

(1987) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : O.S. Appeal No. 2 of 1978

Owners of Ship Tiong Yung	Vs	APPELLANT
Shaw Wallace and Co. Ltd. and Another		RESPONDENT

Date of Decision : 01-10-1987

Acts Referred:

Andhra State Act, 1953 — Section 30
Income Tax Act, 1961 — Section 172(3), 172(6)

Citation : AIR 1988 AP 331

Hon'ble Judges : Upendralal Waghray, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; K. Srinivasa Murthy, for the Respondent

Judgement

Upendralal Waghray, J.—Messrs South Fast Navigation Company Limited (hereinafter referred to as the appellant) claiming to be the owner of the arrested ship TIONG YUNG have filed this appeal under Cl. 15 of the Letters Patent against the judgment and decree of the learned single Judge in CS.No. 1/1975.asuitfiledon the original side of this court. invoking the- Admiralty jurisdiction.

2. Messrs Shaw Wallace and Company Limited (hereinafter referred to as the plaintiffs) have filed the said suit for recovery of a sum of Rs.2,83,227-04 as an action in rem f or arresting the said Ship impleading its owners and other parties interested. The suit claim comprised of two items : (a) Rs.43,000/- for necessities supplied to the seized ship at Visakhapatnam., and (b) Rs.2,38,000/- for necessities supplied to two other ships Timber. Leader and THAIYUNG when they had called at Madras Port earlier. According to the plaint, the Charterers of all the three ships were the same and the plaintiffs were the agents of the charterers. The ship had arrived at Visakhapatnarn port carrying the cargo of Black Sulphur for Minerals and Metals Trading Corporation of India. After completing the discharge of cargo on 29-1- 1975. the ship was to sail for

Calcutta. On the plaintiffs-application No. 23/1975 an ex parte order of arrest of the ship was passed on 3-2- 1975 and the ship was arrested. Thereafter. the appellants entered appearance claiming to be the owners of the seized ship and applied for removal of the arrest order. On 7-2-1975. the court on the basis of a consent passed an order releasing the Ship on condition the appellant furnishes Bank guarantee for rupees three lakhs. This has been furnished by the Central Bank of India and the ship was released and left Vizag. Subsequently, the appellants filed an application for cancellation of the Bank guarantee, contending that this court had no Admiralty jurisdiction. This objection was, however, overruled. The appellants took a stand that they are the owners of the seized ship and had nothing to do with the other two ships. On the plaintiffs Application No. 71/1975, the Charterers of the seized Ship were impleaded as 2nd defendant. They, however, remained ex parte. The plaintiffs also filed Application Nos. 73 and 75/1975 for impleading Minerals and Metals Trading Corporation, New Delhi, as a defendant and for a garnishee order against them. It has been impleaded as 3rd defendant. The 3rd defendant -has stated that it was withholding a sum of rupees three lakhs from out of the sums payable to the,2nd defendant towards the freight charges for the cargo carried in the seized ship. The 3rd defendant have not said anything about the merits of the controversy.

3. The suit has been contested by the appellants, on various grounds.

4. The following Issues were framed in the suit :

(1)(a) Has this court jurisdiction to entertain, try and dispose of the suit?

(b) Has this court admiralty jurisdiction? if not, has this court jurisdiction to entertain the suit?

1 (2) Is the suit bad for non-joinder of the vessel "TIONG YUNG"?

(3) Where the plaintiffs appointed agents by M/s. Windfall Shipping Co. Private Limited, Singapore for their time-chartered vessels namely, TIMBER LEADER, THAIYUNG, ESTABLECER and TIONG YUNG at the ports of Madras and Visakhapatnam?

(4) Are the defendants owners of the vessels TIMBER LEADER, THAIYUNG and ESTABLECER?

(5) Whether, in respect of the services rendered and necessities supplied and other formalities attended to by the plaintiffs, a sum of Rs.2,83,000-00 is due and payable by the defendants as alleged in the plaint?

(6) Whether the plaintiffs attended to all the formalities and also supplied the necessities to the vessel TIONG YUNG at the Visakhapatnam port during Jan. 1975. and if so, whether the defendants are liable to pay to the plaintiffs.. Rs.43,000-00 as pleaded?

(7) Is a sum of Rs.2,81,000-00 due and owing by the Defendants in respect of the necessities supplied and services rendered to the three vessels as detailed in

Annexure "A" to the plaint; and whether that sum is due and payable by the defendants to the plaintiffs?

