
(2004) 06 BOM CK 0103
In the Bombay High Court
Case No : Admiralty Suit No. 8 of 1989

Khairul Jabbar and Others

APPELLANT

Vs

L.C.T. Korea Horizon and Others

RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Customs Act, 1962 — Section 111, 112, 115, 125, 125(1)

Citation : (2004) 6 BomCR 210 : (2005) 101 ECC 375

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

Bench : Single Bench

Advocate : V.K. Rambhadran, for the Appellant; V.N. Deshpande, for the defendant Nos. 1 and 2 and S.R. Rajguru, for defendant No. 4-Union of India, for the Respondent

Judgement

Deshmukh D.K., J.—The plaintiffs in this suit are members of the crew of the defendant No. 1 vessel i.e. L.C.T. Korea Horizon. They have filed this suit for recovery of the arrears of their salary as also certain sums which the plaintiffs paid on maintenance of the vessel. The defendant No. 1 vessel was a vessel of Panama Registry, defendant No. 2 is the owner of that vessel. It may be pointed out here that the vessel was arrested by an order made by this Court. Thereafter, the vessel has been sold and the sale proceeds are presently lying in the Court. The plaintiffs are therefore claiming a decree. They also claim that decretal amount shall be paid to them from sale proceeds of the vessel. The monetary decree sought by the plaintiffs is not opposed by the defendant No. 2. The suit is opposed only by defendant No. 4 Union of India.

2. It appears that in the month of April 1989, the defendant No. 1 vessel was seized by the authorities of the Customs Department. This suit appears to have been filed in the month of October 1989. It appears that after filing the suit, an order for arrest of the vessel was secured from the Court. The order is dated 11th October, 1989. It appears that thereafter this Court made an order dated 8th December, 1989 for sale of the defendant No. 1 vessel. It may be pointed out

here that when the suit was filed, Union of India was not joined as the defendant in the suit. It appears that the Union of India was joined as defendant subsequently. It further appears that by an order dated 24th January, 1990 by this Court, the proceedings for sale of the vessel were stayed. In the meantime, the Collector of Customs passed an order dated 4th June 1990 confiscating the vessel and imposing a penalty in the amount of Rs. 70,70,000 on the crew members and the master of the vessel. It may be pointed out that in so far as the plaintiffs are concerned, the amount of penalty imposed on them by the order dated 4th June, 1990, is Rs. 70,000. By that order, confiscation of vessel was ordered but the option was given to the owner of the vessel to redeem the vessel by paying a fine of Rs. 15,00,000. It further appears that the matter in relation to the sale of the vessel came before the Court on 14th June, 1991 and the authorities of the Customs Department gave their consent for the sale to proceed further. Accordingly proceedings for sale of the vessel were continued and the vessel was sold. The matter came up before the Court on 20th August, 1991 for confirmation of the sale. The Court confirmed the sale of the vessel.

The Court further directed that out of the sale proceeds, the Sheriff to pay an amount of Rs. 9,88,681 to the Bombay Port Trust towards their dues, to the Customs Authorities an amount of Rs. 15,00,000 towards redemption fine and the B.P.T. and Customs Authorities were directed on receiving the amounts to release the vessel by lifting arrest and seizure. The Court clarified that the B.P.T. and Customs Authorities shall be at liberty to adopt such proceedings as they may be advised for their balance claims. It appears that Notice of Motion No. 2047 of 1991 was taken out immediately thereafter by the Customs Authorities i.e. on 18th September, 1991 for payment of Rs. 70,000 from the salary dues payable to the plaintiffs towards personal penalty imposed on them by order dated 4th June, 1990. That Notice of Motion was decided by order dated 3rd April, 1992 and the Court granted that Notice of Motion in terms of prayer Clauses (a) and (b). It further appears that by an order dated 21st July, 1992, the plaintiffs were permitted to delete the Union of India as defendant in the suit and it was in the absence of Union of India the suit on deleting Union of India by order dated 21st July, 1992 was decreed in favour of the plaintiffs. The order of the Court decreeing the suit was challenged before the Supreme Court. The Supreme Court set aside the decree passed by this Court and also set aside the order passed by the Court deleting Union of India as the defendant in the suit. The order of the Supreme Court is dated 1st December, 1992. It further appears that the owner had filed an appeal against the order dated 4th June, 1991 passed by the Collector of Customs before the Customs, Excise and Gold Control Appellate Tribunal. That appeal came to be decided by the Tribunal by order dated 26th February, 1996. By that order, the Appellate Authority reduced the fine imposed on the vessel from Rs. 15,00,000 to Rs. 10,00,000. The Appellate Tribunal also reduced the penalty imposed on the two appellants before it to Rs. 5,000 each. It appears that by the order passed by the Appellate Tribunal, the amount of redemption fine was reduced from Rs. 15,00,000 to Rs. 10,00,000.

