the result this Court continued to exercise admiralty jurisdiction. Thereafter, by the India (Consequential Provision) Act of 1949, the existing laws were further continued. By virtue of the provisions of Article 372 of the Constitution, notwithstanding the repeal of the Indian Independence Act 1947, all the laws in force in India immediately before the commencement of the Constitution were continued in force until altered or repealed or amended by Competent Legislature or other Competent Authority. Thus, at the commencement of the Constitution, this Court exercised the admiralty jurisdiction. Article 225 of the Constitution reads as under:--

"Article 225 :-- Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the Commencement of this Constitution."

It is clear from the provisions of Article 225 of the Constitution that the powers and jurisdiction exercised by the High Courts at the commencement of the Constitution are subject only to the provisions of the Constitution and to any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution. Now, exercise of admiralty jurisdiction by this Court is not definitely contrary to any of the provisions of the Constitution. The only enquiry that is to be made is whether the provisions of the D.R.T. Act can be termed as law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution. It is to be seen that so far as the subject of admiralty is concerned, by Schedule Seventh, List I Entry 95 of the Constitution, legislative competence has been conferred on the Union Parliament to make law in relation to admiralty jurisdiction. Therefore, unless and until the Union Parliament, in exercise of its powers under Entry 95, List I of the Seventh Schedule of the Constitution enacts a law, the admiralty jurisdiction of this Court cannot be curtailed. The D.R.T. Act, by no stretch of imagination, can be termed as a law enacted by the Union Parliament in exercise of its legislative competence under Entry 95 List I of Schedule Seventh of the Constitution and therefore, in my opinion, it cannot be said that the admiralty jurisdiction of this Court which is saved by Article 225 of the Constitution of India is taken away by provisions of Section 34 of the D.R.T. Act insofar as the claims of Banks and financial institutions are concerned.

11. It is further to be seen here that Section 51 of the Merchant Shipping Act makes a specific provision for recovery of the mortgage money by the mortgagee by sale of the vessel, which is mortgaged. Perusal of the provisions in Part III of the Rules and Forms of the High Court of Judicature at Bombay on the Original Side, shows that when a person has a claim against a vessel, he can bring in an action in rem and there is a special and effective procedure provided for recovering the claim of the person in such a suit. It is further to be seen here that the rules provide a special procedure for sale of a ship or vessel pursuant to its arrest. It provides for determination of various claims that may be lodged against the vessel and distribution of the sale proceeds amount the claimants, with the result any person who buys a vessel sold in the admiralty jurisdiction gets a clear title and he gets the vessel free from all encumbrances. By virtue of the provisions of Section 41 of the Evidence Act, the sale certificate issued by this Court in favour of the purchaser is a conclusive proof of his title to the ship and any person who may have a claim against that vessel cannot make any claim against the purchaser or the vessel in his hand. On the contrary, when a vessel would be sold in execution of a certificate issued by the D.R.T. the sale certificate issued by D.R.T. may not confer a clear title on the purchaser. It is further to be seen that in admiralty jurisdiction, the plaintiff can proceed against the vessel itself and can get the vessel arrested in the first instance and the Court can proceed to sell the vessel after its arrest immediately unless within a stipulated time, the owner appears and furnishes security and gets the vessel released. Thus, in admiralty jurisdiction, the claim of the plaintiff is secured firstly by arrest of the ship and secondly, when the ship is released from arrest by the security furnished. Thus, the procedure that is followed by this Court in its admiralty jurisdiction is efficacious and effective procedure than the procedure provided by the D.R.T. Act. It is clear from the preamble of that Act that that Act has been enacted for providing speedy recovery of the claims of the Banks and financial institutions. Thus, it cannot be said that in enacting the D.R.T. Act, it was the intention of the Legislature deprive the Banks and financial institutions of an existing more effective and efficacious remedy. In my opinion therefore, requiring the Banks and financial institutions to go to the D.R.T. for recovering of

their claims against the vessels would defeat the purpose for which the D.R.T. Act has been enacted and therefore, in my opinion, it cannot be said that the suit of the plaintiffs is not maintainable.

