
(1999) 12 BOM CK 0040

In the Bombay High Court

Case No : Notice of Motion No. 1153 of 1998 in Admiralty Suit No. 33 of 1997

Mr. Kamla Kant Dube and another

APPELLANT

Vs

m.v. Umang and others

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Admiralty Courts Act, 1861 — Section 6
Bombay Reorganisation Act, 1960 — Section 28, 3, 30, 37
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 21, 214, 215, 225
Criminal Law (Amendment) Act, 1952 — Section 7(2)
Evidence Act, 1872 — Section 58
Fatal Accidents Act, 1855 — Section 1, 2
Merchant Shipping Act, 1958 — Section 3(15)
States Reorganisation Act, 1956 — Section 49, 52, 8

Citation : AIR 2000 Bom 211 : (2000) 2 ALLMR 48 : (2000) 2 BomCR 556

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : S.K. Mukherjee and Kamal Katha, instructed by Motiwalla and Co, for the Appellant; D.D. Vyas, Ms. E.D. Markar, R.A. Fernandes and M.R. Khatri, instructed by y G.A. Rebello, for the Respondent

Judgement

R.M. LODHA, J.—The plaintiffs have filed this suit against the 1st defendant vessel to be condemned in the sum of Rs. 45 lacs along with interest at the rate of 18% per annum and for direction that the 1st defendant vessel to be sold and the proceeds thereof to be applied towards the satisfaction of plaintiffs claim. The plaintiffs have claimed damages and prayed that 2nd defendant be ordered and decreed to pay to the plaintiffs the sum of Rs. 45 lacs along with 18% interest thereon.

2. The plaintiffs are the parents of Mr. Arvind Dube who died on 16-8-1996 on board the 1st defendant vessel when she was lying at Kandla Port. The 1st defendant is the vessel M.V. "Umang" registered in St. Vincent and Grenadines. The 2nd defendant is a Liberian Shipping company and owner of the 1st

defendant vessel. The 3rd defendant is the local agent of the 1st defendant vessel. The suit has been filed in the Admiralty jurisdiction of this Court on 11-3-1997 and at that time the vessel was lying at Kandla. It is the case of the plaintiffs that their son Arvind obtained second Engineers Certificate on 22-1-1994 and joined sea service on 22-9-1995. He was engaged to serve as third engineer on board the 1st defendant vessel when he was to receive wages in all amounting to 1000 US Dollars per month. Shri Arvind joined the 1st defendant vessel at Kandla Port on or about 27-5-1996. On 15-8-1996 when the 1st defendant vessel was lying at the port of Kandla, Shri Arvind along with other officials and crew were working on the maintenance of an electric crane of the vessel. In the course of repair work of the said crane, Shri Arvind received a severe and fatal electric shock from the crane and he died. The plaintiffs have averred that the death of their son was caused by wrongful act and default on the part of the 1st and 2nd defendants and their managers, servants and agents. The claim as and by way of damages for the estate of the deceased is under the provisions of section 2 (proviso) of the Fatal Accidents Act, 1855 and compensation for the loss of dependency under provisions of section 1(a) of the Fatal Accidents Act, 1855. In paragraph 15 of the plaint, the plaintiffs have averred that their son's fatality constituted "damage caused by a ship" within the meaning of the law relating to Admiralty jurisdiction and that International Law Maritime has for long recognised that wrongful death constitutes a maritime and admiralty cause and accordingly this Court has jurisdiction on its admiralty side to entertain and dispose of the suit.

3. The defendants have traversed the plaintiffs claim by filing written statement and have inter alia set up the plea that this Court has no jurisdiction to try the suit. A notice of motion has also been taken out by the defendants in this regard with a prayer for dismissal of the suit since this Court has no jurisdiction and in the alternative to direct the plaint to be returned to the plaintiff for presentation in appropriate proper Court. The defence of the defendants is that no cause of action has arisen within the area under the jurisdiction of this Court nor are any of the defendants and even the plaintiffs reside or do any business in the area under the jurisdiction of this Court. The defendants have averred that at the relevant date i.e. 15-8-1996, according to the plaintiffs, the 1st defendant vessel was lying in the port of Kandla, District Kutch in the State of Gujarat. Kandla is within the district of State of Gujarat. The territories of the district of Kutch was the territory of the former independent part with sovereign State. By virtue of the provisions of the State Reorganisation Act, 1956, the territories of the former State of Kutch became a part of the bigger bilingual State of Bombay and, therefore, with effect from November 1956 the High Court of Bombay had jurisdiction to exercise its powers in relation to Kutch district. By the enactment of Bombay Reorganisation Act, 1960 which came into force from May 1, 1960, there was a bifurcation of bigger bilingual State and Kutch district became part of the new State of Gujarat. For the State of Gujarat a High Court has been established at Ahmedabad and powers of the Bombay High Court for the area of

State of Gujarat including Kutch district has been taken away. It is thus submitted by the defendants that on and from coming into effect of Bombay Reorganisation Act, 1960, the Bombay High Court has no jurisdiction to exercise any judicial power in respect of Kandla Port which is part of Kutch district in the State of Gujarat.

