
(1999) 08 BOM CK 0048
In the Bombay High Court
Case No : Admiralty Suit No. 58 of 1998

SNP Shipping Services Pvt. Ltd.

APPELLANT

Vs

Kara Mara Shipping Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, 151
Merchant Shipping Act, 1958 — Section 352B

Citation : AIR 2000 Bom 57 : (1997) 3 BOMLR 651 : (2000) 2 CivCC 84 :
(2000) 1 MhLj 699

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

Bench : Single Bench

Advocate : C.A. Sundaram and G.A. Rebello, Z. Bharucha and R.A. Fernandex, i./b., E.D. Markar, for the Appellant; A.M. Varnekar, (for No. 1), P.H. Parekh and S. Priya, (for No. 2), V. Subramaniam, (for Nos. 3 and 4) and U.K. Dahanukar, (for No. 5), for the Respondent

Judgement

R.M. Lodha, J.—I shall dispose of two notices of motion taken out by defendant No. 2 viz. World Tanker Carriers Corporation (WTCC) by this order. By means of notice of Motion No. 2971 of 1998 it is prayed by WTCC that suit be dismissed. This prayer primarily is made under Order 7, Rule 11, CPC based on the ground that this Court has no jurisdiction. By another notice of motion No. 1637 of 1998, WTCC prays that the plaint be struck off as being unnecessary, scandalous, frivolous and vexatious and also being an abuse of process of the Court under Order 6, Rule 16 read with Section 151 of the CPC and for quashing as being contemptuous abuse of the process of the Court and malicious. In the alternative it is prayed that the plaintiffs -- SNP Shipping Services (Pvt.) Ltd. (for short "SNP Shipping") be directed to withdraw this suit.

2. SNP Shipping are the plaintiffs in Admiralty Suit No. 58 of 1998 filed under the provisions of the Merchant Shipping Act, 1958 (Act of 1958} for constituting the limitation fund for limiting their liability against claims arising out of a collision between the vessels m.v. YA MAWLAYA which was at the relevant time managed

by them and m.t. NEW WORLD owned by WTCC which occurred in the international waters approximately 200 nautical miles off the coast of Portugal on 20th/21st Dec., 1994 and further consequential reliefs.

3. Prior to this suit, admittedly the SNP Shipping filed the suit before this Court which was registered as Admiralty Suit No. 26 of 1995 and in that suit the very prayer was made for setting up of limitation fund inter alia other ancillary reliefs. In the said suit WTCC took out a notice of motion challenging the jurisdiction of this Court, though unsuccessful before this Court, WTCC's objection ultimately was upheld by the Apex Court. The question whether Bombay High Court has jurisdiction in the matter of constitution of Limitation Fund in the facts and circumstances was examined elaborately by the Apex Court in the light of provisions of Act of 1958, Letters Patent, CPC and the Private International Law. The judgment of the Apex Court is reported in World Tanker Carrier Corporation Vs. SNP Shipping Services Pvt. Ltd. and Others, . As a general proposition of law, the Apex Court, about the Courts having jurisdiction over Limitation Act, in paragraph 32 of the report ruled thus :

"32. A limitation action as in the present case, falls under the High Court's Admiralty jurisdiction. But a limitation action, though filed in Admiralty, is not against a vessel. It is a protective action against claims which may be filed by others against owner of the vessel in admiralty jurisdiction. Therefore, a plea of limitation can be taken as a defence by the owner in an action in admiralty filed against him by the claimant against him and his ship. Hence, the Court having jurisdiction to entertain an admiralty action against the vessel of the owner has jurisdiction to set up a limitation fund for the owner. Similarly, if the owner initiates the "defensive" action in limitation, the Court which has jurisdiction to entertain a liability claim will have jurisdiction to entertain the limitation action. If a liability claim is already filed, that Court will have jurisdiction over limitation action also. But claims may be several, and they may be actually filed or may be apprehension bended. Any Court where such a claim is filed of is likely to be filed will have jurisdiction to entertain a limitation action. The Court of domicile of the owner and the ship is a Court where such a claim is likely to be filed. Therefore, that Court will also have jurisdiction. Out of these, the owner has the option to choose his Court for filing a limitation action."

