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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION**

**APPEAL NO.319 OF 2015
IN
ADMIRALTY SUIT NO.91 OF 2012
WITH
NOTICE OF MOTION NO.131 OF 2014
IN
ADMIRALTY SUIT NO.91 OF 2012
WITH
NOTICE OF MOTION (L) NO.921 OF 2015
IN
APPEAL NO.319 OF 2015**

Mansel Limited, A company	)	
incorporated under The laws of Bermuda,	)	
having its registered office at Clarendon House,	)	
Church Street, West Hamilton, HM-11	)	
Bermuda	)	... Appellant

Versus

- | | | | |
|----|---|---|--|
| 1. | The Bunkers on board |) | |
| | the Ship M.V. Giovanna Iuliano. |) | |
| 2. | M.V. Giovanna Iuliano (and her charterers/ |) | |
| | Managers and all others persons concerned |) | |
| | and/or interested in her) foregin flag vessel,) |) | |
| | flying the flag of Italy together with her |) | |
| | bunkers on board, at present lying in the |) | |
| | port and harbor of Paradip, Orissa in |) | |
| | Indian territorial waters. |) | |
| 3. | Crest Martime Chartering Indian Ocean |) | |
| | Limited, A company incorporated under |) | |
| | the laws of Republic of mauritius on |) | |
| | 15 th June 1998 under the registration |) | |
| | No. C19905 having its registered |) | |

address at Kross Border Trust Services)
 Limited, St. Louis Business Centre CNR)
 Desroches and St. Louis Street, Port Louis,)
 Mauritius)

4. Deiulemar Shipping SPA, a company)
 incorporated under the laws of Italy and)
 having its office in Via Gunlielmo Macroni)
 26, 80059, Torre del Gerco NA, Italy.) ... Respondents

Mr. Rahul Narichania, Senior Counsel a/w Mr. Akshay Kolte – Patil and
 Ms. Ajita Chure i/by M/s. Crawford Baylay and Co., for the Appellant.
 Mr. Prashant S. Pratap, Senior Counsel a/w Mr. Hari Wadhwana i/by
 Mr. Ashwini Sinha for the Respondent No.2.

**CORAM : A.S. OKA &
 SMT. ANUJA PRABHUDESSAI, JJ.**

DATE ON WHICH SUBMISSIONS WERE HEARD : 22nd DECEMBER, 2016

DATE ON WHICH JUDGMENT IS PRONOUNCED : 5th MAY, 2017

JUDGMENT (PER A.S. OKA, J.)::-

1 The question which arises for consideration is as under :-

“Whether this Court in exercise of its Admiralty jurisdiction
 has a power to arrest and order sale of bunkers on the board
 of a ship?”

2 With a view to appreciate the submissions canvassed across
 the Bar, a reference to few facts will be necessary. The appellant is the
 original plaintiff which is engaged in the business of chartering vessels
 and of providing vessels for hire. The second respondent (second

defendant) is a foreign sea going vessel registered at a port in Italy. The second respondent was at the relevant time on a time charter to third respondent (third defendant). The first respondent (first defendant) are the bunkers on board of the second respondent. It is alleged in the suit filed by the appellant that there is reason to believe that the third respondent is the owner of the first respondent bunkers. The fourth respondent (fourth defendant) is a Company incorporated in Italy which is stated to be the owner of the second respondent.

3 The case made out in the plaint is that the appellant is entitled to receive from the third respondent a sum of US\$ 15,00,301.07 and cost of arbitration of US\$ 30,000 as well as a sum of US\$ 25,000 being the cost of the proceedings. By filing the Suit, the appellant sought arrest, sequestration, condemnation and sale of the first respondent – bunkers on the board on the second respondent which are allegedly the property of the third respondent for securing the aforesaid claim.

