

(1985) 04 AP CK 0017
In the Andhra Pradesh High Court
Case No : O.S. Appeal No. 2 of 1984

M.V. Elisabeth and Others

APPELLANT

Vs

Harwan Investment and Trading Pvt. Ltd.

RESPONDENT

Date of Decision : 26-04-1985

Acts Referred:

Admiralty Courts Act, 1861 — Section 35, 6
Constitution of India, 1950 — Article 225, 372

Citation : AIR 1986 AP 184

Hon'ble Judges : P. Chennakesav Reddy, Acting C.J.;Upendralal Waghray, J

Bench : Division Bench

Advocate : C.A. Sundaram, for Eswara Prasad, J. Chamanthi and N.V. Suryanarayana Murty, for the Appellant; Mr. Parkhasam, for the Respondent

Judgement

P. Chennakesav reddy, Actg. C. J.

1. In this appeal an interesting question of importance relating to the power of the High Court to order arrest of a ship under S. 6 of the Colonial Courts of Admiralty (India Act, 1891 (for short called the "Act") for alleged tortious acts of the owners or master of the ship is raised.

2. The facts and circumstances giving rise to the question may be shortly set out: The defendants in the suit are the appellants before us. The plaintiff-Harwan Investment and Trading Private Limited, Vasco-da-gama, Goa, is the seller of bauxite. M/s. Ras Al Khaimah Agencies Company Limited, Ras Al Khaima, U.A.E., (hereinafter referred to as "buyers") are the buyers. The first defendant is the vessel N.V. Elisabeth lying in the port and harbour at Visakhapatnam. The second defendant , M/s. Daglia Maritime Corporation carrying on business in Greece is the ship owner. The third defendant, Transworld Shipping Services (India) Private Limited, Vasco-da-gama, is the agent of the second defendant.

3. The suit, O.S.No.1 of 1984 is filed for recovery of a sum of Rs. 14, 25 lakhs from defendants 1 to 3 jointly and severally with interest at 24% per annum

from the date of the suit and also for the arrest of the first defendant vessel for condemning it and selling the same towards the suit claim.

4. The vessel undisputedly left the port of Mormogoa on 8-2-84 with the second of the three consignments of bauxite and delivered the same to the buyers at Ras Al Khaimah, U.A.E., between 13-2-1984 and 19-2-1984. The bill of lading, the original of Ex. B-6 , admittedly still continues to be in the hands of the second defendant, the ship owners. The plaintiffs have not received the value of the goods delivered by the carrier to the buyers in respect of the second consignment. The plaintiff claims that the defendants acted in breach of a duty owed by them to the plaintiff and had delivered the goods in spite of the fact that the plaintiff instructed the defendants not to deliver the second consignment to the buyers and that the act of the defendants amounted to conversion.

5. After the second consignment had been delivered, the ship N. V. Elisabeth touched the port at Visakhapatnam by 13-4-1984 for carrying cargo for the M.M.T.C. The plaintiff obtained an order for the arrest of the ship on the plea that the defendants were guilty of conversion. The suit was filed as one in rem invoking the admiralty jurisdiction of this Court for the arrest of the ship. An application I.A. No. 110 of 1984 was filed by the plaintiff for an order of arrest of the ship M.V. Elisabeth. This court passed an order of arrest of the ship on 13-12-1984. The third defendant filed I.A. No. 127 of 1984 for vacating the order of arrest. The learned single judge maintained the order of arrest passed in I.A. No.110 of 1984 and dismissed I.A. No. 127 of 1984 filed by the defendants with costs. Aggrieved against the said order, the defendants have filed this appeal with the leave of the Court.

6. The only question and the main question debated in detail before us was whether the High Court has admiralty jurisdiction to entertain a suit for damages based on tort for conversion and whether an application for an order in rem for the arrest of the ship can be made in such a suit for damages on tort.

7. To answer the question relating to the extent of admiralty jurisdiction, it is necessary to examine the powers exercised by the High Court of Madras under the Letters Patent (madras), 1865, read with the provisions of the (English) Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891) and the (English) Admiralty Courts Act, 1861. Cl. 32 of the Letters Patent (Madras), 1865 reads as follows.

"And we do further ordain that the said High Court of Judicature at madras 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 causes, and other maritime questions arising in India as may now be exercised by the said High Court."

8. Admiralty jurisdiction conferred under Clause 32 continues to be in force in view of the provisions of Arts. 225 and 372 of the Constitution, the Andhra State

Act, 1953 and the States Reorganisation Act , 1956.

9. Colonial Courts of Admiralty (India) Act, (Act XVI of 1891) was enacted in exercise of the powers conferred by the Colonial Courts of Admiralty Act, 1890 of England. The Statement of Objects and Reasons shows that the main object of the Act was to declare certain Courts in India having unlimited civil jurisdiction to be the Colonial Courts of Admiralty in pursuance of the Act of 1890 and that the Act, like the English Act was not intended to take away jurisdiction of any High Court of Judicature in India, but on the contrary it would, so far as the admiralty and vice-admiralty jurisdiction of those Courts are affected, extend and improve them. It was also stated that the jurisdiction of the Colonial Courts of Admiralty in India should not be limited territorially or otherwise. S. 2 of the Act of 1891 reads as follows:

Appointment of Colonial Courts of Admiralty:---

The following Courts of unlimited civil jurisdiction are hereby declared to be Colonial Courts of Admiralty, namely.