4. The Supreme Court thus, ruled that in respect of limitation action the following Courts shall have jurisdiction;

- (i) The Court having jurisdiction to entertain an admiralty action against the owner of the vessel;
- (ii) The Court which has jurisdiction to entertain a liability claim;
- (iii) The Court of domicile of the owner and the ship.

5. Out of the aforesaid forums the owner has the option to choose his Court for filing limitation action.

6. However, on facts of the case which were pleaded by World Tanker Carrier Corporation Vs. SNP Shipping Services Pvt. Ltd. and Others, the Apex Court held that the Bombay High Court has no jurisdiction to set up limitation fund. In paragraphs 35 to 39 of the reported judgment, the Apex Court held thus :

35. Admiralty Suit No. 26 of 1995 is filed by SNP, a company registered in India, claiming to be the managers of the vessel Ya Mawlaya and hence falling within the definition of owner u/s 352F. Others who are subsequently transposed as plaintiffs are foreign companies or foreigners. The claimants are some of the defendants. They are all foreigners. Other defendants are other owners, all of whom are foreigners or foreign companies. None of the claimants in respect of whose claims a limitation fund is sought to be set up, is within the jurisdiction of the Bombay High Court; nor do they carry on business within the jurisdiction of the Bombay High Court, nor have they filed claims before it in respect of the occurrence in question or have submitted to the Jurisdiction of the Court. Some claims in respect of Ya Malaya have been lodged, no doubt, in the Bombay High Court by SNP, itself, and by some crew members of Ya Mawlaya and others. But these claims do not fall within Section 352A and are not capable of being limited. There is also no likelihood of any claim being filed there since all claims are already filed before the Courts in the U. S. A. The Bombay High Court has, therefore, no jurisdiction in respect of Admiralty Suit No. 26 of 1995. There is also misjoinder of causes of action in the suit looking to the prayers in the suit. But we need not examine this aspect since in any event, the Bombay High Court has no jurisdiction to entertain the limitation action. Of course, in theory, if in future any liability action is at all filed there which is capable of limitation, SNP would be entitled to set up limitation as a defence or file an independent limitation action. But the present suit is without jurisdiction.

36. SNP has claimed that the Bombay High Court has jurisdiction because a part of the cause of action has arisen within its jurisdiction. SNP, under its management agreement with Kara Mara, claims to have recruited the crew of the vessel Ya Mawlaya in Bombay. Since the owner is required to establish "no fault or privacy" On his part in respect of the "occurrence", one of the relevant factors for this purpose is recruitment by the owner of a competent crew. Since recruitment was in Bombay, SNP claims that a part of the cause of action has arisen in Bombay. Therefore, SNP contends that the Bombay High Court has jurisdiction. However, in view of what we have held above, this does not confer jurisdiction on the High Court in an admiralty action of the present type.

37. In the present case the collision which gave rise to the owner's liability has occurred on the high-seas off the coast of Portugal. Neither of the vessels involved in the collision is an Indian vessel. The owners of both these vessels are also foreigners. The charterers and sub-managers are also foreign companies. Only one out of several managers/sub-managers of Ya Mawlaya is an Indian Company. And the only act of management in Bombay is said to be the recruitment of the crew. For reasons already stated, this factor alone will not

confer jurisdiction.

38. Moreover, when the right to set up a limitation fund is a right which is common to all persons coming within the category of "owner" u/s 352F and a common limitation fund has to be set up, an act of management only by one of the "owners" when all the other owners are outside the jurisdiction of the Bombay High Court and all their acts are outside the jurisdiction of the Bombay High Court, will not be sufficient to confer jurisdiction. It is difficult to consider the Bombay High Court as the domiciliary Court of the owners of Ya Mawlaya when the persons/companies to whom the vessel belongs are domiciled outside India and out of the entire body of persons/companies falling within the term "owner" u/s 352F, only one manager is an Indian company, and the vessel is registered in a foreign country."

7. A careful reading of what has been held by the Supreme Court leaves no manner of doubt, that though SNP Shipping, as managers of the vessel Ya Mawlaya, are "owner" within the meaning of Section 352F of Act of 1958, the facts averred and the circumstances pointed out by SNP Shipping in Suit No. 26 of 1995 do not clothe jurisdiction to the Bombay High Court in any of the categories of the Courts having jurisdiction for setting up of limitation fund. The Apex Court did observe that in theory if in future any liability action is at all filed before the Bombay High Court which is capable of limitation. The plaintiffs would be entitled to set up limitation as a defence or file an independent limitation action.