4 According to the case of the appellant, it entered into a Time Charter dated 25th June 2010 with the owner of a vessel m.v.Dalmatia G for a period of 36 months. The appellant, in turn, being entitled to sub-charter, chartered the vessel m.v.Dalmatia G to the third

respondent. The allegation in the suit is that the third respondent has committed a breach of the Charter Party Agreement dated 17th April, 2012 executed by and between the appellant and the said respondent as regards vessel m.v Dalmatia G. The appellant invoked arbitration clause under the said Charter Party Agreement. In the meanwhile, the second respondent entered Paradip Port. Therefore, the appellant filed the action seeking security for the arbitration.

5 The appellant chartered the vessel M.V. Dalmatia G to the third respondent for the Charter Party Agreement dated 17th April, 2012 for carriage of a consignment of nickel ore having quantity of 50,000 MT from Indonesia to China. The terms of the Charter Party Agreement have been set out in the plaint. It is pointed out that as nickel ore is a very dangerous cargo which is subject to liquefaction process, the Charter Party Agreement contained nickel ore clause which inter alia provided for appointment of an independent registered local surveyors to check the cargo characteristics before and during the loading.

6 Various breaches allegedly committed by the third respondent have been set out in the plaint. A reference is made to the correspondence exchanged between the parties as well as their respective advocates. The averments which are material for

consideration of this Appeal are in clause (a) of paragraph 8 of the plaint which reads thus :-

“a. Without prejudice to the Plaintiff's rights to proceed in personam against Defendant No.3, the Plaintiff is entitled to proceed against Defendant No.1 in rem as security for the Plaintiff's maritime claim against Defendant No.3, on account of the aforesaid amounts outstanding, due and payable under the Charter Party by Defendant No.3 to the Plaintiff. The Plaintiff's claim concerns and/or relates amounts due and payable under a charter party contract, and is a recognized maritime claim. The Plaintiff further submits that Defendant No.3 may not have any other tangible assets. **The Plaintiff is therefore, entitled to proceed against Defendant No.1 Bunkers in rem as security for dues arising under the Charter Party, under the provisions of law, generally under the Admiralty jurisdiction of this Hon'ble Court. The Plaintiff has a maritime claim against Defendant No.1 Bunkers, on account of outstanding amounts due and payable by Defendant No.3 to the Plaintiff.** The Plaintiff is entitled to enforce, perfect and/or crystallize the same by proceeding against Defendant No.1 Bunkers and by arresting, sequestering, condemning and selling the Defendant No.1 Bunkers, as security for the Plaintiff's claim in arbitration.”

(emphasis added)

7 Therefore, a prayer was made for arrest of the first respondent bunkers on the board of the second respondent and its detention by warrant of arrest of this Court as a security for the appellant's claim against the third respondent in the arbitration commenced by the arbitration notice dated 1st August, 2012 and for interest / expenses, costs and poundage. A prayer was made for condemnation of the first respondent - bunkers and for sale thereof.

8 In the suit, a notice of motion was taken out by the appellant praying for arrest of the first respondent - bunkers on the board of the second respondent. On an application for grant of ex-parte relief made by the appellant, by order dated 22nd August, 2012 read with order dated 24th August, 2012, the learned Single Judge ordered arrest of the first respondent - bunkers on board. By order dated 30th August, 2012 the learned Single Judge vacated the order of arrest when the second respondent without prejudice to its rights and contentions agreed to deposit an amount in Indian currency equivalent to US\$ 2,48,000 with the Prothonotary and Senior Master. The second respondent took out Notice of Motion No.131 of 2014 for recall of the ex parte order dated 22nd August, 2012 and 24th August, 2012 and for directing the appellant to deposit in the Court or to furnish security in

the sum of US\$ 35,000 being the loss and damage suffered by the second respondent as a result of the order of arrest and such further amount calculated at the rate of US\$ 17,500 per day from 28th August 2012 (date of arrest) till the date of release of bunkers on board.