The Customs Authorities have deposited the amount of Rs. 5,00,000 in this Court which was paid to them pursuant to the order dated 20th August, 1991 passed by this Court, by the Sheriff from the sale proceeds of the vessel.

3. As observed above, the suit is not opposed by any of the defendants except defendant No. 4 Union of India. The Union of India also does not dispute the entitlement of the plaintiffs to receive the amounts which they have claimed in this suit. The case of the defendant No. 4 Union of India is that before paying the amount of salary and expenses incurred by the plaintiffs on the vessel out of the sale proceeds of the vessel, the defendant No. 4 is entitled to receive the amount of Rs. 70,00,000 i.e. the amount of penalty imposed on the crew members of the vessel by the order dated 4th June, 1991. In the alternative, it is claimed that as the vessel was confiscated before it was sold and as the redemption fine was not paid by the owner of the vessel by payment of redemption fine, the confiscation of the vessel does not come to an end and therefore, the vessel continued to be confiscated and therefore, Union of India would be entitled to receive the entire sale proceeds of the vessel. On behalf of the plaintiffs, in so far as the demand of the defendant No. 4 is concerned, it is submitted that the amount of Rs. 70,00,000 which the defendant No. 4 is claiming from the sale proceeds of the vessel, is the amount of personal penalty imposed on the crew members. Therefore, it will not be liability against the owner of the vessel and the amount of penalty cannot be recovered from the sale proceeds of the vessel which was the property of the owner of the vessel. It is further contended that by the order passed by the Collector of Customs, confiscation of the vessel was ordered but an option was given to the owner to redeem the vessel on payment of fine of Rs. 15,00,000. Pursuant to the order passed by this Court, the fine of Rs. 15,00,000 was paid and therefore, the vessel stood released from confiscation. It is submitted that this Court has in term stated that on payment of the amount of fine from the sale proceeds of the vessel, the vessel shall stand released from seizure. Thus, according to the plaintiffs, the defendant No. 4 Union of India is not justified either in claiming amount of Rs. 70,00,000 from the sale proceeds or claiming the entire sale proceeds on the ground that the vessel was confiscated.

4. Now, for the purpose of deciding this suit, the only question that is to be considered is whether the defendant No. 4 is entitled to Rs. 70,00,000 i.e. the amount of personal penalty imposed by the order dated 4th June, 1991 on the members of the crew of the defendant No. 1 vessel or in the alternative, the entire sale proceeds are payable to the defendant No. 4 as the vessel stood confiscated.

5. Perusal of the order dated 4th June, 1991 passed by the Collector of Customs shows that penalty on crew members has been imposed u/s 112(a) of the Customs Act, 1962. Perusal of provisions of Section 112 of the Customs Act shows that it empowers the authority to impose a penalty on a person who does any act or omits to do any act in relation to any goods which would render such

goods to confiscation u/s 111 or abets the doing or omission of such an Act. Thus, it is clear that the penalty which is imposed u/s 112 is a penalty imposed on a person arising out of his conduct which amounts to an offence. Perusal of the provisions of Section 142 of the Customs Act shows that where any amount is payable by any person under the Act to the Government and is not paid, the amount can be deducted from the amount payable from any money owing to such person. By that provision, the authorities have been given power to recover such amounts by detaining and selling any goods belonging to such persons which are under the control of the authorities of the Customs. It is thus clear that u/s 142, the amount of penalty can be recovered by the authorities of the Customs Department by making deduction of that amount from any amount that is payable to the person on whom penalty is imposed which are under the control of the Customs Officers. The amount can also be recovered by sale of any goods which are under the control of Customs Officers. Perusal of provisions of Section 142 shows that apart from this mode of recovery, the amount can also be recovered as arrears of land revenues from such persons. Obviously therefore, the amount of penalty is a personal liability of the person on whom the penalty is imposed and therefore, that amount can be recovered from that person and his property. So far as the penalty imposed by the order dated 4th June, 1991 is concerned, i.e. Rs. 70,00,000, it is the penalty imposed not on the owner of the vessel but on the members of the crew of the vessel. The sale proceeds of the vessel which are lying in Court are the property of the owner of the vessel and obviously therefore, the amount of fine imposed on the crew members cannot be recovered from the property of the owner of the vessel. In these circumstances therefore, in my opinion, the defendant No. 4 would not be entitled to claim the amount of Rs. 70,00,000 from the sale proceeds. It may be pointed out here that it appears that this position is understood by the defendant No. 4 also. By order dated 4th June, 1991, penalty in the amount of Rs. 70,000 was imposed on the plaintiffs. On behalf of the defendant No. 4, Notice of Motion No. 2047 of 1991 was taken out. Prayer Clauses (a) and (b) of that Notice of Motion are relevant and they read as under:

"(a) that the Prothonotary and Senior Master be directed to recover and pay to the defendant No. 4 herein above, a sum of Rs. 70,000 (Rupees Seventy Thousand only) from the salary due and payable to the plaintiffs by way of personal penalty imposed upon them by defendant No. 4 for contravening the provisions of the Customs Act, 1962 at the rate of Rs. 10,000 (Rupees Ten Thousand only) each.