4. It would be pertinent to note that in affidavit in reply filed by plaintiffs on 22-7-98 through their constituted attorney Shri D.P. Fernandes, the contents of paragraphs 2, 3 and 4 of the notice of motion have been admitted. The substance of the averments made by defendants in paragraphs 2, 3 and 4 of notice of motion is that the accident is said to have happened in Kandla in the District of Kutch in the State of Gujarat. The plaintiffs in their affidavit in reply set up the plea inter alia that under Clause 32 of Letters Patent, the Bombay High Court in admiralty jurisdiction can order arrest of a vessel anywhere in India in connection with maritime question arising anywhere in India; since late Arvind died on board the 1st defendant vessel at the port of Kandla within India, the Bombay High Court would have jurisdiction to entertain, try and dispose of the suit; and that powers of Bombay High Court with respect to area of Gujarat have not been taken away nor can it be said that Bombay High Court is divested of its admiralty jurisdiction with respect to area of State of Gujarat by virtue of provisions of the Bombay Reorganisation Act, 1960. The plaintiffs, thus, asserted that this Court has jurisdiction under Clause 32 of Letters Patent to try the suit filed by the plaintiffs since the admiralty jurisdiction of this Court is unlimited and not confined to the territorial limits of the State of Maharashtra. Later on 25-8-1999 the 1st plaintiff filed his own affidavit and stated therein that this affidavit is being filed to clarify the statements made by his constituted attorney Mr. D.P. Fernandes in paragraphs 4 and 5 of the said affidavit. The 1st plaintiff in this affidavit stated that admission made by his constituted attorney D.P. Fernandes in affidavit in reply filed on behalf of the plaintiffs on 22-7-98 that the port of Kandla is within the district of Kutch should not be taken as an admission made by him (1st plaintiff) or on his behalf. He has further stated in the said affidavit that port of Kandla is not situated within the district of Kutch and at the relevant time the 1st defendant vessel was lying at anchorage i.e. mooring No. 2 buoy and beyond the high water mark in the Port of Kandla.

5. The defendants are opposing the consideration of the said affidavit dated 25-8-1999 filed by the plaintiff Kamala Kant Dube on the ground that the plaintiffs cannot be permitted to resile from the admission which they have made in the affidavit in reply filed by their constituted attorney on 22-7-98. In view of the liberty granted by the Court, the defendants have filed further affidavits on 19-11-99 and 25-11-99 in response to the affidavit of Kamala Kant Dube dated 25-8-99. Along with the said affidavit the defendants have annexed the map of State of Gujarat marked Annexure "A", map of Kutch district published by the Roads & Buildings Division Annexure "B", Gazette notification issued by the Government of Gujarat in exercise of its powers u/s 7 of the Bombay Land Revenue Code along with English translation of relevant extract, marked

Annexure C, the notification extending Indian Ports Act, 1908 to the Port of Kandla with effect from April 1, 1950 marked Annexure "D" and the certificate by the Deputy Conservator, Kandla Port Trust dated 31-10-1999 regarding the arrival and anchorage of the vessel and the position of moorings marked Annexure "E".

6. The issue that arises for consideration is whether this Court has jurisdiction to try the suit.

7. Since the aforesaid dispute relates to the jurisdiction and is to be decided finally, the learned Counsel for the parties were asked on 25-10-1999 whether they desired to produce any further evidence in support of their respective cases to which both the learned Counsel appearing for the parties on that day submitted that save and except the maps and notification of which the Court can take judicial notice and which are not required to be proved under the Indian Evidence Act, no further evidence by way of affidavits or otherwise would be led except that the defendants shall have right to file an affidavit in response to the affidavit of the plaintiff which was filed on that date. As already indicated above, in response thereto the defendants have filed further affidavits on 19-11-99 and 25-11-99. Since the learned Counsel for the plaintiffs objected to the consideration of the certificate dated 31-10-99 given by the Deputy Conservator, Kutch Port Trust marked Annexure E being not in conformity with the direction of this Court dated 25-10-99, I am not considering the said certificate for the purposes of disposal of this notice of motion.

