
(1992) 07 BOM CK 0028

In the Bombay High Court

Case No : Appeal No. 286 of 1991 In Admiralty Suit No. 8 of 1980

M/s. CNA Peejay Exports Pvt. Ltd.

APPELLANT

Vs

M.V. Nikolay Maksinov and others

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Admiralty Courts Act, 1861 — Section 6
Constitution of India, 1950 — Article 225
Merchant Shipping Act, 1958 — Section 443

Citation : AIR 1993 Bom 286 : (1994) 3 BomCR 273 : (1993) 1 MhLj 463

Hon'ble Judges : V.V. Kamat, J;M.L. Pendse, J

Bench : Division Bench

Advocate : G.A. Rebello and Ms. Sharon D'Sa, for the Appellant; V.R. Dhond and S.c. Chakravorthy, for the Respondent

Judgement

Pendse, J.—This is an appeal preferred by original plaintiffs to challenge judgment dated February 5, 1990 delivered by learned single Judge in Admiralty Suit No. 8 of 1980. By the impugned judgment the learned Judge held that the Admiralty Court had no jurisdiction to entertain and try the suit and thereupon the plaint was returned for presentation to the proper Court, that is this Court under its Ordinary Original Civil Jurisdiction. The facts which gave rise to filing of the suit are as follows.

2. The appellants-plaintiffs are private limited company incorporated under the Companies Act and inter alia carry on business of import and export. Respondent No. 1 is a vessel flying U.S.S.R. Flag and respondent No. 3 are the owners of the said vessel. Respondent No. 2 are the general agents in Bombay and elsewhere in India in respect of respondent No. 1 vessel as well as other vessels belonging to respondent No. 3. Respondent 2 as the general agents of respondent No. 3 are responsible for all matters concerning respondent No. 1 vessel.

The plaintiffs had imported 1360 bags of High Density Polythelene Moulding Powder in three containers from M/s George Woollock Allan, United States of

America. The three containers bearing distinctive marks containing 160 bags, 600 bags and 600 bags were entrusted to defendant No. 3 by the shippers to be shipped and delivered to the plaintiffs in Bombay by the 1st defendant vessel. The necessary bill of lading dated June 4, 1979 was issued by and in the name of defendant No. 1 vessel Nikelay Maksinov. The bill of lading clearly gives the description of the containers, their number and quality. Out of the three containers only one container was loaded on board defendant No. 1 vessel and that container carrying 160 bags was carried by defendant No. 1 vessel to the Port of Naples. The container was then transhipped from defendant No. 1 vessel and loaded on another vessel M. V, Inzhewer Yam-burenko belonging to defendant No. 3, and carried to Bombay Port. The vessel arrived at Port of Bombay on August 7, 1979 and discharged the container. The plaintiffs filed bill of entry for all the three containers on August 8, 1979 and thereafter paid the customs duty. The customs duty paid was Rs. 1,47,087.65. The plaintiffs thereafter found out that only one container was delivered vessel INZHEWER YAMBUR-ENKO. The plaintiffs thereupon made enquiries and learnt from defendant No. 2 that the remaining two containers were brought by the same vessel and unloaded in Bombay Port in the last week of September 1979. The plaintiffs approached the authorities to take delivery and the Customs authorities demanded full duty on the three containers afresh. The plaintiffs were compelled to pay the duty all over again for clearing the three containers. The duty paid by the plaintiffs on second occasion was Rs. 1,30,769.40. The duty was refunded to the plaintiffs after about nine months and the plaintiffs claim that they had lost interest on the said amount to the tune of Rs. 11,700/-. The plaintiffs were also required to pay the demurrage and wherefore charges amounting to Rs. 99,791.09. The plaintiffs claimed that the containers were lying exposed to the elements in the Docks for several months and suffered in quality. About 100 and odd bags were badly damaged and several bags were pilfered from the Docks. The plaintiffs claimed damages to the tune of Rs. 1,00,000/-The plaintiffs thereupon demanded total sum of Rs. 2,11,491.09 from the defendants and on the defendants refusal to pay the same, instituted Admiralty Suit No. 8 of 1980 on May 12, 1980 for realisation of the amount. In the meanwhile defendant No. 1 vessel had arrived in Bombay Port and the plaintiffs sought relief for arrest of the said vessel together with gear, tackle, plant etc. for payment of the plaintiffs' claim. The plaintiffs claimed that they are entitled to proceed against the 1st defendant vessel in rem.

3. Defendants filed their written statement and claimed that the Admiralty. Court had no jurisdiction as defendant No. 1 vessel at no time carried the plaintiffs' consignments in to India or to any Port in India. The defendants claimed that the consignment was carried by vessel m.v. INZHEWER YAM-BURENKO and consequently provisions of S.6 of the Admiralty Courts Act, 1861 are not attracted to confer jurisdiction on the Admiralty Court. The defendants also resisted the claim on merits.