(b) that the Prothonotary and Senior Master be directed to pay the balance of sale proceeds to the defendant No. 4 after adjusting the salary claims of the plaintiffs."

Perusal of prayer Clause (a) shows that the defendant No. 4 was claiming the amount of Rs. 70,000 not from the sale proceeds of the vessel but the defendant No. 4 was claiming a direction to the Prothonotary and Senior Master to recover

the amount from the salary due and payable to the plaintiffs as it was a personal penalty imposed on the plaintiffs. Perusal of prayer Clause (b) show that the defendant No. 4 was claiming balance of the sale proceeds after adjustment of the salary claims of the plaintiffs. Thus, by taking out this Notice of Motion, the defendant No. 4 accepted the position that the amount of personal penalty imposed by the order dated 4th June, 1991 is not to be recovered from the sale proceeds but from the amounts that are payable to those persons. Notice of Motion No. 2047 of 1991 was decided by order dated 3rd April, 1992 and the Notice of Motion was granted in terms of prayer Clause (a). Perusal of the affidavit of Mr. Pannapara Olahamman Joseph dated 17th September, 1991 filed in support of Notice of Motion No. 2047 of 1991 shows that in paragraph 1 of that affidavit, it is stated:-

"This affidavit is in support of the Notice of Motion taken out by the defendant No. 4, on behalf of the Union of India for the recovery of the balance sum of Rs. 70,70,000 (Rupees seventy lakhs seventy thousand only) as against the claim of the defendant No. 4 against their total claim of Rs. 85,70,000 (Rupees eighty five lakhs seventy thousand only)."

In the affidavit filed in support of the motion, in paragraph 14, it is stated:-

"I say that out of the said proceeds, the salary claim of the crew members of the ship in terms of the main admiralty suit, is payable in terms of the order dated 12.12.89 of His Lordship Mr. Justice Suresh. I further say and submit that out of the salary claims due and payable to the seven crew members who are the plaintiffs in the present suit, a sum of Rs. 10,000 per head is recoverable from their individual salaries as these are personal penalties imposed by the Collector on each of them. Hence I say, submit and maintain that a total sum of Rs. 70,000 is recoverable and payable to the defendant No. 4 (Union of India) from the total salary claim of the plaintiffs being the total personal penalty imposed on the seven crew members at the rate of Rs. 10,000 each."

In paragraphs 16 and 17, the amount of personal penalty of Rs. 70,00,000 imposed on other four crew members is referred to and in paragraph 17, it is stated:-

"I further say that all the four persons were either owners or persons in employment of the ship by its owners at the material time. All these persons are abettors and participants of the offence. I say that applying the principles of vicarious liability existing between an employer and his servants, the employer is liable for the offences committed by his employees especially in his presence with his consent and connivance and during the course of employment."

6. It is thus clear that according to the defendant No. 4, the amount of Rs. 70,00,000 which is the amount of personal penalty imposed on four crew members was recoverable from the owner of the vessel as a vicarious liability. Though case about recovery of Rs. 70,00,000 was pleaded in the affidavit filed in support of Notice of Motion No. 2047 of 1991, in fact in the motion no relief was

claimed in relation to the amount of Rs. 70,00,000 and the prayer in the motion was restricted to Rs. 70,000 which was the amount of personal penalty imposed on the plaintiffs and which the Court had granted. So far as the contention that the employer is liable to pay the personal penalty imposed on the employees is concerned, the learned Counsel appearing for defendant No. 4 did not show anything to me which will substantiate his case. In my opinion, considering the provisions of the Customs Act, which makes the amount of recovery from the person from whom penalty is imposed or from his property, the amount of penalty cannot be recovered from the owner of the vessel.