8. The history of the Admiralty jurisdiction of this Court has been traced in various judgments of this Court from time to time. To summarise : For the first Admiralty jurisdiction came to be invested in the Recorder's Court at Bombay which was established by a Charter dated 20th February, 1798. The Recorder's Court, however, was substituted by 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 invested with the same jurisdiction on its Admiralty Side as the jurisdiction which was exercised by the High Court of admiralty in England. The Supreme Court of Judicature at Bombay which was established in 1823 as aforesaid was superseded by the High Court of Judicature at Bombay established by the Letters Patent of 1862. Clause 31 of the Letters Patent dealt with admiralty and Vice admiralty jurisdiction. The Letters Patent of 1862 were once again superseded by Letters Patent of 1865 and Clause 32 of these Letters Patent provided:

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

9. In the year 1890, Colonial Courts of Admiralty Act, 1890 was enacted. Section

2(1), section 3 and section 7 of the said Act read thus:--

"2. Colonial courts of Admiralty.---(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other Civil jurisdiction and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority the expression "Court of law" for the purposes of this section includes such Governor."

3. Power of Colonial legislature as to Admiralty jurisdiction.---The legislature of a British possession may by any Colonial law:---

(a) 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 this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and

(b) confer upon any inferior or subordinate Court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit;

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Court conferred upon a Colonial Court of Admiralty.

7. Rules of Court.--(1) Rules of Court for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said Court in the exercise of its Ordinary Civil Jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full Court, or by any Judge or Judges thereof, and subject to any rules,

where the Ordinary Civil Jurisdiction of the Court can in any case be exercised by a Single Judge, any jurisdiction conferred by this Act may in the like case be exercised by a Single Judge."

10. By Act No. 16 of 1891 i.e. Colonial Courts of Admiralty (India) Act, 1891, the High Court of Bombay along with the High Court of judicature at Fort William in Bengal and at Madras were declared to be Colonial Courts of Admiralty. The preamble of the said Act stated "Whereas it is provided by the Colonial Courts of Admiralty Act, 1890 that the Legislature of a British possession may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty." The High Court of Bombay being the Court of record which had unlimited civil jurisdiction was also declared to be Colonial Court of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom.

11. In *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, the question before the Apex Court was whether the High Court in India was invested with admiralty jurisdiction to order the arrest of the vessel in respect of a cause of action relating to outward cargo. While dealing with the said contention, the Apex Court referred to the history of the admiralty law and the various paragraphs, particularly 14, 17, 20, 25, 26, 30, 44, 48, 49, 56, 58, 59, 65, 66, 67, 68, 72, 75, 78, 80, 83, 85, 88, 89 and 101 throw immense light on the extent and power of admiralty jurisdiction possessed by the High Courts. The observations made by the Apex Court to the extent these are relevant for deciding the present controversy of territorial limits of the admiralty jurisdiction shall be dealt with by me little later at appropriate stage.

12. What is clearly laid down by the Apex Court in respect of admiralty jurisdiction is that despite its peculiarity of original growth, it nevertheless is a part of the totality of jurisdiction vested in the High Court as the superior Court of record and is not a distinct and separate jurisdiction as was once the position in England before the unification of codes. The Colonial Courts of Admiralty Act, 1890 and Colonial Courts of Admiralty (India) Act, 1891 conferred admiralty jurisdiction on Indian High Courts by reason of their being courts of unlimited jurisdiction. The two Acts of 1890 and 1891 did not confer any separate or distinct jurisdiction but by passage of these acts equated the Indian High Courts to the position of English High Courts for the exercise of admiralty powers within their jurisdiction. The jurisdiction is not confined to the High Courts who were conferred power and jurisdiction under the Act of 1891 alone.

13. The State Reorganisation Act, 1956 was enacted to provide for the reorganisation of the States of India. The existing States were divided or expanded and the new States came to be formed from the appointed day i.e. 1st November 1956. u/s 8 of the Act of 1956 a new Part A State to be known as the State of Bombay came to be formed comprising the territories stated therein which inter alia included the territories of the existing State of Kutch. Part V of

the Act of 1956 deals with High Courts. Section 49 provides that the High Courts exercising jurisdiction immediately before the appointed day shall be deemed to be High Courts of New States and accordingly High Court of Judicature at Bombay became empowered to exercise its jurisdiction in respect of new State of Bombay by virtue of section 52 of the Act of 1956. Sections 49 and 52 which are relevant for the present purposes read thus:--

49. (1) The High Courts exercising immediately before the appointed day jurisdiction to relation to existing States of Bombay, Madhya Pradesh and Punjab shall, as from the appointed day, be deemed to be the High Courts for the new States of Bombay, Madhya Pradesh and Punjab respectively.

.....

52. The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State.

14. The State of Bombay which came to be formed in the year 1956 under the Act of 1956 was further reorganised under the Bombay Reorganisation Act, 1960 (Act of 1960). The appointed day of the said Act is 1st of May 1960. u/s 3 of the Act of 1960, State of Gujarat was formed comprising some of the territories of Bombay and the residuary State of Bombay was named the State of Maharashtra. The territories which form the State of Gujarat include Kutch district. Section 3 reads thus:

3. (1) As from the appointed day, there shall be formed a new State to be known as the State of Gujarat comprising the following territories of the State of Bombay, namely, :---

(a) Banaskantha, Mehsana, Sabarkantha, Ahmedabad, Kaira, Panch-Mahals, Baroda, Broach, Surat, Dangs, Amreli, Surendra nagar, Rajkot, Jamnagar, Junagadh, Bhavnagar and Kutch districts; and

(b) the villages in Umbergaon taluka of Thana district, the villages in Nawapur and Nandurbar talukas of West Khandesh district and the villages in Akkalkuwa and Taloda talukas of West Khandesh district, respectively specified in Parts I, II and III of the First Schedule;

and thereupon, the said territories shall cease to form part of the State of Bombay, and the residuary State of Bombay shall be known as the State of Maharashtra.