12. It is well known that the Banks and financial institutions do not have their claims merely against the vessels which are registered in India and are owned by the Indian citizens or Indian companies. The Banks and financial institutions have maritime claims also against foreign vessels for supply of necessities to the vessel etc. Presently,'' such Banks or financial institutions can bring an action in rem against such foreign vessel in High Court whenever it is in Indian territorial waters for recovery of its dues. The High Court, in exercise of its admiralty jurisdiction treats the vessel itself as a person, arrests that ship for recovery of the claim of the Bank or financial institution, however, if it is held that the said Bank or financial institution, who have maritime claim against a foreign vessel will have to file application before the D.R.T. then in my opinion, the Banks and financial institutions will never be able to recover its claim against such vessels because the D.R.T. cannot treat the vessel as a person and direct its arrest and if the vessel is not arrested, it will be difficult for the Bank to recover its dues from the owner of the vessel who is a foreigner, having no property in India. In short, if it is held that even for recovery of its claims against vessels, the Banks and financial institutions cannot approach this Court in its admiralty jurisdiction, the Banks and financial institutions will loose the only remedy that is available to them against foreign vessels because the remedy that is provided by the D.R.T. insofar as the foreign vessels are concerned, in my opinion, is of no avail and is almost nonexistent. When a person has a claim against a foreign vessel and the vessel is in Indian territorial water, he can institute a suit in the Admiralty Jurisdiction of a High Court, against the vessel itself. In such a suit, it is not necessary for the Plaintiff to disclose the name of the owner of the vessel. Such a suit is an action in rem against the vessel. The High Court can arrest the vessel to prevent it from leaving the Indian territorial waters. After the arrest of the vessel, in case the owner or somebody on his behalf does not appear to get the arrested vessel released, the vessel is sold, in accordance with the provisions of the Admiralty Rules and from the sale proceeds the Plaintiff recovers his claim. Now in case the Banks cannot file suit against the foreign vessel in the admiralty jurisdiction of the High Court, they will have to file an application before the D.R.T. only against the owner of the vessel, as an action in rem can not be instituted against the vessel itself before the D.R.T. The owner of such a vessel in most of the cases may not have property in India. Therefore, it would be very difficult for the Bank to recover its claim. In my opinion, it can never be said that the intention of the Legislature in enacting the D.R.T. Act was to create problems and difficulties for the Banks and financial institutions in recovering their claims. In any case it cannot be said that in enacting the D.R.T. Act it was the intention of the legislature to deprive the banks and the Financial Institution of an effective remedy available to them under the existing law. For all these reasons, therefore, in my opinion, it has to be held that the provisions of the D.R.T. Act do not oust

the jurisdiction of this Court to entertain the suit.

13. Now, so far as the question whether the suit is maintainable in this Court because the vessel is registered in Andhra Pradesh and is also lying at Visakapatnam is concerned, as observed above, this suit has been filed in the admiralty jurisdiction of this Court pursuant to the provisions of Section 51 of the Merchant Shipping Act. Therefore, in terms of the provisions of Section 3(15), this Court will be the High Court in relation to the defendant Nos. 1 and 2 vessels because part of cause of action for institution of the suit has arisen at Bombay.

14. It is common ground before me that the agreement of mortgage as also the agreement of guarantee were entered into at Bombay and the amount of loan was also paid at Bombay. The amount, as per the agreements, was also to be repaid at Bombay and therefore, it can be safely said that part of the cause of action for institution of the suit has arisen at Bombay and therefore, this Court has the jurisdiction to entertain the suit. In the result therefore, issue Nos. 6, 7, 8, 9 and 10 are answered in the affirmative. It is held that this Court has the jurisdiction to entertain the suit.

Parties to act on the copy of this order duly authenticated by the Associate/ Personal Secretary as true copy.

Certified copy expedited.

