

(1978) 05 CAL CK 0003
In the Calcutta High Court

Union of India and Another	Vs	APPELLANT
Great Eastern Shipping Company Ltd.		RESPONDENT

Date of Decision : 30-05-1978

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 38

Citation : (1978) 05 CAL CK 0003

Hon'ble Judges : Murari Mohan Dutt, J;Dhires Chandra Chakraworti, J

Bench : Division Bench

Advocate : N.C. Roychowdhury, Snehasu Sekhareswar Roy, for the Appellant;
Nilay Kumar Ghose (not present), for the Respondent

Judgement

1. This Rule has been referred to the Division Bench as it involves a point of law of some importance.

2. The point arises in this way. The petitioners, who are the Union of India and the Food Corporation of India, instituted a suit in the Court of Small Causes, Calcutta praying for a decree for Rs.3105.33, and interest and other reliefs against the opposite party, the Great Eastern Shipping Company Limited, which is a company incorporated under the Indian Companies Act having its registered office at No.10, Mahatma Gandhi Road, Bombay. The Company also carries on its business at No.5, Clive Row, Calcutta-1. The case of the petitioners was that the petitioner No.1 booked 277400 bags of Urea and 2774 pieces of Empty Bags under 3 Bills of Lading in the vessel known as s.s. Jaganjali owned by the opposite party company and loaded the same at Ports Chinhae and Ulsan (Korea) for transshipment to any Indian port or ports and for discharge at the ports of Vishakhapatnam and Calcutta. It was alleged that there was short loading of 293 empty original containers and also of 2774 pieces of empty spare bags. The petitioners, accordingly, claimed the said sum on account of compensation. It is not necessary for us to state the defence of the opposite party, for we are only concerned with the question whether the Court of Small Causes, Calcutta had jurisdiction to try the said suit. The contention of the opposite party before the

learned Trial Judge was that as the suit was in the nature of a maritime action, the Court of Small Causes had no jurisdiction, for such actions are within the Admiralty Jurisdiction of the High Court. The learned Trial Judge upheld the said contention of the opposite party and directed the return of the plaint for presentation to proper Court. Being aggrieved by the said order of the learned Trial Judge, the petitioners moved an application under S. 38 of the Presidency Small Causes Courts Act before the Full Bench of the Court of Small Causes, Calcutta. The learned Judges of the Full Bench, however, took the view that the application was not maintainable and, accordingly, they dismissed the same. Hence this Rule.

3. In this Rule we are concerned with the only point whether the Court of Small Causes, Calcutta had jurisdiction to entertain and hear the suit. Prima facie, it seems that the action being a maritime action, it comes within the Admiralty jurisdiction of this Court. The said jurisdiction was first created by the Charter establishing the Supreme Court of Judicature at Fort William in Bengal in the year, 1774. By clause 26 of the said Charter, the Supreme Court was made a Court of Admiralty, in and for the provinces, countries and districts of Bengal, Bihar and Orissa, and all other territories and islands adjacent thereto. The Supreme Court had full power and authority to take cognizance of, hear, examine, try and determine all causes civil and maritime, and all pleas of contracts, debts exchanges, policies of assurance, accounts, charter parties agreements, loading of ships, and all matters and contracts, which in any manner whatsoever related to freight, or money due for ships hired and let out, transport money, maritime usury and bottomry or to extortions, trespass injuries, complaints, demands and matters civil and maritime, whatsoever between the merchants, owners and proprietors of ships and vessels employed or used within the jurisdiction aforesaid, or between others contracted, done, had or commenced in, upon or by the sea, or public rivers or ports, creeks, harbours, and places over flown etc., throughout the said three provinces, countries or district of Bengal, Bihar and Orissa and all the said territories or islands adjacent thereunto and dependent thereupon the cognizance whereof did belong to the jurisdiction of the Admiralty, as the same was used and exercised in that part of Great Britain called England together with all the singular their incidents emergent and dependencies annexed and connexed causes, whatsoever, and to proceed summarily therein with all possible dispatch, according to the course of 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.