8. Pursuant to the order passed by the Apex Court on 20-4-1998, this Court vide its order dated 30-4-1998 dismissed both the suits. It may be stated here that SNP Shipping filed an application before the Apex Court seeking review of the order dated 20-4-1998 on various grounds, substantially most of these grounds have been set up in the present plaint as well showing the jurisdiction of the Bombay High Court, but the review application was, dismissed by the Apex Court by an order dated 28-8-1998. That did not bring an end to the question about the jurisdiction of this Court and the SNP Shipping filed even the SLP against the order passed by the learned single Judge of this Court on 30-4-1998 dismissing the suit which was nothing but consequential order pursuant to the order passed by the Apex Court on 20-4-1998 holding that Bombay High Court has no jurisdiction in the matter. The said SLP was ultimately withdrawn by SNP Shipping on 28-10-1998. Before the Apex Court some other proceedings came to be filed by Maritime Association of Ship Owners, Ship Managers and Agents, Lalkar Marine Private Limited, Galaxy Multi Model Systems Private Limited and Seaspan Shipping Limited. These proceedings were, one way or the other, directly or indirectly challenging the correctness of the order of the Apex Court passed on 20-4-1998 and to demonstrate that the Bombay High Court has jurisdiction in the matter of setting up of limitation fund. Not only that a writ petition under Article 32 of the Constitution of India also came to be filed by Maritime Association of Ship Owners, Ship Managers and Agents, admittedly of

which SNP Shipping is one of its members challenging the judgment of the Apex Court passed on 20-4-1998. By its order dated 16-10-1998, the Apex Court dismissed the writ petition as wholly misconceived and even otherwise did not find any merit in the petition,

9. The present admiralty suit No. 58 of 1998 has been filed by the SNP Shipping on 24-9-1998 immediately after its review application seeking review of the order dated 20-4-1998 was dismissed by the Supreme Court on 28-8-1998. However, SNP Shipping has sought to justify the filing of the present suit before this Court for setting up of limitation fund on the ground that by virtue of the order dated 23-7-1998 passed by the Louisiana District Court at the instance of the 2nd defendant (WTCC) to 13th defendants the cause of action giving rise to present suit has arisen within the jurisdiction of this Court inasmuch as the likelihood of claim or claims being made against them is now imminent. The SNP Shipping construed the judgment delivered by the Apex Court on 20-4-1998 in his own way to mean that SNP Shipping would in future be entitled to file independent limitation action if the liability claim is likely to be filed in Bombay High Court. SNP Shipping has, therefore, asserted and averred in the present plaint that there is now well founded likelihood of liability claim being filed in this Court. After the aforesaid two notices of motion were taken out by WTCC praying for dismissal of suit for want of jurisdiction and the suit being abuse of process of Court, the chamber summons have been taken out by the plaintiffs on 3-8-1999 seeking leave of the Court to amend the plaint for addition of few paragraphs in relation to facts which had come into existence subsequently. The proposed amendments as set out in chamber summons read thus :

A. After paragraph 19, add the following as paragraph 19A :--

19A. The Plaintiffs apprehensions at the time of the institution of the suit are fortified because after the filing of the present action, the second and sixth Defendants obtained an ex parte decree from the U.S. District Court at Louisiana on 3rd March, 1999 in Civil Action No. 94/4190, C/W95-0396,95-1151, 95-1948, 95-3295 and 97-3788. The said Court in its findings of facts and conclusion at Law, granted the second Defendants a sum of USS 21,453,686.34 together with prejudgment interest from 21-12-1994. It further decreed in favour of the sixth Defendants a sum of US\$7,789,615.81 together with prejudgment Interest. The Plaintiffs' assets stand exposed to sequestration and attachment. This additional fact combined with the undisputed awareness on the part of the Defendants that the Plaintiffs have assets in Bombay, which assets the second Defendants have launched on an expedition to identify, reaffirms the genuine likelihood on the part of the Plaintiffs that a liability claim will be filed within this jurisdiction and the Plaintiffs have become entitled to limit their liability in accordance with law.