(8) Whether the plaintiffs' claim for the necessities supplied and charges for services rendered to the vessels TIN4BER LEADER and THAI YUNG is not recoverable by the plaintiffs?

(9) Are the plaintiffs entitled to recover interest from the defendants as claimed in para. 7 of the plaint?

(10) Are the plaintiffs entitled to an account of the amounts due from the defendants?

(11) Are the plaintiffs entitled to an order for appraisalment of the value and for sale of the vessel TIONG YUNG for satisfaction of their claim in the suit?

(12) Are the plaintiffs entitled to arrest and detention of the vessel Tiong Yung?

(13) To what relief?

5. P.W. 1 has been examined on behalf of the plaintiff, and Exhibits A-1 to A-198 marked. D.W. 1 has been examined on behalf of the appellants and only one document Ex. B-1, Charter party agreement between the 1st and 2nd defendants has been marked.

6. The learned single Judge held under Issue No. 1 that this court has admiralty jurisdiction and decided issue No. 2 also in favour of the plaintiffs holding that the plaint was in accordance with the Form prescribed under the Original Side Rules. Under Issue No. 2 it has been held that the 2nd defendant were time charterers and the plaintiffs are Shipping Agents of the 2nd defendant in respect of the relevant voyages of the three ships. Under Issue No. 4, the conclusion of the learned Judge is as follows :

"The conclusion, therefore is that the South East Navigation Company and the Glory Navigation Company were the true owners of the three vessels and that they chartered out the three vessels to Windfall Shipping Company which appointed the plaintiffs as their agents in Madras and Visakhapatnam ports. The result is that for the purpose of the present suit and from the point of view of the plaintiffs claim both the South East Navigation Company and the Glory Navigation Company on one side and the Windfall Shipping Company on the other can be treated as owners or beneficial owners of the three vessels. Issues 3 and 4 are answered accordingly."

Under Issues 5, 6 and 7 the learned single Judge held that the plaintiffs are entitled to a sum of Rs.41,890-57 for the necessities supplied to the seized ship at Visakhapatnam port and a sum of Rs.2,22,96-99 in respect of the two other Ships TIMBER LEADER and THAIYUNG, during their earlier voyage at Madras Port. The amount due from the other two ships at Madras includes a sum of Rs.1,22,566-80 paid by the plaintiffs towards the Income Tax payable by the foreign charterer or owner on the freight payable for the journeys to enable the

Ships to move out, as required by S. 172(3) and (6) of the Income- tax Act. It is also held that the aforesaid amounts paid towards Income Tax are necessities recoverable in an action in admiralty jurisdiction. Under Issue No. 8 the learned Judge held that the amounts due in respect of the other -two ships, are also recoverable by the plaintiffs in the present suit which is an action in rem against the seized Ship. Under Issue No. 9, the plaintiffs are awarded interest as mentioned in the judgment. On Issue No. 10, it is held that, because of the findings given in the judgment there is no need for any accounting. Under Issues No. 11 and 12, it is held that as the appellant has given a Bank guarantee, which is enough to cover the suit claim, there is no need to appraise the value of the Ship or arrest or detain it any further. As a result, a decree is passed for Rs.2,64,787-56 together with interest.

7. Sri P. Ramachandra Reddi, learned counsel for the appellant, has not challenged the findings of the learned single Judge that (a) this court has admiralty jurisdiction and (b) the liability- of- the appellant to the--extent of the necessities, supplied by the plaintiffs to the seized ship viz; Rs.41,890-57. He has, however, contested the liability of the seized Ship and of the appellants for the amount claimed by the plaintiffs for the other two Ships. He has also contended that, in an action in rem under the Admiralty jurisdiction for the arrest of a Ship, a claim for the recovery of the amounts due, in connection with supplies made to other ships for their earlier voyagees cannot be included, particularly when the owner of the present Ship has nothing to do with the other two ships. He has also contended that the amounts paid towards the liability of Income Tax on freight does not amount to necessities of the Ship and cannot be claimed in a suit under Admiralty jurisdiction.

8. The counsel for the respondent-plaintiff has, however, supported the findings of the learned single Judge, on the aforesaid aspects.

9. The parties, that arise for consideration in the appeal are

(1) Whether a suit in rem against a Ship under the Admiralty jurisdiction can include a claim for amounts due to the plaintiff towards necessities supplied to other Ships during their earlier voyages?