(2) The villages in Umbergaon taluka specified in Part I of the First Schedule shall form a separate taluka of the same name and be included in Surat district, and the remaining villages in the said taluka shall be included in, and form part of, Dahanu taluka of Thana district; and the villages specified in Parts II and III

of the First Schedule shall respectively be included in, and form part of, Sangadh taluka of Surat district and Sagbara taluka of Broach district."

15. The separate High Court for the State of Gujarat was established u/s 28 of the Act of 1960 which also provide that High Court of Bombay shall become the High Court for the State of Maharashtra. The High Court of Gujarat, u/s 30 of the said Act was conferred jurisdiction in respect of the territories included in the State of Gujarat having the same powers and the jurisdiction which the High Court of Bombay had in respect of the said territories immediately before the appointed date. Section 37 provides that the High Court of Bombay shall have no jurisdiction in respect of the territory transferred. Transferred territory is defined in section 2(h) which means the territories, as from the appointed day, are the territories of State of Gujarat. Section 37(i) which is relevant for the present purposes may be reproduced here which reads thus

37. (1) Transfer of proceedings from Bombay High Court to Gujarat High Court.---
(1) Except as hereinafter provided, the High Court at Bombay shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.

.....

16. What is contended by the learned Counsel for plaintiffs based on the affidavit dated 25-8-99 filed by Mr. Kamala Kant Dube (1st plaintiff) is that the 1st defendant vessel was anchored at mooring No. 2 buoy and beyond the high water mark in port of Kandla and, therefore, it cannot be said that vessel was lying within Kutch district. He urged that all the berth and anchoring points in Kandla are substantially deep and far deeper than the high water mark. However, I do not find any merit in this contention of learned Counsel for plaintiffs. Firstly, it would be seen that in paragraphs 2, 3 and 4 of the affidavit in support of the notice of motion, the defendants have repeatedly stated about the place where the accident is alleged to have taken place i.e. Port of Kandla in the district of Kutch within the State of Gujarat. In the affidavit in reply filed by the plaintiffs through their Constituted Attorney Mr. D.P. Fernandes the facts and the statements made in paragraphs 2, 3 and 4 of the affidavit in support of motion have been admitted to be substantially correct. The plaintiffs have now sought to resile from the said admission. The 1st plaintiff has filed affidavit in which it is stated that the statements made in paragraphs 4 and 5 of the affidavit of Mr. D.P. Fernandes be not taken to be the admission made by him. I am afraid, in view of clear and categorical admission made by the plaintiffs through their constituted attorney in their affidavit in reply to the notice of motion, the plaintiffs now cannot be permitted to withdraw from the admission and set up a different case that Port of Kandla is not within the district of Kutch in the State of Gujarat. Moreover from the available material placed on record, it is clearly established that Kandla Port is part of the district of Kutch in the State of Gujarat. The defendants have placed on record the map of the State of Gujarat, the map of Kutch district and the notification issued by the Revenue Department of Government of Gujarat dated 14-11-67. The correctness of the said documents is

not disputed by the plaintiffs. A perusal thereof clearly shows that the Kandla (old and new) is part of Anjar Taluka of District Kutch in the State of Gujarat. As a corollary there remains no doubt that Kandla port is in the district of Kutch of the State of Gujarat. Admittedly, the 1st defendant vessel on the date of the filing of the suit was anchored at No. 2 mooring buoy of Kandla Port that is within limits of Kandla Port. I, therefore, have no hesitation in holding that vessel was lying at Kandla Port in Kutch district of State of Gujarat.

17. The contention of the learned Counsel for plaintiffs is that in exercise of Admiralty jurisdiction this Court can exercise its power, authority and jurisdiction throughout the territory of India. He would urge that the Admiralty jurisdiction of Bombay High Court extends to the whole of India. He placed heavy reliance upon Clause 32 of the Letters Patent (Bombay) which according to him prescribes the geographical extent of the Admiralty Jurisdiction as arising in India, the statement of objects and Reasons of Colonial Courts of Admiralty (India) Act, 1891 and the judgment of the learned Single Judge of this Court in *Marine Engineers (India) and others v. M.V. Innovative-1*, decided on 4-12-1995.