The learned single Judge raised 12 issues arising out of the pleadings and tried

the first issue about jurisdiction as a preliminary issue. The parties did not lead any evidence in regard to the issue of jurisdiction and on the basis of the pleadings the learned Judge held that the Admiralty Court had no jurisdiction to entertain the suit in view of provisions of S. 6 of the Admiralty Courts Act, 1861. The learned Judge held that as defendant No. 1 vessel had not carried any consignment of the plaintiffs to the Bombay Port or any other Port in India, the Admiralty Court lacks jurisdiction to entertain the suit under S. 6 of the Act. In support of the conclusion the learned Judge relied upon judgment reported in the English Reports Ecclesiastical, Admiralty and Probate and Divorce Vol. CIXVII page 205 Note 458. The learned Judge directed that the plaint should be returned for presentation to the proper Court, that is, the Court exercising civil jurisdiction on the Original Side. The decision of the learned single Judge is under challenge.

4. Shri Rebello, learned counsel appearing on behalf of the appellants, submitted that the view taken by the learned single Judge about applicability of provisions of S. 6 of the Admiralty Courts Act is incorrect. Shri Rebello submitted that the learned Judge overlooked that part of the consignment was loaded on defendant No. 1 vessel and the said vessel carried the consignment upto Naples. It was contended that the plaintiffs are not aware as to what happened to the consignment at Naples and when defendant No. 1 vessel arrives in Bombay Port it is open for the plaintiffs to proceed against the vessel and the Admiralty Court has clearly jurisdiction to entertain the suit under S. 6 of the Admiralty Courts Act. The learned counsel referred to the provisions of S. 443 of the Merchant Shipping Act, 1958. Shri Rebello also submitted that the distinction between the jurisdiction of admiralty Court and the ordinary civil Court is no longer in operation in view of the decision of the Supreme Court reported in JT 1992 (2) 65, M. V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd. Shri Dhond, learned counsel appearing on behalf of the respondents, on the other hand submitted that the decision of the learned single Judge declining to entertain the suit in view of provisions of S. 6 of the Admiralty Courts Act does not suffer from any infirmity and is not required to be disturbed. Shri Dhond very fairly stated that in view of decision of the Supreme Court it is necessary to give a wide construction to provisions of the Admiralty Courts Act. In our judgment, the decision of the learned single Judge declining to entertain the suit in admiralty jurisdiction is not correct.

5. The provisions of S. 6 of the Admiralty Courts Act, 1861 and which were made applicable to India by the Colonial Courts of Admiralty Act, 1890 read with Colonial Courts of Admiralty (India) Act, 1891 read as follows":

"The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown

to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales : provided always, that if in any such cause the plaintiffs do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court."

The plain reading of Section 6 indicates that the Admiralty Court will have jurisdiction over any. claim by the owner or consignee or assignee of any bill of lading of any goods carried into any Port in India. The claim shall be in respect of damages done to the goods by the negligence or misconduct or by breach of duty or breach of contract on the part of the owner, master or crew of the ship. The action in admiralty is an action in rem against the vessel of the owner. The learned single Judge held that the Admiralty Court can exercise jurisdiction u/s 6 provided there is breach of contract on the part of the owner, master or crew of the ship, and the expression "of the ship" means the ship which carries the consignment of the plaintiffs in India. According to the learned single Judge as defendant No. 1 is not the vessel which has carried the consignment to India, it is not possible to exercise jurisdiction under S. 6 against defendant No. 1 vessel. We are afraid we cannot share the view of the learned single Judge. It cannot be overlooked that the part of the consignment mentioned in the bill of lading was loaded on defendant No. 1 vessel and the said vessel carried it up to Port of Naples. Now what transpired at the Port of Naples is not known to the plaintiffs according to the averments in the plaint. The vessel thereafter came to India and as the consignment was not unloaded by defendant No. 1 vessel at Bombay the plaintiffs are entitled to proceed against defendant No. 1 vessel to realise the claim for damages. It is not correct to suggest that unless and until defendant No. 1 vessel brings the consignment into Indian Port the jurisdiction under S. 6 cannot be exercised. We are not prepared to give restrictive meaning to the expression "of the ship" and it is desirable to give it a wider interpretation to subserve the ends of justice. The Supreme Court in the decision in the case of *M. V. Elisabeth* (supra) while examining the ambit of jurisdiction under the Admiralty Courts Act, 1861, observed that restrictive construction is not warranted by the provisions of the Indian Constitution. The Supreme Court after referring to Calcutta decisions as well as the decision of this Court reported in *Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd.*, , where a strict view of S. 6 was adopted, specifically observed that the decisions were not correct. In paragraph 19 of the judgment the Supreme Court held that the reasoning of the Calcutta and Bombay High Courts on the question of jurisdiction were not correct and the narrow view adopted in those decisions on the source and ambit of the admiralty jurisdiction is not warranted. In our judgment, once it is accepted by the defendants that the consignment or part thereof was loaded on board of defendant No. 1 vessel and carried up to the Port of Naples, then the claim for damages against the vessel when it arrives in Port of Bombay is perfectly entertainable by the Admiralty Court.