19B. The Plaintiffs state and submit that the decree passed by the United States District Court of Louisiana on 3rd March 1999 for a sum of US \$ 30 million (approx.) has been passed against it severally on the basis that the Plaintiffs as Managers of the vessel Ya Mawlanya were the alter egos of the owners. Hence for

all intents and purposes the aforesaid decree passed by the Court in Louisiana is directed solely against the Plaintiffs as if they were the owners and are sought to be made answerable as such for the sum of US\$ 30 million (approx.)

19C, As a result of the aforesaid decrees passed by the United States, District Court in Louisiana, Defendants Nos. 2 and 6 herein have commenced an asset tracing exercise of locating the Plaintiffs' assets as precursor to executing the decree of US\$ 30 million. This is made abundantly clear from the statement made to the press by Brain Starer lead Counsel for Defendants 2 to 6 that they are already working on enforcement of the US Judgment in various places around the world.

19D. The plaintiffs thus say and submit that in view of the fact that the United States District Court of Louisiana has passed a decree for a sum of US\$ 30 million (approx.) against it severally as if it were the owners coupled with the fact that the Defendants have clearly expressed their intention to execute the decree gives the Plaintiffs a well founded apprehension that a real likelihood of a crystallized liability claim of US\$ 30 million may be imminently filed against them within the jurisdiction of this Hon'ble Court, thereby entitling the Plaintiffs to invoke the provisions of Part XA of the Merchant Shipping Act, 1958 in order to limit liability.

19E. The plaintiffs further state and submit the basis on which the Louisiana Court decree which came to be passed against them is of considerable relevance inasmuch as it proceeds on an unsubstantiated allegation that the plaintiffs as alter egos of the owners ought to be responsible for the alleged negligence of the owners and are accordingly sought to be made liable as if they were the owners of the vessel YA MAWLAYA. In this connection it is pertinent to note that the cargo interests (defendant No. 6 herein) have pursuant to an injunction passed by the High Court in London, dropped proceedings against the owners in Louisiana and instead proceeded against the plaintiffs as managers despite the absence of any privity of contract between them. Subsequently the cargo interest also succeeded in arresting a vessel managed by the plaintiffs in Durban S. Africa on the basis of the alter ego theory viz. that the plaintiffs were the alter egos of the owners and that the vessel YA RAB which was arrested was an associated ship of the ill fated YA MAWLAYA. Furthermore the cargo interests have also attempted to enforce the Louisiana Court Decree against the plaintiffs in a Court in Genoa, Italy. A writ of summons issued by the said Genoa Court has been served upon the plaintiffs by Italian Consular attache in Mumbai on or about 8th June, 1999.

19F. In view of the foregoing it is abundantly clear that the plaintiffs in their individual capacity as managers are likely to be made liable to answer the decree passed by the Louisiana Court for the sum of US\$ 30 million (approx.). The plaintiffs further say and submit that they are entitled to invoke the jurisdiction of this Hon'ble Court which is its domiciliary forum as a result of the likelihood of claims being made and on the Louisiana decree being executed against them.

The plaintiffs accordingly say and submit that this Hon''ble Court has jurisdiction to entertain try and dispose of the present suit.

B. In paragraph 31 at page 45 and the following sentence before the sentence beginning with "the plaintiffs further submit that this Hon''ble Court is domiciliary forum (line 17th from the top). "Furthermore on the basis of a motion filed by the second and sixth defendants before the U.S. District Court for summary judgement, on 3rd March, 1999 the U.S. District Court has passed an ex parte judgement in the sum of US\$ 21,453,686.34 as damages in favour of the second defendants and a sum of US\$ 7,789,615.81 as damages in favour of the sixth defendants. By the said judgement, the likelihood of claims against the plaintiffs have now become more imminent. This is more so because on 28th September, 1998 when an application was made for ad-interim reliefs in terms of the draft motion, the second defendants have confirmed that they are likely to proceed against the plaintiffs. Furthermore, they have undertaken to give 30 days notice prior to commencement of a claim. This is obviously to be commenced within the jurisdiction of this Hon''ble Court where the plaintiffs carry on business and have assets. This combined by the fact that the sixth defendants gave already commenced proceedings in the Court of Genoa, as stated hereinabove, the plaintiffs' suit is thus within the frame work of the Judgment passed by the Hon''ble Supreme Court of India and in any event, falls within the purview of Chapter Part X-A of the Merchant Shipping Act.