18. Article 214 of Constitution of India provides that there shall be a High Court for each State. Under Article 225 it is provided that subject to the provisions of the Constitution and to the provisions of any law of the appropriate legislature, the jurisdiction of any existing High Court shall be same as immediately before the commencement of the Constitution. Every High Court has been empowered to issue writs, orders or directions under Article 226 throughout the territories in relation to which it exercises jurisdiction. This power to issue writs, orders or directions may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part arises notwithstanding that the seat of such government or authority or authority or the residence of such person is not within the territories. Article 372 provides for continuance in force of existing laws and their adaptation until altered or repealed or amended by the competent legislature or authority. In the year 1956, the State Reorganisation Act was enacted by the Parliament. Upon formation of new States, the local limits of respective High Courts for the exercise of jurisdiction are the territories of the concerned States. The new State of Bombay which was formed u/s 8 of the Act of 1956 was further reorganised under the Bombay Reorganisation Act, 1960 whereby the new State of Gujarat was formed u/s 3 of the Act of 1960 comprising of the area specified therein and residuary State came to be known as the State of Maharashtra. Section 28 of the Act of 1960 provides that from the appointed date i.e. 1st May 1960, the State of Gujarat shall have a separate High Court and the High Court of Bombay shall become High Court for the State of Maharashtra. u/s 30, the High Court of Gujarat has all jurisdiction, power and authority of the High Court of Bombay in respect of the territories or part thereof constituting State of Gujarat. Section 37(1) provides that the High Court of Bombay shall have no jurisdiction in respect of transferred territory. In my considered view, therefore, each High Court can only exercise its jurisdiction, power and authority throughout the

territories in relation to which it has been established. Clause 32 of Letters Patent to that extent has to be read in the light of the Constitutional provisions, the provisions of the State Reorganisation Act and Bombay Reorganisation Act. Admiralty jurisdiction exercisable by every High Court which every High Court possesses in its plenary powers being the Court of Record and superior Court cannot extend beyond its local limits. It is a trite principle in Admiralty law that a vessel must be within jurisdiction of the Court for being proceeded against. An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. In such action in rem it is important that the ship is within local limits and jurisdiction of the concerned High Court at the time the proceedings are started. This view also finds support from the various paragraphs of the judgment of the Apex Court in *M.V. Elisabeth* particularly paragraphs 66, 82, 83, 89 and 93. The said paragraphs read thus:---

66. It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicable provisions of statutory law, with all persons and things found within their jurisdiction. The power of the Court is plenary and unlimited unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the courts to administer justice are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the Court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

82. The Merchant Shipping Act empowers the concerned High Court to arrest a ship in respect of a substantive right. A right conferred by the Indian Carriage of Goods by Sea Act, 1925 in respect of outward cargo is one of those rights which can be enforced by arrest and detention of the foreign ship in order to found jurisdiction over the vessel and its owners, just as it can be done in respect of inward cargo by reason of the substantive rights conferred by the Admiralty Court Act, 1861 read with the Colonial Courts of Admiralty Act, 1890, and other rules of law. The same principle must hold good for carriage under a charterparty. These and other laws, such as the law of contract, tort, crime, mortgage, marine insurance, customs, port operations, etc., and the Civil and Criminal Procedure Codes as well as the relevant rules of Court regulating procedure and practice together constitute the body of substantive and procedural laws governing claim relating to inward and outward cargo, and such claims are enforceable against foreign ships by recourse to arrest and detention when found within jurisdiction. Viewed in this light, and by this reasoning, the Andhra Pradesh High Court, as a successor to the Madras High Court, does not lack admiralty jurisdiction in respect of claims relating to outward cargo.

83. The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrests of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the

defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action.

89. 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. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.

93. Once a foreign ship is arrested in Indian waters by an order of the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a Court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceedings must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the concerned High Court, as defined under the Merchant Shipping Act, 1958 (section 3(15)) attracts the jurisdiction of the competent Court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel."

19. The Apex Court in *M.V. Elisabeth* was of course not directly concerned with the territorial limits of admiralty jurisdiction but the afore quoted observations do reflect that Admiralty jurisdiction by the High Court has to be exercised only with reference to the territorial jurisdiction of that Court in exercise of its appellate powers. When the Apex Court observed, 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 what has been conveyed is that admiralty jurisdiction is assumed over foreign ships to enforce claim against them while they are within the jurisdiction of High Court. Public policy also demands that each High Court must exercise its jurisdiction including admiralty jurisdiction exclusively over a territory in respect of which it has been established. If all the High Courts of the country are deemed to have admiralty jurisdiction concurrently over the entirety of territorial waters of India, it would result in chaotic situation, uncertainty and very likely conflict of decisions which no civilised society would like to have. It is absurd, say for example, to suggest that power to enforce claim against foreign vessel berthed at Kandla Port, can be exercised by any of the 18 High Courts in the country in exercise of its admiralty jurisdiction which each one of them possesses being a superior Court of record,

