

(1980) 02 BOM CK 0001

In the Bombay High Court

Case No : Notice of Motion No. 137 of 1979 and Adm. Suit No. 32 of 1979

The Shipping Development Fund Committee

APPELLANT

Vs

M.V. Charisma and Another

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Merchant Shipping Act, 1854 — Section 66

Merchant Shipping Act, 1894 — Section 31

Merchant Shipping Act, 1958 — Section 3(15), 47, 51

Citation : AIR 1981 Bom 42

Hon'ble Judges : Bharucha, J

Bench : Single Bench

Advocate : K.H. Bhabha and Virag V. Tulzapurkar, for the Appellant; K.S. Cooper, Mukharji, P.A. Mehta and J.B. Chinai, for the Respondent

Judgement

1. The 2nd defendants are the owners of the 1st defendant vessel. The 1st defendant vessel is mortgaged to the plaintiffs. It is presently anchored in the port of Bombay. The suit is filed in the Admiralty and Vice-Admiralty Jurisdiction of this Court for realisation of the mortgage security. In the written statement the 1st and 2nd defendants contend that this Court in its Admiralty a Vice-Admiralty Jurisdiction does not have jurisdiction to entertain and try the suit. It is this preliminary issue that now comes up before me.

2. The history of this Court's power to entertain suits for realisation of the security in ship mortgage suits in its Admiralty and Vice-Admiralty Jurisdiction may briefly be traced. In the (English) Merchant Shipping Act, 1854, Sections 66 onwards dealt with ship mortgages. Section 71 conferred upon the mortgagee the power to sell the mortgage security without the intervention of the Court. Under the provisions of Section 11 of the (English) Admiralty Courts Act, 1861, the High Court of Admiralty was given jurisdiction over any claim in respect of any mortgage registered according to the provisions of the Merchant Shipping Act, 1854. Under the provisions of the Colonial Courts Act, 1890, the Legislature of British India was empowered to declare certain courts in India to be Colonial

Courts of Admiralty and the Courts so declared had Admiralty jurisdiction. This Court being declared an Admiralty Court under the 1890 Act, it exercised under the provisions thereof such Admiralty jurisdiction as was exercised by the High Court of Admiralty in England under statute or otherwise. That jurisdiction this Court continues to exercise by virtue of the provisions of Clause 32 of the Letters Patent, 1865. In 1894 the Merchant Shipping Act was re-enacted in England. Section 31 thereof gave to the ship-mortgage power to sell the mortgage security without the intervention of the Court.

3. The (Indian) Merchant Shipping Act, 1958, was enacted, its preamble reads thus :--

"An Act to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board and a Shipping Development Fund, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping."

The provisions of Section 47 onward deal with ship mortgages. Under the provisions of Section 51 the mortgagee is entitled to recover the amount due under the mortgage in the High Court and. it is expressly stated that he does not have the power of sale. The High Court is defined in Section 3 (15) thus :--

4. " "High Court", in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction-

(a) the port of registry of the vessel is situate; or

(b) the vessel is for the time being; or

(c) the cause of action wholly or in part arises."

5. It was submitted by the learned counsel appearing for the 1st and 2nd defendants that the power to entertain and try suits relating to ship mortgages is conferred under the aforesaid provisions of the 1958 Act upon all High Courts in India; that all High Courts in India were not Admiralty Courts; that the suit as filed within the Admiralty Division of this Court was, therefore, not competent and that it should have been filed under the ordinary Original Civil Jurisdiction of this Court. It was submitted that the 1958 Act was a code in itself in respect of all the matters it dealt with. It was contended, relying upon a judgment of the Supreme Court in Tansukh Rai Jain Vs. Nilratan Prasad Shaw and Others, , that, since this was the intention of the legislature in enacting the 1958 Act, there was repugnancy between the aforementioned sections of that statute and the provisions of Section 11 of the 1861 Act read with Clause 32 of the Letters Patent. There was, it was said, a direct conflict between the aforementioned provisions of the 1958 Act and those of the 1861 Act and of the Letters Patent in regard to which court could entertain and try a suit to realise the security of a ship mortgage. It was urged that there was, therefore, an implied repeal by the 1958 Act of provisions of Clause 11 of the 1861 Act in so far as it applied to this

Court under Clause 32 of the Letters Patent.

6. It will be noted, first, that there are very many High Courts in this country which exercise no ordinary original civil jurisdiction. It will be noted, secondly, that under the terms of Section 3 (15) of the 1958 Act a suit to enforce a ship mortgage may be filed in a High Court if the ship is registered or anchored within the High Court's appellate jurisdiction or even a part of the cause of action has arisen therein. This Court in its ordinary Original Civil Jurisdiction does not exercise so vast a jurisdiction. I, therefore, cannot accept the submission that the provisions of Section 51 read with Section 3 (15) of the 1958 Act require that a suit to enforce a ship mortgage must be filed within the Ordinary Original Civil Jurisdiction of this Court.

7. It was then contended that a special jurisdiction was conferred by the 1958 Act. Assuming that to be so, there is no rule of this Court which directs that that special jurisdiction shall be exercisable on the Original Side, Appellate Side or, for that matter, in the Admiralty Division. It has been held by this Court in *Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd.*, that in cases where the Admiralty Court has jurisdiction, its jurisdiction is exclusive. Logically speaking, the special jurisdiction must, I think, be exercised by this Court in its Admiralty and Vice Admiralty Jurisdiction, which had exclusive jurisdiction already over ship mortgages, though of course, the jurisdiction would be exercisable within the constraints imposed by the 1958 Act.

8. It would seem that, consequent upon the enactment of the 1958 Act, the Admiralty Court has lost its country wide jurisdiction to entertain suits to enforce ship mortgages and retains it only within the limits of the particular High Court's appellate jurisdiction; but I do not express any final opinion upon this. I do not think that this limited jurisdiction establishes that it is not an Admiralty Court which can entertain a ship mortgage suit, as was sought to be urged before me.

9. I see no implied repugnance between the provisions of the 1958 Act on the one hand and Clause 11 of the 1861 Act read with the Letters Patent, Clause 32, on the other hand. I may mention that though the 1958 Act provides a list in its Schedule of the enactments which it repeals there is no mention of the provisions of the 1861 Act or the Letters Patent.

10. I have pondered over the question whether the ship mortgagor would be in a more onerous position if the ship mortgagee were required to file the suit in the Admiralty Jurisdiction of a High Court that has such jurisdiction. I think not. In the Admiralty Jurisdiction the ship would, certainly, be liable to arrest, but it would otherwise, equally certainly, be liable to be the subject-matter of an order appointing a receiver.

11. In conclusion, I hold that a suit to enforce a ship mortgage must be filed within the Admiralty and Vice-Admiral Jurisdiction of this Court. The Admiralty Court shall however, exercise therein such powers as are provided for in the Merchant Shipping Act, 1958.

12. I answer the issue accordingly.

13. Answered accordingly.