- 1).....
- 2) the High Court of Judicature at Madras; and
- 3).....

10. When the above Act of 1891 was enacted, the corresponding statute in England was the Admiralty Courts Act, 1861, in which Ss. 6 to 8 dealt with the admiralty jurisdiction. Section 6, which is relevant for our purpose, confers jurisdiction on the High Court of Admiralty over any claim for damage for the cargo imported. Section 7 confers jurisdiction as to damage done by any ship and S. 8 confers jurisdiction as to questions as to ownership etc., of ships.

11. Section 35 is important and it provides that the admiralty jurisdiction of the High Court could be exercised either by proceeding in rem or by proceeding in personam. It would be useful to read S. 6:

"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 damages 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 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 plaintiff 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 by the said court."

12. A reading of Section 6 makes it abundantly clear that the High Court shall have jurisdiction for 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 damages. The claim may be for damages done to the goods or any part thereof by the negligence, misconduct of or for any breach of duty or breach of contract by the owner, master or crew of the ship. Section 2(2) of the English Colonial Courts of Admiralty Act, 1890, provides that the jurisdiction of the Colonial Courts of Admiralty shall, subject to the provisions of the Act, be exercisable over the like places, persons, matters and things, in the same manner as exercised by the admiralty jurisdiction of the High Court of England, whether existing by virtue of any statute or otherwise. Thus, the Colonial Courts in India could exercise the admiralty jurisdiction exercised by the English Courts by 1890.

13. But the question is whether the claim should relate only to goods carried into any port in India as per S. 6 of the Admiralty Courts Act of England, 1861. It is contended that the admiralty jurisdiction of the High Court of Andhra Pradesh cannot be invoked in relation to cargo carried outside India and a claim for damages in respect of such cargo cannot be entertained. A similar question arose in *Sahida Ismail Vs. Petko R. Salvejkov and Others*, . That was a case for the arrest of the ship, which carried goods to Colombo from India and wrongly delivered without any authority of the plaintiff or his Bank. A warrant for the arrest of the ship was sought on the return of the ship to India. It was argued before the Bombay High Court (sic) could be exercised for a claim for damages when the goods were carried into any port in India, but not when they were carried outside from India. This contention was rejected by the Bombay High Court, following a decision of the English Courts in *Cap Blanco*. 1913 PD 130.

14. A similar view was expressed in *Pieve Superiore* 1874 30 LT 887: 5 PC 482. There the Privy Council upheld the right of the assignee of bills of lading to arrest a ship on her return after discharging the cargo.

15. The Calcutta High Court in *Rungta v. Owners* 1962 66 Cal WN 1083 expressed the view that in order to attract the maritime jurisdiction of the High Court, it was not necessary that the goods should be imported into India or that their carriage should be for delivery in India and that it was sufficient if the goods are carried into any Indian port and there is a breach of duty or contract on the part of the master in respect of the goods so carried.

16. In *National Co. Ltd., v. Asiaz Mariner* (1968) 72 Cal WN 635 dealing with the scope of Section 6 of the Act of 1861, a learned single Judge of the Calcutta High Court held that the section ought to be construed liberally so as to provide reliefs which the fair meaning of the language allows and on that principle the expression "damage" is to be understood as damage, actual or constructive and is to be given a wide signification.

17. There can, therefore, be no doubt regarding the existence of admiralty jurisdiction in the High Court of Andhra Pradesh in relation to cargo carried outside India and a suit for damages to the cargo can be entertained in exercise of the admiralty jurisdiction of the High Court in view of the clear provisions of

Section 6 of the Admiralty Court Act, 1861.

18. It was, however, argued that the present action for conversion cannot be filed as an action in rem and that therefore the ship cannot be arrested and that the plaintiff could only proceed in personam obtain a decree and only thereafter proceed by way of execution, if necessary. Section 35 of the Act of 1861 clearly provides that the admiralty jurisdiction may be exercised, at the option of the plaintiff, either by proceedings in rem or by proceedings in personam. Thus if a suitor in the British Courts was given in option to apply for an action in rem or in personam before 1890 in England, the same became available to a suitor in India filing a suit invoking the admiralty jurisdiction of the High Court in respect of any breach of duty or breach of contract.

19. The Calcutta High Court in Rungta's case (19162-66 Cal WN 1083) referred to above, held that the High Court entertained an action in rem for the arrest of the ship or in personam in respect of breach of duty or breach of contract by the ship owner or master and an unpaid vendor was entitled to stop the vessel in transitu.

20. We entirely agree with the view expressed by the learned single Judge that the arrest of the ship was properly ordered and dismiss the appeal with costs which are quantified at Rs. 500/-.

21. Appeal dismissed.