(2) (3) Whether in this case the seized ship or the appellants are liable for the claim against the other Ships? What is the effect of th6 finding under Issue No. 4 and whether the finding is correct?

(4) (5) Whether the amount paid by the plaintiff towards the liability of a foreign owner or Charterer towards Income Tax on freight, as contemplated by s. 172(3) (6) of the Income- tax Act to enable the Ship to move out of the harbour can be recovered in a suit under Admiralty jurisdiction akin to the necessities supplied for the Ship?

(6)

10. The facts, about which "there is no serious controversy, are as follows:

This is a suit involving Admiralty Jurisdiction of this court and is an-action in rem - the ship to be seized was the only defendant. The plaint satisfies the requirements of the form prescribed in such cases by the Original Side Rules of the Madras High Court, which are applicable. The averments in the plaint are brief and are to the effect that the plaintiffs are the Agent of Messrs Windfall Shipping Co. Private Limited. Singapore who are the Charterers of all the three Ships. The plaintiffs have to receive the amounts mentioned in the suit in respect of the necessities supplied to the three ships. There is no allegation that the ownership or beneficial ownership of the three ships is in one person. The appellants, who have appeared, have raised several contentions and dispose of fact and law. No rejoinder is filed by the plaintiffs after the filing of, the written statement. Messrs Windfall Shipping Company, Private Limited. Singapore. (subsequently impleaded as 2nd defendant) are charterers of the three ships, TIMBER LEADER, THAIYUNG AND TING YUNG and the plaintiffs are the Agents of the 2nd defendant. The two Ships which had brought cargo to Madras Port earlier, belonged to Messers Glory Navigation Company Limited. Thaipai. The plaintiffs as Agents of the 2nd defendant who was charterer of the said two Ships incurred an expenditure of Rs.2.22,896- 99 in connection with the necessities supplied and other services rendered to the said two ships, when they were at Madras Port earlier. This amount includes a sum of Rs. 1,22,566- 80 paid by the plaintiff towards Income Tax payable on the freight by the 2nd defendant, as the charterer or the owner of the said two ships. Without the said payment of income- tax these Ships would not have been allowed to leave the harbour. According to the appellants they are based at Honkong and are the owners of the seized ship "TIONG YUNG of Monrovia and Ex.B I charter party agreement as executed at Singapore on 6th Nov. 1974 between the appellant and the 2nd defendant, in respect of the seized Ship and describes appellants as the owner of the seized Ship. It is a time charter for a period of six months from the date mentioned in it. Clause 26 of Ex.B-1 reads as follows: -

"Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance crew and another matters same as when trading for their own account.

After the judgment in the suit was pronounced. it was brought to the notice of the learned single Judge that a controversy was being raised about the Bank guarantee having lapsed. The learned judge gave a direction that the plaintiff could recover the decretal amount from the amount. withheld by the 3rd defendant Corporation. However. it was brought to the notice of the learned single Judge then itself that the appellant had filed a suit in the Delhi High Court against the 2nd and 3rd defendants herein for an injunction not to pay the said amount and an injunction was granted by that Court. though its particulars were not available then. Certain subsequent events have also been brought to our notice by the learned Counsel for the respondent-plaintiff. As per the orders on plaintiffs Application in 171/1979 the Central Bank of India had deposited a sum of rupees three lakhs in this court and this was also withdrawn by the plaintiff,

after furnishing a bank guarantee. Against the orders in Application No. 171/1979. the New India Maritime Insurance Company. which had got itself impleaded. has filed an Appeal OSA No. 4/1982. which is pending in this Court. The New India Maritime Insurance Company is claiming that the Bank guarantee was furnished by the Central Bank of India, at its instance. and the Central Bank of India had collected the said sum from it. Apart from questioning the direction for depositing the amount in OSA No. 4/82 the said Insurance Company has also filed h suit on the Original Side of the Madras High Court against the Glory Navigation Company, Thaipai., being CS. No. 475/1979. There, it is being contended by the Insurance Company that it had acted on the instructions of the said Company for arranging the Bank guarantee. The aforesaid suit has been decreed ex parte. These subsequent developments are evident from the record in OSA No. 4/1982 which is pending in this court, and has arisen out of an application in this suit. though after the suit was decreed. The learned counsel for the plaintiff has referred to them, as according to him. certain inferences have to be drawn from these developments also.