though no cause of action has arisen within jurisdiction of that Court or to say that upon entry of the foreign vessel into territorial waters of India, the claim against such vessel can be enforced in any of 18 High Courts of the country. Whatever be the misgivings about admiralty jurisdiction vis a vis High Courts in India earlier, now in view of the judgment of the Supreme Court in *M.V. Elisabeth*, no doubt is left that admiralty jurisdiction is an essential aspect of judicial sovereignty which is exercised by each High Court as a superior Court of record. Thus, there has to be certainty about the forum and accordingly each High Court must have admiralty jurisdiction in respect of the territories for which it has been constituted and not throughout the territorial waters of the country. This is the view of the Madras High Court too in *M/s. Seawaves Shipping Services, Tehran, Iran v. M/s. Adriatic Tankers Shipping Co. S.A., Greece, Owners & others*, 1996(1) Law Weekly page 182. The Division Bench of the Madras High Court was concerned with the question whether in exercise of the admiralty jurisdiction on the original side, the Madras High Court could entertain the prayer for the arrest of the ship at the Port of Kandla. In the case before the Madras High Court the suit was for recovery of a sum of US Dollars 41,837. The 1st defendants-owners of the ship were having their office in Greece while the 2nd defendants described as managers were the company registered under the laws of Netherlands having their office there. The 3rd defendant was the master of the ship *Nova Progress*. Before the Single Judge of Madras High Court it was urged that the only tangible assets of defendant Nos. 1 and 2 are the ship lying at the port of Kandla Gujarat State and the cause of action arose on 27-8-95 when the ship was berthed at Port of Kandla. The learned Single Judge held that the fact that the vessel was berthed at the Port of Kandla in Indian waters does not give jurisdiction to Madras High Court to arrest the ship under the admiralty jurisdiction. Upon appeal being taken against the order of the learned Single Judge, the Division Bench of the High Court upon consideration of the judgment of the Apex Court in *M.V. Elisabeth* and some other judgments in paragraphs 5, 12, 17 and 18 observed thus :---

"5. We are unable to accept the contentions of learned Counsel for the appellant. The question which has arisen before us did not arise before the Supreme Court in the case referred to above. The only contention before the Supreme Court was that no High Court in India was invested with Admiralty jurisdiction to order the arrest of the vessel in respect of a cause of action relating to outward cargo because section 6 of the Admiralty Court Act, 1861 read with Colonial Courts Admiralty Act, 1890 conferring Admiralty jurisdiction on Indian courts was confined to "claim for damage to cargo imported". That contention was rejected by the Supreme Court in that case. While doing so, the Supreme Court has traced the entire history of the Admiralty jurisdiction of the Indian High Courts. But, the Court had no occasion to expressly advert to the territorial limits of such jurisdiction. There are, however, several passages in the judgment, which go to show that the Admiralty jurisdiction of a High Court has to be exercised only with reference to the territorial jurisdiction of that Court in exercise of its appellate

powers.

12. The Act did not alter in any manner the territorial jurisdiction of the Admiralty Courts in India. By Act XVI of 1891, the High Court of Madras was declared to be a Court of Admiralty along with High Courts of Bombay and Fort William in Bengal. There was no subsequent legislation either by the British Parliament or by Indian Legislature enhancing the territorial limits of the High Courts at Madras, Bombay and Calcutta in their Admiralty jurisdiction. With reference to the subjects and causes, the scope of jurisdiction has been as wide as that of the High Court of England. But with reference to territorial limits it can by no stretch of imagination be said that all the three High Courts had and have concurrent jurisdiction over the entirety of Indian Territorial waters. If that contention is accepted it will lead to uncertainty and conflict of decisions. With reference to the same incident, one suit may be filed in Bombay and another suit in Madras; Law in a civilised country has to necessarily prescribe a definite forum. Otherwise, questions relating to Forum non Convenience will often arise and transfer of proceedings from one High Court to another will be sought.

17. It will be seen from the above passages, that the Supreme Court has used the expression concerned High Court in more than one place. That shows that the Supreme Court proceeded on the principle that each High Court exercises jurisdiction exclusively over a particular territory. In that case, the vessel was within the territorial jurisdiction of Andhra Pradesh High Court and, therefore, the question which is now before us did not arise. The plaintiff in that case was an Indian Company and part of the cause of action arose in this country. In the present case, the plaintiff is a foreign company and no part of the cause of action is stated to have arisen here except the entry of the vessel into the Port at Kandla.

18. The definition of High Court found in section 3(15) of the Merchant Shipping Act lends support to our view. We have no hesitation in rejecting the prayer of the appellant for arrest of the ship pending the disposal of the suit. In our opinion, the view expressed by the learned Judge is correct and there is no merit in the appeal. In fine, the appeal suffers a dismissal."