9 In support of the Notice of Motion, a contention was raised by the second respondent that this Court had no jurisdiction to order arrest of bunkers on board. The contention was that the arrest of bunkers on board independent of the vessel is not permissible in law. It was also contended that the first respondent - bunkers do not belong to the third respondent against whom the appellant has a claim. The learned Single Judge relied upon his decision in the case of *Peninsula Petroleum Limited Vs. Bunkers on Board the vessel, m.v. Geowave Commander and others* in Notice of Motion No.385 of 2014 in Admiralty Suit No.85 of 2013¹. It was held in the said decision that this Court does not have jurisdiction to arrest bunkers independent of vessel. Secondly, the learned Single Judge held that a suit to arrest a ship in action in rem for providing security for an award that may be made in arbitration proceedings is not maintainable. Therefore, by the impugned order, the learned Judge proceeded to reject the plaint by holding that the entire order of arrest of the first respondent - bunkers on board was wrongful.

1 2014 SCC Online Bom 1895

10 The learned Senior Counsel appearing for the appellant and the learned Senior Counsel appearing for the second respondent have made detailed submissions. The learned Senior Counsel appearing for the appellant submitted that Admiralty jurisdiction of this Court can be traced to its Letters Patent. He pointed out that under clause 32 of the Letters Patent of 1865 the then existing Admiralty jurisdiction of this Court was continued. He relied upon clause 53 of the Charter/Letters Patent of 1823 which according to him conferred the Admiralty jurisdiction on this Court (at that time, the Supreme Court of Judicature of Bombay). He submitted that under clause 53, the jurisdiction could be exercised against all ships, persons, things, goods and wares. Therefore, the said jurisdiction was not restricted to a vessel or ship. Thereafter, he referred to the provisions of the Admiralty Courts Acts of 1840 and 1861 as well as the Colonial Courts of Admiralty Act of 1890 and 1891. He submitted that there is no bar or embargo under any of the four statutes on passing an order in rem of arrest of bunkers on the board. Inviting our attention to the said Act of 1861 and in particular Section 18, he submitted that the Act makes a distinction between the expression ship and other property. His submission is that if common law Courts could exercise jurisdiction in respect of the property other than ships, there could be no impediment against an

Admiralty Court passing an order of arrest of bunkers on board. He submitted that Section 33 of the said Act of 1861 permits High Court of Admiralty to withhold release of any property under its arrest.

11 Thereafter, the learned Senior Counsel appearing for the appellant invited our attention to Rules 927 onwards of the Bombay High Court Original Side Rules, 1980 (for short “O.S. Rules”). He submitted that all the relevant Rules use the expression “any property”. He urged that Admiralty jurisdiction can be exercised over any property apart from ships. He relied upon a decision of the Court of Appeal in United Kingdom in the case of *The Heinrich Bjorn 1885*². He submitted that the view taken therein is that the Admiralty jurisdiction can be exercised not only against a ship but any property of the defendant. He invited our attention to the provisions of an enactment in South Africa and various articles on law in Norway. He has also taken us through a decision of the Apex Court in the case of *In Re m.v. Elisabeth*³. He relied upon subsequent decision of the Apex Court in the case of *M.V. Sea Success and another*⁴ which holds that the decision in the case of *m.v. Elisabeth* defines the jurisdiction of the Court but does not limit or restrict it. He submitted that the Apex Court has also held that the changing global scenario should be kept in mind having regard to the

2. 1885 Law Reports Probate Division Vol 10 page 44

3. 1993 (2) SCC 433

4. (2004) 9 SCC 512

fact that there does not exist any primary enactment in India on the Admiralty jurisdiction.

12 He submitted that the proposition that bunkers on board of a ship cannot be arrested without there being claim against the ship is not correct. He submitted that Letters Patent is a substantive law and not purely a procedural law. He also dealt with the contention that arrest of bunkers causes prejudice to innocent third parties.