C. All consequential amendments be allowed."

10. The said chamber summons has been made returnable on 27-8-1999 but Mr. Parikh, the learned counsel appearing for the WTCC urged that the proposed amendments be taken Into consideration and even these facts shall not confer any jurisdiction on this Court to entertain the plea of SNP Shipping for setting up of limitation fund. In this view, I have disposed of Chamber Summons by separate order and permitted SNP Shipping to amend the plaint accordingly.

11. Mr. C. A. Sunderam, the learned Senior Counsel appearing for SNP Shipping strenuously relied upon the events that had taken place subsequent to the filing of the suit particularly ex parte decree passed by U.S. District Court, Louisiana on 3-3-1999 in favour of WTCC for a sum of US Dollars 21,453,686.34 together with prejudgment interest from 21-12-94 and decree in favour of 6th defendants for a sum of US Dollars 7,789,615.81 together with prejudgment interest and urged that though the suit was filed on the likelihood of liability action being filed before this Court, now the said likelihood is fully substantiated by passing of the ex parte decrees by the U.S. Court. He also argued that SNP Shipping are "owner" within the meaning of Section 352F of the Act of 1938 and as regards SNP Shipping Bombay High Court is a domiciliary Court and, therefore, this Court has jurisdiction to entertain and try the present suit filed by the plaintiffs for setting up of the limitation fund. According to him the present suit fits into the liberty granted by the Supreme Court to SNP Shipping to file the suit subsequently before Bombay High Court for setting up of limitation fund if the

liability claim is likely to be filed before this Court. The question that needs to be considered is : Whether in view of the events that had taken place subsequently to the passing of the order by the Apex Court on 20-4-98, the Bombay High Court can be said to have jurisdiction to entertain and try the present suit for setting up of Limitation fund at the instance of SNP Shipping?

12. As already noted above, in the earlier Admiralty Suit No. 26 of 1995 filed by SNP Shipping, the principal relief was for setting up of limitation fund. In that suit WTCC raised the plea that the Bombay High Court has no jurisdiction to entertain and try the said suit. The facts as were obtaining on date, the Apex Court on 20-4-1998 held that the Bombay High Court has no jurisdiction. In my view the relevant facts continue to be same and have not changed which were considered by the Apex Court in holding that Bombay High Court has no jurisdiction for setting up of the limitation fund in the matter. It is true that at that time the Apex Court decided the matter on 20-4-1998, no decree by the U.S. Court was passed but it cannot be overlooked that at that time the proceedings before the U.S. Court were pending and the Apex Court did consider this fact and also observed that the plaintiffs intended to seek anti-suit injunction in respect of all pending litigations against it in foreign Court. Obviously upon vacation of any interim order passed by this Court and anti-suit injunction having been rendered inoperative, the US Court proceeded with the matter and ultimately in the month of March, 1999 decreed the claim of WTCC and the 6th defendant. The circumstances of the decree having been passed by the US Court subsequent to the decision given by the Apex Court on 20-4-1998 does not make any qualitative difference in respect of jurisdiction of Bombay High Court which was held to be not there by the Apex Court. On all counts the Apex Court negated the plea of SNP Shipping about this Court's jurisdiction in the matter. It was held that there is also no likelihood of any claim being filed before this Court since all claims were already filed in US Courts. However, the Apex Court observed that in theory if in future any liability action is all filed before Bombay High Court which is capable of limitation, SNP Shipping would be at liberty to pray for setting up of limitation fund as a defence or by way of independent suit. Mere fact that in the earlier Suit No. 26 of 1995 though initially filed by SNP Shipping alone and subsequently certain defendants who were owners, charterers or managers were transposed as plaintiffs, and the Apex Court while deciding the matter on 20-4-98 was concerned with all those plaintiffs also does not make any difference. Now in the changed circumstances, Mr. Sunderam, the learned Senior counsel submitted that those plaintiffs other than the present plaintiffs have filed the suit for setting up of limitation fund in the High Court of Justice, Kings Bench Division, England as their domiciliary Court and as regards the present plaintiffs since the Bombay High Court is domiciliary Court, this Court has jurisdiction. I am afraid, the submission of the learned Senior Counsel has no substance. The Apex Court could not have held more clearly when it said, "It is difficult to consider the Bombay High Court as the domiciliary Court of the owners of Ya Mawlaya when the persons/companies to whom the vessel belongs