6. Indeed, in our judgment, the issue which arises in the appeal has become so academic in view of decision of the Supreme Court. In paragraph 84 of the Supreme Court judgment, Mr. Justice Thomsen observed that the admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of the ship. The Supreme Court also referred to the provisions of the Merchant Shipping Act, 1958 and with reference to Section 443, observed that the High Court has jurisdiction to arrest the ship. The Supreme Court further observed in paragraph 90 that 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. The 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. In paragraph 94, the Supreme Court observed :

"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."

Mr. Justice Sahai, who concurred with the decision of Mr. Justice Thommen, observed in paragraph 102 that a citizen carrying on business which is a fundamental right cannot be rendered helpless on premise that the jurisdiction of High Courts stood frozen either under statute of England or any custom or practice prevailing there or the High Court of England cannot exercise the jurisdiction. The learned Judge held that the extensive jurisdiction that the High Courts enjoyed in relation to Admiralty under 1890 Act preserved under Article 225 provided justification for direction to arrest the ship, for the tortious act done by master or owner of the ship is established and this jurisdiction can be exercised even if there was no specific provision like Section 6 of 1861 Act. In view of the decision of the Supreme Court, the judgment of the learned single Judge holding that the Admiralty Court had no jurisdiction cannot be sustained.

7. Turning to the judgment of the English Court referred to by the learned Judge, we must express our disagreement with the view taken by Dr. Lushington in the said Judgment. In that case a bill of lading was issued for goods shipped on board the vessel "Ironsides". After the ship left Port of New Orleans, a fire broke out on board the ship and on putting off the fire the ship was filled with water and most of the cargo was destroyed. Some of the cargo, which was salvaged, was put on board of another vessel "Valentina" and the said vessel carried the goods to Port of Liverpool. The only cargo available in respect of bill of lading was one bale of cotton. When the vessel "Ironsides" subsequently came to England it was arrested by the consignee for the claim in respect of the lost consignment.

The action was defended on the ground that the Admiralty Court had no jurisdiction and it was held that the vessel "Ironsides" is not liable as no part of the plaintiffs' goods were carried into the country by that vessel. The learned single Judge was in agreement with the view taken in the English case decided in the year 1862. We are unable to share the view taken by the English Court. Once the consignment was put on board of vessel "Ironsides" and the consignment was lost, then when the vessel subsequently reaches the Port of Liverpool the plaintiffs could have enforced the claim against the said vessel. A mere fact that the consignment which was saved in the fire was brought to Liverpool by another vessel cannot divest the Admiralty Court from proceeding against the Vessel on which initially the consignment was loaded. We are not prepared to take a restricted view of provisions of S. 6 of the Admiralty Courts Act and deprive the Court of the jurisdiction. In our judgment, the Court should be extremely slow in denying the jurisdiction and should guard in retaining the jurisdiction. It is possible that in a given case the consignment may never arrive at the port and the liability of the vessel, on which the consignment was loaded and which is reflected in the bill of lading cannot be avoided and it is always open for the consignee to proceed against the vessel whenever the vessel is found in the Indian Port. In our judgment, in these circumstances" we are unable to share the view taken by Dr. Lushington in the English case on which the learned single Judge relied upon. For these reasons the decision of the learned single Judge on the preliminary issue is required to be set aside.

8. There is one more circumstance which cannot be overlooked. The challenge to the jurisdiction at the behest of the defendants was only to exercise of powers as the Admiralty Court and not to the original civil jurisdiction of this Court. The learned single Judge held that the Admiralty Court had no jurisdiction and returned the plaint for presentation to the original civil jurisdiction of this Court only. In our judgment, the distinction between the admiralty jurisdiction and civil jurisdiction of this Court has disappeared after the decision of the Supreme Court and consequently the order of return of plaint cannot be sustained.

9. Accordingly, appeal is allowed and the impugned judgment dated February 5, 1990 is set aside and finding on issue No. 1 is recorded in favour of the plaintiffs. The suit will now be tried by the Admiralty Court in respect of other issues framed.

On request of the counsellor the defendants the amount deposited by the defendants for the release of the ship shall be invested by the Prothonotary and Senior Master in any nationalised bank forthwith, initially for a period of one year.

There will be no order as to costs.

Appeal allowed.