7. So far as the alternate contention of the defendant No. 4 that because the vessel stood confiscated, the defendant No. 4 is entitled to entire sale proceeds is concerned, perusal of provisions of Section 115 of the Customs Act shows that power is conferred on the authorities of the Customs Department to confiscate the vessel. Section 125 of the Customs Act is relevant. It reads as under :--

"125. Option to pay fine in lieu of confiscation.-

(1) Whenever confiscation of any goods is authorised by this Act, the Officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods (or, where such owner is not known, the person from whose possession or custody such goods have been seized), an option to pay in lieu of confiscation such fine as the said Officer thinks fit;

(2) Where any fine in lieu of confiscation of goods is imposed under Sub-section (1), the owner of such goods or the person referred to in Sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

8. Perusal of the above provisions of Section 125 shows that discretion is vested in the authority which orders confiscation of the goods to provide for payment of fine in lieu of confiscation and on payment of the amount of fine, the owner of the goods becomes entitled to the release of the goods. In so far as the present case is concerned, the vessel was ordered to be confiscated by order dated 4th June, 1991, but an option was given to the owner of the vessel to pay fine to redeem the vessel. The relevant portion of the order reads as under:--

"I order confiscation of the ship m.v. KOREA HORIZON u/s 115 of the Customs Act, 1962 but give the owner an option to redeem it on payment of fine of Rs. 45 lakhs (Rupees fifteen lakhs)."

9. By this order no time limit was fixed for payment of the redemption fine. On 20th August, 1991, the Court made an order for payment of the redemption fine. The relevant portion of the order reads as under:--

"Report dated 7th August, 1991 is confirmed in terms of prayer (a). Out of sale proceeds Sheriff to forthwith pay to Bombay Port Trust a sum of Rs. 9,88,681 towards their dues and to customs a sum of Rs. 15 lacs towards redemption fine.

On receipt of these amounts, B.P.T. and customs authorities to release the vessel by lifting arrest and seizure. ... Clarified that B.P.T. and customs are at liberty to adopt such proceedings as they may be advised for their balance claims."

10. Thus, it is an admitted position that pursuant to this order 20th August, 1991, the amount of Rs. 15,00,000 was paid from the sale proceeds of the vessel to the Customs Authorities. It may be pointed out here that at this point of time, the appeal filed by the owner against the order dated 4th June, 1901 was pending. That appeal came to be decided on 26th February, 1996 and the amount of redemption fine was reduced from Rs. 15,00,000 to Rs. 10,00,000. Thus, on the date on which the redemption fine was paid, the appeal was pending and by the order passed by the Appellate Authority, the amount of fine was reduced to Rs. 10,00,000. As a consequence, the Customs Authorities have redeposited an amount of Rs. 5,00,000 which was paid to them in excess as redemption fine. The learned Counsel appearing for defendant No. 4 relies on the provisions of Section 126 of the Customs which read as under:-

"126. On confiscation, property to vest in Central Government.-

(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods."

11. The learned Counsel submits that as a consequence of confiscation of the vessel, the vessel stood vested in the Central Government. In my opinion, though it is true that consequence of the order of confiscation is that the vessel would vest in Central Government, but where in exercise of the powers u/s 125, the authority ordering confiscation gives an option for payment of fine in lieu of confiscation, then the moment fine is paid, the confiscation would stand revoked and therefore, the vessel will not vest in the Central Government. It was submitted on behalf of the defendant No. 4 that as per the order, redemption fine was payable by the owner but in this case, the amount of redemption fine has not been paid by the owner but it has been paid under the directions of this Court by the Sheriff and therefore, according to the defendant No. 4, as the payment was not made by the owner, it will result in lifting the order of confiscation. In my opinion, there is no substance in this submission. The amount of Rs. 15,00,000 which was the redemption fine was paid from the sale proceeds of the vessel. The sale proceeds of the vessel is the property of the owner and therefore, the payment of fine was made on behalf of the owner and therefore, the moment the amount of fine is paid, the confiscation of the vessel will stand lifted. It is pertinent to note here that by order dated 20th August, 1991, the Customs Authorities have been granted liberty to adopt such proceedings as they may be advised for their balance claims. If it was the case of the Customs Authorities that the vessel stands confiscated and they are entitled to entire sale proceeds, there was no question of their accepting Rs. 15,00,000

towards redemption fine. Payment of redemption fine and confiscation cannot go together. The confiscation will take effect in the absence of payment of redemption fine and if redemption fine is paid, there can be no confiscation. In my opinion, thus the contention raised on behalf of the defendant No. 4 Union of India has no substance. As observed above, the other defendants are not opposing the suit. Hence the plaintiffs are entitled to have the suit decreed. The suit is decreed in favour of the plaintiff and against defendant Nos. 1 and 2 in terms of prayer Clause (a) of the plaint plus interest on Rs. 42,22,830 at the rate of 14% p.a. from the date of filing of the suit till the date of decree and at the rate of 6% p.a. from the date of decree till payment. The plaintiffs would also be entitled to the costs of the suit from defendant Nos. 1 and 2 as incurred by the plaintiffs.

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