are domiciled outside India and out of the entire body of persons/companies falling within the term "owner" u/s 352F, only one manager is an Indian Company, and the vessel is registered in the foreign country". The final verdict, therefore, having been given by the Apex Court that Bombay High Court cannot be considered as the domiciliary Court of the owners of Ya Mawlaya which includes SNP Shipping as well, it has to be held in the facts of the present suit as well, that the Bombay High Court is not and cannot be considered to be domiciliary Court and, therefore, this Court has no jurisdiction.

13. Obviously when this Court has no jurisdiction, the plaint is liable "to be rejected. However, in the present case, WTCC has highlighted the conduct of SNP Shipping in their attempts to keep the matter alive for setting up of limitation fund before this Court, though it has no jurisdiction. I shall also deal with the question whether the suit is liable to be dismissed being abuse of the process of the Court.

14. The facts which have come on record are clearly indicative of SNP Shipping's desperate attempt in keeping the matter alive relating to setting up of limitation fund in this Court which has no jurisdiction and held to be so by the highest Court of the land by initiating one proceeding or the other. In that judgement dealing with the conduct of the plaintiffs, the Apex Court held in paragraph 39 of the report thus :--

"39. The entire course of conduct appears to be a deliberate attempt on the part of the plaintiffs to bring the limitation action in Bombay with a view to obtain anti-suit injunction against all the claimants who have filed proceedings against the owners and Ya Mawlaya in the Courts of the United States prior to the filing of the admiralty suit here. The Bombay High Court, therefore, ought not to have entertained Admiralty Suit No. 26 of 1995 brought by SNP and others."

15. Pursuant to the judgment of the Apex Court when this Court on 30-4-98 dismissed the suit having no jurisdiction in the matter, even such innocuous order which was only a consequential order to the order passed by the Apex Court, still the SNP Shipping took up the matter in SLP before the Apex Court which though was ultimately withdrawn. The Apex Court passed the order on 28-10-1998 observing as follows :--

"Learned counsel for the petitioner seeks leave to withdraw the Special Leave Petitions. We fail to see how such petitions could have been filed. Other Writ Petitions were also filed as well as Review Applications were also made to review the impugned judgment of this Court. These are now proper practices which should be encouraged. We, therefore, while ordering dismissal of the Petitions as withdrawn, direct that the petitioners should pay costs of Rs. 5000/- to be paid to the Supreme Court Legal Services Committee."

16. Not only that a writ petition came to be filed through Maritime Association of Shipowners, Ship Managers and Agents under Article 32 of the Constitution of India challenging even the judgment of the Apex Court passed on 20-4-1998.

Admittedly SNP Shipping are one of the members of the said Maritime Association of Shipowners, Ship Managers and Agents. On 16-10-1998 the Apex Court dismissed the writ petition in the following terms :--

"This petition under Article 32 is wholly misconceived. Article 32 is not a proper remedy for challenging a decision of this Court or reviewing it. Even otherwise there is no merit in the Petition. It is dismissed."