20. I find myself in full agreement with the aforesaid view of Madras High Court being legal, logical and in accord with the public policy.

21. It may be noted that under the Merchant Shipping Act, 1958, High Court in relation to a vessel means the High Court within the limit 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.

22. The learned Counsel for the plaintiffs placed strong reliance on the judgment of the learned Single Judge of this Court in *Marine Engineers (India) & others* (supra) in support of his contention that the Admiralty Court has countrywide jurisdiction which was initially conferred upon Colonial Courts in 1890 and 1891 by virtue of Clause 32 of Letters Patent. It is true that in the said judgment the

learned Single Judge has taken the view that the admiralty jurisdiction of this Court is not confined to the territories of the State and that the admiralty jurisdiction of this Court is countrywide. At first though I considered referring the matter to larger Bench but on in depth thought I did not feel it necessary though I have taken the different view from what has been taken in *Marine Engineers (India)*. The reason for this is that I find the judgment of learned Single Judge, with utmost respect, per incuriam. In the *Marine Engineers (India)* in paragraph 15, the learned Single Judge proceeded on the basis that the admiralty jurisdiction has not been conferred upon the High Court of each State. This is, with great respect, not a correct view. The Apex Court in *M.V. Elisabeth* has clearly laid down that the High Court being Court of record under Article 215 and in the very nature of its being a superior Court with plenary powers possesses admiralty jurisdiction. The admiralty jurisdiction after coming into force of Constitution is not confined to the six High Courts which were conferred admiralty jurisdiction as Colonial Admiralty Court or its successor High Court but to all High Courts in the country. There was no necessity of conferment of admiralty jurisdiction either generally or specifically upon the new High Courts having come into existence on coming into effect of the State Reorganisation Act since by its virtue of being a superior Court and a Court of record each High Court acquired admiralty jurisdiction. Moreover, in the said judgment the learned Single Judge by relying upon the judgment of this Court in *The Shipping Development Fund Committee Vs. M.V. Charisma and Another*, held that in the said judgment this Court had laid down that Admiralty Court has countrywide jurisdiction which is not the law laid down in the case of *Shipping Development Fund Committee*. The *Shipping Development Fund Committee* was a case before this Court in which the question raised was whether the suit filed for realisation of mortgaged security against the defendant vessel anchored at the port of Bombay under the Merchant Shipping Act, 1958 could be entertained and tried under the admiralty jurisdiction of this Court. This Court held that a suit to enforce the ship mortgage must be filed within the Admiralty and Vice-Admiralty jurisdiction of the Court. However, the Admiralty Court shall exercise therein such powers which are provided for in the Merchant Shipping Act, 1958. In paragraph 8 of the report, it was held thus:-

8. It would seem that consequent upon the enactment of the 1958 Act, the Admiralty Court has lost its country wide jurisdiction to entertain suits to enforce ship mortgage and retains it only within the limits of the particular High Court's appellate jurisdiction; but I do not express any final opinion upon this. I do not think that this limited jurisdiction establishes that it is not an Admiralty Court which can entertain a ship mortgage suit, as was sought to be urged before me."

What has been read by the learned Single Judge in *Marine Engineers (India)* with reference to *Shipping Development Fund Committee* is not what has been laid down in *Shipping Development Fund Committee*. The learned Judge in *Shipping Development Fund Committee* observed that he was not expressing any final opinion whether consequent to enactment of 1958 Act the Admiralty Court has

lost its countrywide jurisdiction and that by the limited jurisdiction which the High Court has under 1958 Act, it cannot be said that it is not a Admiralty Court. The view taken by this Court in Shipping Development Fund Committee is, therefore, not that the Admiralty Court has the countrywide jurisdiction as has been read into it by the learned Single Judge in Marine Engineers (India) Ltd.

23. In A.R. Antulay Vs. R.S. Nayak and Another, of the report the Apex Court observed thus :---

44. It appears that when this Court gave the aforesaid directions on 16th February, 1984, for the disposal on the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in The State of West Bengal Vs. Anwar Ali Sarkar, . See Halsbury's Laws of England, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Ed., pages 128 and 130 Young v. Bristol Aeroplane Co. Ltd. 1944(2) All.E R. 293 , Also see the observations of Lord Goddard in Moore v. Hewitt 1947(2) All.E.R. 270-A and Penny v. Nicholas 1950(2) All.E.R. 89 "Per Incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned, so that in such cases some part of the decisions or some step in the reasoning on which it is based; is found, on that account to be demonstrably wrong. (See Morelle v. Wakeling) 1995(1) All.E.R. 708. Also see State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, . We are of the opinion that in view of the clear provisions of section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong.