13 He submitted that when Letters Patent gives jurisdiction to the Court to arrest any property of the offender under the Admiralty jurisdiction, the power cannot be excluded unless there is a specific enactment excluding that power.

14 He submitted that if the appellant would have failed to remove the bunkers, the Court could have vacated arrest due to failure of the appellant to comply with the orders of the Court and to compensate the applicant for the loss sustained. He submitted that the third respondent could have simply re-bunkered the sailed vessel. He submitted that at the port of Paradip, Indian Oil Corporation through tank trucks provides bunkers. He submitted that the third respondent could have easily mitigated the losses or delay by approaching the

Court for calling upon the appellant to discharge the bunkers from the vessel.

15 The learned Senior Counsel appearing for the second respondent submitted that when High Court exercises Admiralty jurisdiction it does not exercise civil or criminal jurisdiction. Admiralty jurisdiction is in connection with maritime claims and can be said to be exercising maritime jurisdiction as referred in the Letters Patent. He submitted that the claims which cannot be considered in Admiralty jurisdiction can be agitated by invoking other jurisdiction. He submitted that 1890 and 1891 Colonial Courts Admiralty Act and the Admiralty Courts Act, 1861 vested the Bombay High Court with the same jurisdiction as that of English High Court by declaring the said Court as a Colonial Court of Admiralty. He submitted that once a statute vests Admiralty jurisdiction in this Court, Letters Patent cannot expand the scope of that jurisdiction. He submitted that as held by the Apex Court in the case of *m.v.Elisabeth*, for the purposes of expanding the jurisdiction, subsequent enactments, international conventions, etc., can be looked into.

16 The learned Senior Counsel appearing for the second respondent would submit that what is required to be seen is whether

English High Court had jurisdiction to arrest bunkers on board of a ship when there was no maritime claim against the ship and when no cause of action was available against the owner of the ship. He submitted that the cause of action which is available to the appellant was in connection with a Charter Party Agreement entered into with the third respondent for another vessel. He relied upon a decision of the Court of Appeal in England in the case of *The Banco*⁵. He submitted that reliance placed by the appellant on the decision in the case of *Heinrich Bjorn* is misconceived as in the subsequent judgment in the case of *Beldis*⁶, the observation relied upon by the appellant is held as purely obiter.

17 The learned Senior Counsel appearing for the appellant by way of rejoinder submitted that Bombay High Court had jurisdiction because the first respondent - bunkers on Board of the second respondent which are the property of the third respondent were present within the territorial jurisdiction of this Court. He submitted that in the decision in the case of *m.v.Elisabeth*, the Apex Court recognized that the Admiralty jurisdiction of the Court was derived not only from the enactments but also Letters Patent as well as customs and practice which expressly recognise that any property of the defendant within the jurisdiction may be arrested. He submitted that what is held by British

5. (1971) Vol. 1 Lloyd's Law Reports 49

6. (1935) Vol. 53 Lloyd's Law Reports 255

Court in the case of Banco has no relevance as the Letters Patent of 1823 continue to be the source of this Court's Admiralty jurisdiction. He urged that the case of Beldis relied upon by the second respondent dealt with the law as applicable in 1936 and in this case we are dealing with the Letters Patent of 1823. He, therefore, urged that this Court in Admiralty jurisdiction has power to arrest bunkers on Board of a ship.

18 We have considered the submissions. Bunker is a name given to the fuel which operates ships. Bunker on board of a ship is fuel compartment in which ship's fuel is stored on board. Thus, if arrest of bunker on board is ordered, it virtually amounts to arrest of vessel inasmuch as the vessel cannot be removed from the port without debunkering and without refueling. In the impugned order, the learned Single judge has relied upon his own judgment in the case of *Peinsula Petroleum*. The issue which arises for consideration is noted by the learned Single Judge in paragraph 7 which reads thus :-

“7 The issue in this Notice of Motion which requires to be decided is whether bunkers on board a vessel can be arrested without any claim against the vessel and independent of the vessel. Naturally it is the Plaintiff's case that the Court should allow and it is the Defendants' case that the Court should not.