11. For understanding the controversies raised in the appeal it is necessary to examine the nature and scope of Admiralty jurisdiction of this Court. Admiralty jurisdiction of the High Courts in our country is conterminous with the Admiralty jurisdiction of the High Court of England. as it existed at the time of the passing of the Colonial Courts of Admiralty A" 1890 by the British Parliament. A brief historical background of this jurisdiction in our country is also found in a decision of the Bombay High Court reported in Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd., and the decision of Calcutta High Court in Jayaswal Shipping Company Vs. The owners and parties interested in Steamship "S.S. Leelavati", . By the letters Patent issued under the charter of 1823. Supreme Courts were established at Bombay, Calcutta and other" places in the country. The concluding portion of Cl. 53 of the Letters Patent of Bombay (which is similar to the others) extracted from the aforesaid Bombay decision reads as follows:

".....the cognizance where of doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all the singular. their incidents, emergents and dependencies, annexed and connexed causes whatsoever; and to proceed summary therein, with all possible despatch, according to the course of our Admiralty of that part of Great Britain called England without the strict formalities of law. considering only the truth of the fact and the equity of the case".

After the Indian High Courts Act of 186 1, the High Courts of Judicature at Calcutta, Madras and Bombay superseded the Supreme Court. By the Letters Patent of 1862. the Admiralty jurisdiction previously exercised by the Supreme Court was to be exercised by the High Courts. The Letters Patent of 1862 was superseded by the Letters Patent of 1865 and under- the new Letters Patent also. the Admiralty Jurisdiction of the High Courts remained the same, that is. those of the Admiralty Courts in England. The Jurisdiction of the Admiralty Courts

in England. in respect of the offences on high seas, is of ancient origin. These Courts began to hear disputes in Civil matters connected with the sea. The Civil jurisdiction continued within the limits laid down by the Statutes of the Richard 11. but its exercise involved the Admiralty Courts in a long struggle with the superior courts in common law. The Admiralty courts asserted the highest and fullest jurisdiction over everything which might happen on the high seas. But. it was obliged to give way to the common law courts and ceased to exercise jurisdiction to the full extent which it had formally claimed. In the reign of William IV it retained a curtailed jurisdiction though even then in a number of important subjects. The Admiralty Courts Act of 1840 was passed by the British Parliament to improve the practice and extend the jurisdiction of the High Court of Admiralty in England. This was the first of a series of Acts, which enlarged or defined the Admiralty jurisdiction.

. 12. The next important legislation in England regarding the jurisdiction of the High Court of Admiralty is the Admiralty Courts Act of 1861. By the English Judicature Act, 1873, the jurisdiction of the High Court of Admiralty was transferred to the High Court of Justice in England. Thereafter, there is no separate High Court of Admiralty in England. Admiralty Division is one of the several Divisions of the High Court of England. With a view to bring the Admiralty jurisdiction in the various Colonial Courts and the Courts in British possession abreast with the developments of law in England. the British Parliament passed the Colonial Courts of Admiralty Act, 1890. Sub-sections (1) and (2) of Section 2 of that Act. which are relevant. read as follows:

"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 of the powers which it possessed 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.

(2) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places. persons. matters and things, as the . Admiralty jurisdiction of the High Court in England. whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that court to international law and the comity of nations".

The British Parliament also passed Colonial Courts of Admiralty (India) Act. 1891, with a view to declare certain High Courts in India to be colonial Courts of Admiralty. as contemplated by the Colonial Courts of Admiralty Act, 1890.

Section 2 of this Act mentions the various High Courts, and the High Court of Madras is one of them. There has been no legislation affecting the admiralty jurisdiction in India after 1890. Thus, the nature and scope of Admiralty jurisdiction in India, even today, will have to be determined with reference to the law in England as it stood in 1890. For this purpose, the statutory law is the Admiralty Court Act of 1861 (as it stood in 1890). There have been several legislative measures in England affecting the Admiralty jurisdiction of the Courts in that country. The recent and important legislation is the Administration of Justice Act, 1956. It is not permissible for the Courts in India to rely upon the statutory provisions in England made after 1890, as they have not been made a part of the statutory law of our country. The Colonial Courts of Admiralty Act of 1890 itself indicates that the respective legislature of the Colonies or possessions could amend or modify the law in its application to the respective jurisdiction. A learned judge of the Calcutta High Court in *Jayaswal Shipping Company Vs. The owners and parties interested in Steamship "S.S. Leelavati"*, has observed in 1954 as follows : (para 1)

"..... The ancient lumbr of admiralty law in India is in need of immediate legislative spring cleaning, so that her citizen of today may be spared in future from the, task of solving such problem of Indianising English Geography by having to interpret English Statutes".