24. The decisions which are given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned which may result in the reasoning which is demonstrably wrong, are per incuriam decisions and have no binding force. The judgment of learned Single Judge in Marine Engineers (India) falls in this category for reasons: firstly because it is based on erroneous assumption that High Courts of new States have not been conferred admiralty jurisdiction and it is different from the normal jurisdiction of the High Court; secondly, it held that in Shipping Development Fund Committee, this Court took the view that Admiralty Court has country wide jurisdiction, which is not the view in Shipping Development Fund Committee case, thirdly, it refused to apply observations of Apex Court in M. V. Elisabeth case though the said observations are of binding nature and fourthly non consideration of constitutional provisions and other laws which govern the jurisdiction of High Courts.

25. The learned Counsel for the plaintiffs submitted that the judgment of the learned Single Judge in Marine Engineers is binding and it cannot be disregarded on the ground of per incuriam. He submitted that not only the judgment of the learned Single Judge in Marine Engineers (India) is clearly right but even per incuriam principle is not applicable. In this connection, he relied upon decision of the Apex Court in Dhanki Mahajan Vs. Rana Chandubha Wakhatsing and

Others, , Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., and Shridhar Vs. Nagar Palika, Jaunpur and Others, . The learned Counsel urged that merely because the view taken by the learned Single Judge appears to be wrong view of the authorities or misinterpretation of a Statute or that the view was expressed when the matter was not fully argued would not be hit by per incuriam principle. There is not doubt that the per incuriam principle is applied rarely and the Court is very slow and reluctant in declaring a judgment per incuriam. But nevertheless if the decision has been given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding on the Court that has resulted in reasons which are apparently and demonstrably unsustainable, the Court may be left with no option but to treat such decision per incuriam and not a binding decision. For the reasons which I have already indicated above, I find that the judgment of the learned Single Judge in Marine Engineers (India) is not binding being per incuriam.

26. So far as the facts of the present case are concerned, even otherwise in view of section 37 of Bombay Reorganisation Act, this Court cannot be said to have any jurisdiction to try the suit. I have already observed that Kandla port is part of Anjar Taluka within Kutch district of State of Gujarat. Kutch district became the part of the newly formed State of Bombay on coming into force of the State Reorganisation Act in the year 1956. By virtue of section 3 of Bombay Reorganisation Act, the new State of Gujarat was formed comprising of some of the territories of State of Bombay stated therein which included Kutch district and the residuary State came to be known as State of Maharashtra. Thus, Kutch district was transferred to the State of Gujarat with effect from 1-5-1960 on coming into force of Bombay Reorganisation Act. Section 37 of the Bombay Reorganisation Act clearly bars the jurisdiction of the Bombay High Court in respect of transferred territory. The submission of the learned Counsel for the plaintiffs that the admiralty jurisdiction is not related to territory and that Kandla Port is not transferred territory within the meaning of section 2(h) and 37 of Bombay Reorganisation Act cannot be accepted. The vessel defendant No. 1 on the date of the filing of the suit was anchored at Kandla Port. Kandla Port is a part of Kutch district. Kutch district was transferred from the State of Bombay to the State of Gujarat on its formation with effect from 1-5-1960 and, therefore, even if it is assumed that in exercise of admiralty jurisdiction this Court has all India jurisdiction, in view of the specific bar of exercising any jurisdiction in respect of transferred territory created u/s 37 of the Bombay Reorganisation Act, this Court shall not have any jurisdiction in respect of the vessel anchored in transferred territory i.e. Kandla Port within the district of Kutch. The contention of the learned Counsel for plaintiffs that land areas of Kandla port are out of Kutch district and not the anchorage of Kandla port falls within Kutch district is devoid of any merit. Take a case where the vessel is anchored at Kandla port and a claim is enforced in relation to that vessel under the Merchant Shipping Act, 1958 before Gujarat High Court. The port of registry of the vessel is outside India and no cause of action wholly or in part has arisen within limits of Gujarat. The

basis of enforcement of claim before Gujarat High Court is that vessel is anchored at Kandla Port within State of Gujarat. Obviously u/s 3(15) of Act of 1958, Gujarat High Court is the High Court in relation to that vessel. A fortiori, the admiralty jurisdiction, in relation to the vessel anchored at Kandla port of Gujarat High Court has to be invoked and not the admiralty jurisdiction of any other High Court.

28. In view of my discussion aforesaid, the conclusion is inescapable that this Court has no jurisdiction to try this suit.

29. The notice of motion taken out by the defendants is, accordingly, allowed and the Prothonotary and Senior Master is directed to return the plaint to plaintiffs for its presentation in proper Court within eight weeks from today.

30. The bank guarantee submitted by the defendants pursuant to the order passed by this Court on 12-3-97 shall stand discharged after eight weeks from today.

31. In view of the oral prayer made by the learned Counsel for plaintiffs, the direction given in this order for return of plaint shall remain stayed for a period of eight weeks.

32. The parties may be provided ordinary copy of this order duly authenticated by the Court Associate on payment of usual copying charges expeditiously.

33. Notice of Motion allowed.