

(1992) 12 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 5161 of 1992 Arising out of SLP (C) No. 14442 of 1992

Union of India (UOI)

APPELLANT

Vs

Khairul Jabbar and Others

RESPONDENT

Date of Decision : 01-12-1992

Acts Referred:

Customs Act, 1962 — Section 115

Citation : (1997) 68 ECR 384 : (1993) 66 ELT 33 : (1993) 1 JT 59 : (1992) 3 SCALE 579 : (1993) 1 SCC 619

Hon'ble Judges : L. M. Sharma, C.J;S. P. Bharucha, J;S. Mohan, J

Bench : Full Bench

Advocate : P. Parmeswaran, S.V. Tambwekar and Mukul Mudgal, for the Appellant;

Final Decision : Allowed

Judgement

1. Special leave granted.

2. The appeal is directed against the order of a Division Bench of the High Court at Bombay summarily dismissing a Letters Patent Appeal on the ground that the appellant could not make any grievance about the order of the learned Single Judge impugned before the Division Bench in view of certain orders of Single Judge which had become final and binding. The order of the learned Single Judge allowed the oral application of respondents 1-7 (plaintiffs) to dismiss the suit against the appellants (fourth defendant) on the ground that no relief was claimed against them despite objection by their counsel. The learned Judge then passed a decree in favour of the plaintiffs and against the first and second defendants (the vessel and its owner) ex parte in the sum of Rs. 42,23,830/- with interest thereon as therein stated.

3. So far as is relevant for our purposes, the facts are that the vessel "Korea Borizon" was seized by the appellants, the Customs authorities. The vessel was then arrested in the Admiralty Jurisdiction of the High Court of Bombay. An

adjudication order was thereafter passed in respect of the vessel by which the vessel was confiscated u/s 115 of the Customs Act, 1962 but the owner was given the option to redeem it upon payment of Rs. fifteen lakhs. Penalties were also imposed upon the Captain and various crew members, including the plaintiffs. On 14th June, 1991 an order was taken in the Admiralty suit which stated that as the ship was taking in water and likely to sink, it was agreed by the plaintiffs, the second defendant, the Bombay Port Trust, the Customs authorities and the purchaser of the vessel, which had been ordered to be sold under the authority of the court, that, at the time of confirmation of the sale, the question of payment to the Bombay Port Trust and the Customs authorities should also be decided. The Sheriff was directed to pay, out of the sale proceeds, to the Customs authorities the sum of Rs. fifteen lakhs towards redemption fine whereupon the Customs authorities were to release the vessel by lifting the seizure. It was also clarified that the Bombay Port Trust and the Customs authorities were at liberty to adopt such proceedings as they might be advised for their balance claims.

4. It also appears that at a later stage the Customs authorities argued that the vessel had been seized by them and thereafter confiscated and accordingly it vested in the Government of India so that the proceeds of the sale thereof should be handed over to them. This prayer of the Customs authorities was rejected on 3rd April, 1992 having regard to the earlier order of 14th June, 1991. It may also be mentioned that the amount of the claim in the suit was amended and increased and that the Customs authorities had filed no affidavit to oppose the same.

5. How, it was recognised that the Customs authorities had a claim against the vessel other than the redemption fine of Rupees fifteen lakhs and that they were at liberty to adopt such proceedings as they might be advised in that behalf. It was also recognised that they ought to be made party-defendants to the suit and were accordingly impleaded. The only recourse for the balance claim was the balance amount of the sale proceeds of the vessel. The Customs authorities were, therefore, as it appears to us, *prima facie*, entitled to defend the suit so that the amount that was available to them out of the sale proceeds of the vessel was not diminished. In our view, the suit as against the Customs authorities ought to have been dismissed on the oral application of the plaintiffs and without due consideration of the objections of the Customs authorities, particularly since the suit was otherwise undefended.

6. Accordingly, we are of the view that the impugned order of the Division Bench and of the learned Single Judge deleting the Customs authorities (the 4th defendant) from the suit and passing an *ex parte* decree in favour of the plaintiffs and against the first and the second defendants should be set aside. The plaintiffs shall be at liberty to make an application in writing for the deletion of the Customs authorities (the 4th defendant) from the suit. The Customs authorities shall be entitled to object thereto by affidavit and oral submissions.

The learned Single Judge hearing the application shall then pass an order considering the contentions of either side.

7. The appeal so allowed accordingly.