But, nothing has been done by our Parliament till today, that is, 40 years after Independence. It is high time that law in this field is consolidated and amended by appropriate legislation to enable the Indian citizens to get relief against the foreign owners of charterers of ships for realisation of the amounts due.

13. Point No. 1 : This controversy is reflected in Issue No. 8 framed in the suit. The Admiralty jurisdiction of the High Court in England in civil matters in 1890 included claims, against foreign ships of the foreign owners or charterers and respect of the necessities supplied to the ship while in English Port. It could be by an action in personam against the person liable or by an action in rem against the offending ship without the need of impleading any individual or person. In such an action in rem, the Ship itself was attached while in port. If none appeared claiming the ship, it could be proceeded against for the amount decreed. If the decretal amount was not satisfied by the sale of the Ship, the plaintiff could not proceed against any other person his remedy being restricted only to the realisations by the sale of the seized ship. However, if any person claiming title to the seized ship or any interest in it appeared and contested the claim and offered bail or security to the satisfaction of the Court the ship would be released. This type of action relieved the English citizen or resident from embarking upon an enquiry about the ownership of the Ship for determining the person liable for recovering the value of the necessities supplied to the Ship. However, it was open to the plaintiff to initiate an action in personam and proceed against the person liable whether he be the owner or beneficial owner of the Ship in respect of which the amounts were due. Whatever might have been

the origin of the action in rem, that is, whether it was to enforce any maritime lien against the seized ship or to compel appearance of the owner of the seized ship. but provided a, speedy and effective remedy. .

14. Sri P. Ramachandra Reddi, learned counsel for the appellant. has urged that. in accordance with the law in England, as it stood in 1890, only claims in respect of the necessities supplied to the offending ship could be included in such an action in rem. He further contends that the claims in respect of the necessities supplied to other Ships earlier, could not be included in such an action. Re has placed reliance on the decision reported in *The Beldis* (1935) All ER 760. In that case, the plaintiffs brought an action in rein against the Ship *Beldis* for the enforcement of their claim, which was recognised by the Arbitrators Award against the ship *Beleri* belonging to the same owners. The Court of appeal held that such an action was not maintainable. To the same effect is the decision reported in *Bengal Assam Steamship Co. Ltd. Vs. Owners and Parties interested in S.S. "Shanku Maru"*, , which is also referred to in the judgment under appeal. It is further submitted by the learned counsel for the appellant that the right to attach a sister ship in the same ownership in an action under Admiralty jurisdiction has been conferred by the Administration of Justice Act, 1956 in England for the first time. Section 1 of the said Act specifies the questions of claims which could be entertained in the Admiralty jurisdiction of the High Court. Section 3 deals with the mode of exercise of Admiralty jurisdiction. Sub-section (4) of S. 3 reads as follows:-

"(4). In the case of any such claim as is mentioned in paras (d) to (r) of sub-section (1) of Section 1 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court and (where there is such jurisdiction) the Admiralty jurisdiction of the Liverpool Court of Passage.....may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against-

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) (c) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

(d) Section 4 of the said Act deals with the jurisdiction in personam of courts in certain cases. According to the learned counsel such a right to proceed against a sister ship in the same ownership in an action in rem has been given only by the said Act, which does not apply to our country. He has referred to certain decisions in English Courts, subsequent -to the 19,56, Act, for illustrating his contention that, only after the said Statutory provision, that action in rein was being entertained against sister ships in accordance with the provisions of the said enactment. He has also referred to certain passages from the First Volume

of Halsbury's Laws of England (IV Edition) in support of his contention that such an notion was not maintainable in England in 1890, vide paragraphs 305, 306, 310. 311 and 409.

