

(1998) 08 BOM CK 0032

In the Bombay High Court

Case No : Chamber Summons No. 604 of 1998 in Admiralty Suit No. 28 of 1998

Ocean Marine Mutual Insurance Association Ltd.

APPELLANT

Vs

m.v. "WONFU" and others and M/s. Shivam Engineering Co.,
(Bhavnagar) Pvt. Ltd.

RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Merchant Shipping Act, 1958 — Section 3(55)

Merchant Shipping Act, 1984 — Section 742

Citation : AIR 1999 Bom 18 : (1998) 4 ALLMR 289 : (1998) 4 BomCR 841

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : E.D. Marker, for the Appellant; P.S. Pratap, for the Respondent

Judgement

S. Radhakrishnan, J.—Heard the learned Counsel for the plaintiff and the learned Counsel for the respondents. This Chamber Summons has been taken out by the plaintiffs to implead the respondents as party defendants to this suit. By this Chamber Summons the plaintiffs are seeking a direction that the respondents be ordered and directed to furnish in favour of the Prothonotary and Sr. Master, High Court, Bombay, a security in the sum of 142, 294.90 U.S. \$, towards the satisfaction of the plaintiffs claim.

2. This suit has been filed by the plaintiffs, an Insurance Company which had insured the defendant-vessel viz. m.v. "WONFU". It appears that the defendant-vessel was covered by an insurance with the plaintiffs-company to avail of the cover of protection, indemnity, freight, demurrage etc. In this behalf the plaintiffs have raised debit notes against the defendants in the sum of 142, 294.90 U.S. \$. The plaintiffs have also sent a demand notice to the defendants. Finally, when the plaintiffs came to know that the said vessel was lying at port Alang, they had approached this Court and obtained a warrant of arrest on 3rd April, 1998.

3. Perused the Bailiff's Report dated 4th May, 1998, wherein the Bailiff who had proceeded to the said defendant-vessel which was lying at Plot No. 140, Alang

Ship Breaking Yard, Alang (Bhavnagar). The Bailiff has categorically stated in the said report that he found most of the vessel was demolished. He has also stated that he had contacted the respondent who was the purchaser of the said vessel and had informed him about the warrant of arrest against the said vessel m.v. "WONFU". The Bailiff has stated that he had fixed warrant of arrest on the remaining portion of the said vessel as the substantial part of the vessel was already demolished. The Bailiff has further stated that he had served the duplicate copy of the warrant of arrest upon the respondent who had purchased the said vessel and obtained an acknowledgement.

4. Ultimately, the present respondent had moved this Court by way of Notice of Motion No. 1203 of 1998 for vacating the warrant of arrest dated 3rd April, 1998 on the ground that on the date when the order of arrest was passed, the 1st defendant-vessel was almost demolished and there was nothing remained which could have been considered as an existence as a vessel. The said Notice of Motion No. 1203/98 taken out by the present respondent was disposed of by this Court on 5th May, 1998 in view of the report of the Deputy Sheriff to the effect that the Bailiff had found most of the vessel demolished and also in view of the photographs of the said vessel which clearly indicated that only some skeleton, relics of the said vessel remained. In fact, this Court, by its order dated 5th May, 1998 has categorically held that the 1st defendant-vessel as such did not exist. Certain parts/relics thereof were seen in the photographs and it was impractical to get the vessel arrested as an existing entity.

5. The learned Counsel for the respondents pointed out that on the day when the arrest order was passed, there was no existing vessel which was capable of being arrested. The learned Counsel for the respondents also brought to my notice the meaning of the word "Ship" under the Admiralty Court Act, 1861 as under:

"Ship" shall include any description of vessel used in navigation not propelled by oars.

Similarly, the learned Counsel for the respondents also brought to my notice the meaning of the expression "Vessel" u/s 3(55) of the Merchant Shipping Act, 1958, which is as under;

"Vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation.

6. The learned Counsel for the respondent relied upon the judgment of the Queen's Bench Division (Admiralty Court) in *Steedman v. Scofield and another*, 1992 Vol. 2 page 163. In this case the issue was, whether a jet ski would be a vessel capable of being used in navigation. In the said judgment there is a reference to section 742 of the Merchant Shipping Act, 1984 which provides that the expression "vessel" includes any ship or boat, or any other description of the vessel used in navigation. Similarly, the expression "ship" includes every description of vessel used in navigation not propelled by oars. In this case, after considering various judgments it was held that jet ski was not a vessel. Later the

Court went on to consider the issue regarding "used in navigation", The phrase "used in navigation" conveyed the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea" and return to the harbour from which she sailed, but the vessel will nevertheless have to be navigated to her fishing grounds and back again. The expression "navigation" is not synonymous with movement on water. Navigation is a planned or ordered movement from one place to another. A jet ski is capable of movement on water at very high speed under its own power, but its purpose is not to go from one place to another. A person purchases a jet ski for the purpose of enjoying the thrills of water skiing without the ties of a boat and towrope and for exhilaration of high speed movement over the surface of water.

7. Ms. E.D. Marker, the learned Counsel appearing on behalf of the respondents conceded that even on the date when the arrest order was issued, the said vessel - "WONFU was not capable of navigation. On a full consideration of the provisions of the Merchant Shipping Act, 1958 regarding the meaning of the expression "vessel" as well as the meaning of the expression "ship" as per the Admiralty Court Act, 1861, and in the light of the judgment of the Queen's Bench Division (Admiralty Court) in *Steedman v. Scofield and another*, it is very clear that "vessel" or "ship" must be-capable of being navigated. In the light of the above, my brother Judge Shri Rane has categorically held that the aforesaid first defendant-vessel does not exist and that certain parts/relics thereof as seen in the photographs, will be impracticable to get them arrested as an existing entity.

8. The learned Counsel for the plaintiffs. Ms. E.D. Marker has also conceded that no part of the cause of action against the respondents had arisen within the jurisdiction of this Court. Her main contention is that since the aforesaid vessel was arrested in an action in rem, and since the respondents had appeared in this Court, this Court should entertain the suit against the said respondents by way of an action in personam, that would have been true if the current owner namely the respondents had come to this Court and submitted to its jurisdiction by providing security for release from the said arrest warrant, whereas the present respondents had moved this Court for vacating the arrest warrant on the ground that the arrest warrant itself could not have been issued to arrest an entity which was neither a "ship" nor a "vessel".

9. The learned Counsel for the respondents Mr. Pratap contended that the arrest warrant could not have been executed as there was no "ship" or "vessel" in existence, and merely because the present respondents had appeared before this Court and sought relief of vacating the said order of arrest, it would not confer any jurisdiction to this Court to compel the respondents to be made a party in the suit.

10. Under the aforesaid facts and circumstances, the present Chamber Summons is devoid of any merits. Hence, the Chamber Summons stands dismissed. However, with no order as to costs. Issuance of certified copy is expedited.

11. Chambers summons dismissed.