4. Under clause 26 of the Charter the Admiralty jurisdiction was the same as exercised in England. Then came the Letters Patent of 1862 by which the High Court of Judicature at Fort William in Bengal was established and the Admiralty jurisdiction was conferred on the High Court by Clause 31 of the Letters Patent. The Government of India Act and also the Constitution of India have also preserved the said Admiralty Jurisdiction of the High Courts. It is not necessary

for us to state how the Admiralty jurisdiction as exercised in England, was modified or extended from time to time but suffice it to say that in 1861 the Imperial Parliament passed an Act to extend the jurisdiction and improve the practice of the High Court of Admiralty. The Act provided as follows:

The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any Bill of lading of any goods carried into any port in England or Wales in any ship, for damages done to the goods carried into any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England and Wales.

5. In *Rungta Sons Private Ltd. and Another Vs. The Owners, Masters and Parties Interested in S.S. "Edison Mariner" and Another*, G. K. Mitter, J, as his Lordship then was) referred to Clause 26 of the Charter and also considered how the Admiralty jurisdiction was preserved and extended time to time. There also the question was one of jurisdiction of the High Court to try a suit relating to a maritime action. The learned Trial Judge has placed reliance on the said decision in which it has been held by Mitter that it can not be disputed that the Calcutta High Court can exercise Admiralty Jurisdiction in rem or in personam in respect of claims arising of any agreement for the use and hire of a ship or relating to the carriage of goods in a ship. In the instant case, the learned Trial Judge seemed to think that whenever there is a maritime action, it would come within the Admiralty Jurisdiction of the High Court, without however, noticing the conditions which should be fulfilled before it can be said that the ordinary Civil Courts will have no jurisdiction in the matter. Be that as it may, it follows from the Imperial Parliament Act of 1861, the relevant portion of which has been quoted above, that one of the conditions to be fulfilled for ousting the jurisdiction of ordinary Civil Courts is that the owner or part owner of the ship is domiciled in England and Wales. Before the case of *Rungta Sons Private Ltd.*, (supra) P. B. Mukharji, J (as his Lordship then was), had to consider the Admiralty Jurisdiction of this Court. It has been laid down by His Lordship, after considering the law prevalent in England, that the Admiralty jurisdiction of the Calcutta High Court with regard to the claim for necessities, which is the same as used and exercised in England and which is defined by S. 5 of the Admiralty Courts Act, 1861 postulates two requirements. The first postulate is that the supply to the ship must be elsewhere than in the port to which the ship belongs. The second postulate is that the owner or part owner of the ship must be domiciled in England or Wales. The expression "domiciled in England or Wales" as applied to India must be interpreted as "domiciled in the Union of India" and not as domiciled within the Admiralty jurisdiction of the respective Court of Admiralty in Calcutta, Madras or Bombay. It has been observed inter alia that where the owner of the ship himself is domiciled in the Country, then the supplier can seek his remedy by the ordinary process of law in ordinary Civil Courts of the land.

6. The learned trial Judge also relied on a decision of a learned single in Commissioners for The Port of Calcutta Vs. Alliance Jute Mills, . In that case the learned Judge, however, did not consider that one of the conditions to be fulfilled in order to attract the Admiralty jurisdiction of this Court is that the owner of the ship is not domiciled in India. In a subsequent case, however, reported in the same volume at page 194, the learned Judge pointed out the said condition.

7. Thus it is manifestly clear that one of the conditions to be fulfilled to oust the jurisdiction of Civil Courts or to invoke the Admiralty jurisdiction of this Court is that the owner of the ship must be domiciled in India. In the instant case, the ship is question in owned by the opposite party company The criterion of domicile is the existence of one system of law and the whole of Indian Union can be regarded as the area of domicile wherein one system of law prevails. whose place of business is at 5, Clive Row, Calcutta. The Company, as stated already has been incorporated under the Indian Companies Act. Thee can, therefore, be no doubt that the company, who is the owner of the ship in question, is domiciled in India. In view of the principles of law stated above, we do not think that the suit which has been instituted by the petitioners in the Court of Small Causes, can not be tried by that Court. The learned Trial Jude, in our opinion, is not, therefore, right in holding that he had no jurisdiction to entertain and hear the suit. In these circumstances, we set aside the order of the learned Trial Judge and direct him to proceed with the disposal of the suit in accordance with law.

This Rule is made absolute, but there will be no order for costs.

Let the records be sent down as early as possible.

D.C. Chakraborti, J.

8. I agree.