15. Sri Sundaram, learned counsel appearing for the respondent-plaintiff, has pointed out that the cases reported in *The Beldis* (supra) are from a county court having Admiralty jurisdiction and was governed by the Admiralty Act of 1868 and amendments made to it. According to him, the Admiralty jurisdiction of the High Court was wider than that of the county Courts and the Indian Courts have the Admiralty jurisdiction of the High Court in England. But, no such relevant distinction or statutory, provision or decided case has been brought to our notice. He has, however, relied upon two cases viz., *The Dictator*, 1892 LPD 304 and *The Geema*, 1899 LPD 285 and contended that the right to proceed against a sister ship in an action in rem under the Admiralty jurisdiction in England has been recognised, since ages and the Administration of Justice Act, 1956, does not confer this right for the first time. The facts in *The Dictator* (supra) are: The plaintiffs brought an action in rem for value of certain services rendered to that Ship (the Dictator) which was attached. The owners entered appearance and, on their furnishing a bail for 5000 pounds, the Ship was released. After contest, the suit was decreed for a sum of 7,500 pounds, that is, 2,500 pounds in excess of the amount of bail. When the plaintiffs took steps to recover the balance of 2,500 pounds, in execution of the same decree, against the other property of the defendants who had contested the suit, the defendants resisted on various grounds including that in an action in rem only the ship seized could be proceeded against and not the owners. Further, as the bail of 5,000 pounds was accepted, it represented the value of the ship. These objections were negated by the court on the ground that the owners had appeared and furnished bail and contested the matter. The action which originally commenced as an action in rem became an action in personam rendering the contesting owners also liable. It was also held that in such cases bail cannot be treated as an equivalent to the value of the ship.

16. The facts in *The Geema* (supra) are asunder:

Consequent on a collision in river Thames between a British and a foreign ship, the owners of the British Ship commenced an action in rem and arrested the foreign ship. The owners of the foreign ship appeared, gave bail for the value of the Ship and of freight and got the ship released, and contested the action. As a result, there was a decree in favour of the plaintiffs for a sum in excess of the amount of bail.- When the plaintiffs sought to recover the excess amount, in execution of the same decree, " by proceeding against the other property of the defendants, the High Court negated their request on the ground that they could not proceed against anything in excess of the bail granted. The Court of Appeal reversed the said judgment and approved the judgment in the Dictator and held that as the defendants had contested the action, they will be personally liable for the plaintiffs claim. in execution of the decree.

17. Relying on these two decisions, it is contended by the learned counsel for the plaintiff that where the owners have chosen to appear and contest an action in rem, the action gets converted into an action in personam and the defendants will be liable for the amount claimed. We do not find any rationale helpful to the plaintiff in these cases. The claim in both these actions was in respect of the vessel seized. After the owners had contested the claim, the amount decreed was in excess of the bail or security offered earlier for release of the ship. In such circumstances it was held that the amount of decree in excess of the bail, or probably even the value of the ship could be recovered from the defendants or their properties. Probably, if the owners had not appeared and contested the claim, the sale proceeds of the ship alone would have been the only available asset for the recovery of the decretal amount. These cases do not deal with the question whether a claim against other ships (assuming that they belonged to the same owner) could be included in an action in rem against the seized ship. The learned counsel has, however, fairly stated that there is no reported case, either of an English Court or of our High Court, in support of such proposition.

18. The learned single Judge, while dealing with Issue No. 8 has considered the aforesaid cases as well as the provisions of Administration of Justice Act, 1956 and the decision, reported in *The Banco* (1971) 1 All ER 524. He also held that the provisions of the English Act of 1956 would not apply to Indian Courts. He has, however, come to a conclusion that nothing prevented the plaintiff from recovering the value of the supplies made to more than one ship in an action against one of them. This conclusion of the learned single Judge is not supported by any decision or other authority. In fact, the decisions referred to earlier as well as the passages from the Halsbury's Law Journal do not support such a conclusion. The learned single Judge has also referred to the decisions reported in *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, *Associated Cement Companies v. Their Workmen*, AIR 1959 SC 67 and some other cases for the proposition :hat a provision, which purports to exclude he jurisdiction of the Courts in certain matters, will have to be strictly construed. We are concerned with a specific: type of action in the special jurisdiction viz., action in rem against a ship in Admiralty jurisdiction without impleading the person liable. This form of action does not take away the jurisdiction of the Admiralty Court to" proceed against the foreign owner and his property, a particular ship for which the necessities were supplied. The Supreme Court decisions may not be of any assistance, in view of this as it is pointed out earlier, the plaint does not contain any allegation that the owner f the seized ship is also the owner of the other two ships, or in any way liable for the dues in respect of the other two ships. from a survey of the statutory provisions and deemed casses in England as in "1,890, it can be seen that only claims against the offending ships were included in the action in rem against it. The form of the plaint in such actions also indicates that no other claims are meant to be included in it, nor any person is to be impleaded as a defendant. Without making appropriate allegations in the plaint. or impleading

the person liable (i.e. Glory Navigation Company) as the defendant, it will not be proper to extend the scope of an action in rem, which is essentially a speedy remedy to seize the ship for recovering the amounts due from it. The plaintiff is also not deprived of proceeding by an action in personam against the owner of the earlier ships or by an action in rem against the Particular ships themselves. Even under the English Statutes of 1956, it is necessary to allege that the ownership of the ships is common. The statement of the learned counsel for the appellant that the plaintiffs themselves are to be blamed for not realising the dues from the ships, which were allowed to sail away, cannot be easily brushed aside. It was not permissible for the plaintiffs to include in the present suit claims, regarding the supplies made to the other ships in connection with their earlier voyages to Indian Ports. The conclusion of the learned single Judge on Issue No. 8 is, therefore, set aside.