17. In the backdrop of these orders passed by the Apex Court, the present suit filed by SNP Shipping by misconstruing the judgment of the Apex Court that the plaintiffs were granted liberty to file the suit subsequently for setting up of limitation fund if there was likelihood of liability action being filed before this Court cannot but is an abuse of the process of the Court. After laying down the general proposition of law regarding the jurisdiction of the Court in the matter of setting up of limitation fund, on the facts of the case, the Apex Court only permitted SNP Shipping to pray for setting up of limitation as a defence or file an independent limitation action if in future any liability action capable of limitation was at all filed in the Bombay High Court. Admittedly, no liability action has been filed as on date before this Court and rather it was made clear by the learned counsel appearing for WTCC as well as learned Senior Counsel appearing for defendants Nos. 3 to 5 that neither any liability action has been filed before this Court nor can be filed now since such liability action has become time barred. The various paragraphs in the plaint clearly demonstrate that the judgment of the Apex Court if not distorted at least has been misconstrued to make out a case for jurisdiction of this Court and that attempt has to be nibbed in bud. Re-litigation of a matter on the selfsame facts on misreading or misconstruing of the judgment of the Apex Court is nothing but a desperate and deliberate attempt by SNP Shipping to play with the process of law by filing vexatious and frivolous suit. The CPC gives enough power to Courts to defeat such deliberate and desperate attempt of a litigant by passing appropriate order so that such litigation does not send wrong signal to the public at large that administration of justice does not have potency to curb such frivolous and vexatious litigation.

18. Order 6, Rule 16, C. P. C. empowers the Court to strike out the pleading if it is an abuse of the process of the Court. Order 6, Rule 16 reads thus :

"16. Striking out pleadings.-- The Court may at any stage of the proceedings order to be struck out. or amended any matter in any pleading -

(a) which may be unnecessary, scandal ous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court."

19. Section 151 of the CPC retains the inherent jurisdiction which every Court possesses to strike out from its record a suit which is frivolous, vexatious, malicious or tantamount to abuse of the process of the Court or tends to bring the administration of justice to ridicule by persistently and consistently filing

proceedings and suits though the matter has been settled finally by the highest Court of the land. It is true that such power of striking of the plaint from the record of the Court on the ground of abuse of process is to be exercised sparingly and with circumspection and in rarest of rare cases but when the conduct of a litigant is so glaringly contumacious intended to keep a matter alive in a Court having no jurisdiction, such litigation deserves to be dealt with sternly.

20. The Apex Court in Delhi Development Authority Vs. Skipper Construction and Another, considered its previous judgment given in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, of the report held thus :

"54. The filing of the Suit No. 770 of 1993 is nothing but a wilful action on the part of the contemnors to undermine the dignity of this Court and the majesty of law. The conduct of the contemnors tends to bring the authority and administration of law into disrespect or even disregard. It equally tends to interfere with or prejudice the litigants during the litigation. Abuse of the process of Court calculated to hamper the due course of judicial proceeding or the orderly administration of justice is a contempt of Court. In Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, , this Court observed : (SCC para 7)

"While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice."

21. What is an abuse of the process of the Court again came up for consideration before the Apex Court in K.K. Modi Vs. K.N. Modi and Others, and the Supreme Court ruled that re-litigation is one of the examples of an abuse of the process of the Court and a party if advised to reagitate the same issue which has already been decided earlier against him, it is contrary to justice and public policy and is, therefore an abuse of process of Court. In paragraph 44 of the report, the Apex Court held thus :--

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to reiterate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral

purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the Court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and, exercised only in special cases. The Court should also be satisfied that there is no chance of the suit succeeding."

22. The present case as already noted above, is a classic example of re-agitating the same issue by a party which has been held against him by the highest Court of the land. Despite the fact that it has been held that for setting up of a limitation fund in the matter this Court has no jurisdiction, the plaintiffs are seeking to invoke jurisdiction of a Court having no jurisdiction on misconstruction and misreading of the judgment of the highest Court. Such attempt of the litigant has to be stopped immediately in the interest of Justice and for the benefit of public at large to prevent the time of the public and the Court being wasted.

23. I may observe here that one of the reliefs in the present suit for declaration that SNP Shipping is in no manner whatsoever linked, owned or controlled legally or beneficially by the Merali family or any other entity is subject matter of another Suit 2352 of 1999 filed before this Court and the learned Counsel for WTCC informed that SNP Shipping has made statement in that suit during the course of arguments that they (SNP Shipping) would not press the prayers relating to aforesaid declaration in this suit.

24. I, therefore, hold that the present suit besides that this Court has no jurisdiction, is also liable to be dismissed as an abuse of the process of the Court.

25. In the result, both the notices of motion namely, Notice in Motion No. 2971 of 1998 and Notice of Motion No. 1637 of 1999 are allowed with costs of Rs. 5000/- payable to WTCC. The suit is dismissed.

26. Certified copy expedited.