19. Point No. 2 : The effect of the finding under Issue No. 4 as well as its correctness, has to be gone into while considering this point. Assuming that, in an action in rem against a ship the plaintiff could include the claim for necessities supplied to the other ships on the previous voyages. It is necessary to examine whether the seized ship or the appellants are liable for the disputed claim. As already pointed out, the plaint does not contain any allegations that the owner of the seized ship is responsible for the payment of the amounts due, in respect of the disputed claim, nor is there an allegation that the owner of the three ships is the same, or that the seized ship belongs to the Glory Navigation Company Limited. After the written statement of the appellant, no rejoinder is filed by the plaintiffs. The plaintiffs are fret to proceed against the owners or charterers or the said two ships themselves, under the Admiralty jurisdiction.

20. It is contended by the learned counsel conclusion of the Issue No. 4, are appellant or the seized ship liable, as it is not held that the owner of the three ships is the same. It is also contended by him that the finding about the ownership of the seized ship is vague and also incorrect. It is contended that the Telex messages Exhibits A-64, A-94, and A- 103 are between the plaintiff and its sub Agents and the appellants are not parties to any of them. Ex.A-199. a photostat copy of the entries in Lloyds Register, cannot help the plaintiff. According to him the register is not a public document and Ex.A-196 is not a certified copy. There is no proof of the entries in the register. Further, the register cannot be treated as a document of title. Ex.A-196 merely shows the two Companies, Glory Navigation, and the appellants are grouped together and this by itself cannot help in resolving the controversy. Similarly, Exs.A- 114, 1 15 and 116 are the visiting cards of the Ships" crew that it shows that the offices of Glory Navigation and the appellants are situated in the same premises and have same telephone numbers. The explanation of the appellant is that the Glory Navigation Company was managing the ship, on behalf of the owners, and in any event these documents are not sufficient to establish the ownership of the seized ship with Glory Navigation Company. It is also contended by the learned counsel for the appellant that the principals of the plaintiff are parties to Ex. B, 1 which

shows the appellants are owners of the ship. The plaintiffs are, prima facie, estopped from disputing this. Therefore, neither the charterer had any beneficial ownership in the seized ship, nor Glory Navigation Company had any title or ownership over it. According to him, the appellants cannot be mulcted with the liability, in respect of the disputed claim.

21. According to the plaint, the charterers of the three ships are the same. that is. M/s Windfall Shipping Company, Singapore (which was not even impleaded as a defendant in the plaint but was impleaded subsequently. Ex.B-1 is the charter party agreement between the appellant as the owner of the ship and the 2nd defendant as the charterer. It is well settled that only, in demised charters or charterer may have a beneficial ownership in the ship. But in a time charter, particularly like Ex.B-1, which contains Cl. (26) the charterer has no beneficial ownership in the seized ship.

22. The learned counsel for the plaintiff relied upon a decision in *The Ripon City*, 189"7 LPD 226 for the purpose" that the charterer also had an interest in the ship and could make the ship liable for their. actions. But, none of the points decided in the said decision helps us, in the present controversy, as to whether by a charter like Ex.B-1, the 2nd defendant could make the seized ship liable for the dues from the charterer. in respect of the other ships. The 2nd defendant has no beneficial interest in the ship and it cannot be proceeded against for any personal or other liability of the 2nd defendant.

23. In support of the contention that the Glory Navigation Company is the owner of the seized ship, reliance is placed by the learned counsel for the plaintiff on the documents referred to above and on certain portions of the cross-examination of D.W. 1. The learned single judge, after referring to the evidence in the case, has recorded the following conclusions, on Issue No. 4 :

"Thus the evidence of D.W. 1 does not in any way affect the acceptability of the evidence adduced by the plaintiffs to show that the Glory Navigation Company and the South East Navigation Company, though different companies in name, were practically sister organisations and that the Glory Navigation Company were the real managers and operators of *Tiong Yung* as well. It has already been noticed that the Glory Navigation Company were the owners or operators of the other two vessels *Timber Leader* and *Tiong Yung*.

The conclusion, therefore, is that the South East Navigation Company and the Glory Navigation company were the true owners of the three vessels and that they chartered out the three vessels to Windfall Shipping Company which appointed the plaintiffs as their agents in Madras and Visakhapatnam ports. The result is that, for the purpose of the present suit and from the point of view, of the plaintiffs" claim both the South East Navigation Company and the Glory Navigation Company on one side and the Windfall Shipping Company on the other can be treated as owners or beneficial owners of the three vessels. Issues 3 and 4 are answered accordingly-

The learned counsel for the plaintiff as also requested the court to draw an inference referred to above for the purpose that it is Glory Navigation Company at whose instance the security was offered and, therefore, it is the owner. The counsel for the appellant has, on the other hand, contended that no such inference can be drawn as the suit in the Madras High Court was decreed ex parte and, according to the appellants, the security was furnished at their instance and that is the reason they are contesting the case. We do not consider that any such inference, as contended by the counsel for the plaintiff, can be drawn from the aforesaid circumstances. The finding of the learned single Judge also does not show that the Glory Navigation Company are the owners of the seized ship. It is a case of two separate Corporate bodies. Unless Glory Navigation is held to be the owner of the seized ship the plaintiff cannot get any relief in respect of the disputed claim. There is no clear finding to this effect. Apart from this, for the reasons given above it is not possible to hold that the Glory Navigation Company is the owner of the seized ship. The conclusion of the learned single Judge on Issue No. 4 holding that the seized ship or the appellant are liable for the disputed claim is, therefore, set aside and it is held that the appellants are the owners of the seized ship, and neither the appellants nor the seized ship are liable for the disputed claim.

24. Point No.. 3 : While dealing with Issues 5, 6 and 7 the learned single Judge has found that the plaintiffs had paid "a sum of Rs.1,22,566,80 towards the Income Tax on freight payable by the foreign owner or charterer for the two voyages of the other ships at Madras Port. This was to satisfy t& requirement of the provisions, of S. 172(3) and (6) of the Income Tax Act to enable the ships to move out of the Harbour. The relevant provisions of the Income Tax Act read as follows:

Shipping business of non-residents;

172 (1)

(2) (3)

(4) (3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the Income Tax Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account. of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat :

Provided that where the Income Tax Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf the Income Tax Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4)

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof."

A foreign owner or charterer of a ship, who has brought passengers or freight to India, is liable to pay Income Tax on the freight payable to it for the said trip. Unless the amount due towards the Income Tax is paid, the ship will not be given clearance to leave the port. The short controversy is whether such a payment .of Income Tax by plaintiffs as agent of the charterer could be recovered by them in an "action in Admiralty jurisdiction as it is akin to the supply of necessities to keep the ship afloat and moving. According to the law in England in the 19th Century, various items were being added to the list of necessities supplied to the ship, which could be recovered in an" action in Admiralty jurisdiction. Subsequently, statutory provisions have been made specifying items, which can be claimed under this head under the Admiralty jurisdiction. Section 1 of the Administration of Justice Act, 1956 in England specifies the various claims, which can be entertained by the Court under Admiralty jurisdiction. However, the law on this subject, in our country has been stagnating since 1890. Though S.1 of the English Act does not show that any amount paid by an agent to a charterer towards Income Tax liability on freight payable by the charterer can be recovered under the said Section, but unless the various statutory provisions of that country are considered, it will be difficult to say, whether it can recover in England today or not. However, it is necessary that the law keeps abreast with the developments in the other fields of activity. It will be unjust to deny the inclusion of such a claim in a suit under Admiralty jurisdiction. Otherwise, the plaintiff will be left without an effective remedy against the foreign owners or charterers of the ships. The finding of the learned single Judge on this aspect is, therefore, upheld, but, the mere fact that such an amount could be recovered in an action in Admiralty jurisdiction will not help the plaintiff in this case.

25. As a result, the Appeal is allowed in part. The decree of the learned single Judge is modified by deleting the disputed claim of Rs.2,22,896-99 and there will be a decree for Rs.41,890-57 and interest on this sum at the rate directed by the learned single Judge. Having regard to the circumstances of the case, we direct that the parties shall bear their own costs throughout in the suit as well as in the appeal.

26. Order accordingly.