The Plaintiff's submission primarily was that this Court in exercise of its admiralty jurisdiction must adopt a liberal interpretation of the expression

property which can be arrested in exercise of its jurisdiction. The counsel also submitted that the Court must exercise its jurisdiction in equity and law, unless expressly curtailed or barred and as there is no express curtailment and/or bar on arrest of bunkers, this Court must exercise jurisdiction to arrest bunkers.”

(emphasis added)

19 In the said case before the learned Single Judge, the plaintiff relied upon Letters Patent, 1823 read with Letters Patent, 1865 and the Bombay High Court, (O.S.) Rules.

20 The learned Single Judge dealt with an argument that at many places Admiralty Rules in O.S. Rules refers to the word “property”. In paragraphs 11 and 12, the learned Single Judge held thus:-

“11 The Plaintiffs reliance on the High Court (O.S.) Rules, 1980 as vesting jurisdiction in this court to arrest bunkers is misconceived. The rules do not provide for arrest of bunkers. The rules do not provide for the manner in which the writ of summons or warrant of arrest is to be served in case of arrest of bunkers. Rule 946 on the contrary sets out the manner in which the warrant of arrest or writ of summons shall be served on the property against which the suit is brought. Rule 946 (2) deals with a situation where the property against which the suit is brought is ship or cargo on board. Rule 946 (3) refers to property against which the suit is brought is cargo which has been landed or transshipped. It also deals with a case where the cargo is in the custody of a person who will not permit access to it. Rule 946 (4) deals with a situation where the property against which the suit is brought is freight.

12 If bunkers were property against which the suit could be brought in rem, then the manner of service of writ of summons or warrant of arrest of bunkers would also have been specifically provided not like what the Plaintiff's counsel submitted that if no property other than a ship, cargo or freight could be arrested, the rules would have said so expressly. The rules indicate which are the only properties against which a suit in rem can be brought and bunker is not one of the property.”

(emphasis added)

21 In paragraph 14 of the said judgment, the learned Single Judge held that only place where bunkers could be arrested and stored is South Africa as there is a specific statute conferring jurisdiction of arresting bunkers. The learned Single Judge relied upon various paragraphs of the decision of the Apex Court in the case *m.v. Elisabeth and Ors.* He held that whilst freight and cargo are considered as maritime property, bunkers are not considered as maritime property. In paragraph 24, he observed that the arrest of bunkers effectively results in arrest of ship although there is no claim against the ship owner and therefore, ship owner, who is a third party, is seriously prejudiced. In paragraphs 26 to 28, the learned Single Judge held thus :-

“26 Discharge, storage and transportation of bunkers would require appropriate permissions, licences and approvals under the Petroleum Act, 1976 and the rules framed thereunder. The Plaintiff's counsel in fairness agreed that the Customs permission would be required and a special receiver of the bunkers would have to be appointed for storage pending sale. As these are

imported goods, customs permissions would also be required for discharge and storage under customs bond.

- 27 There are 13 major ports and over 50 active minor ports in India engaged in commercial shipping activity and many of these may not have facilities for discharge and storage of bunkers. Many of these do not have the facility to provide bunkers to ships and this would cause serious difficulty if bunkers are arrested and unloaded from a ship. Such ships would effectively become dead ships and cause serious threat to navigation in the port, apart from the difficulties the Master and crew on board the same may face in the absence of fuel to run the generators. If there is cargo on board, it would also be exposed to serious risks of damage and deterioration depending on the nature of the cargo. All these impediments also make it clear that an order of arrest of bunkers would face serious difficulties in enforcement in Ports in India.
- 28 On the Plaintiff's submission of equity and justice, the Plaintiff to seek such discretionary relief first has to establish that this Court has jurisdiction to arrest bunkers on board a ship in which the Plaintiff has failed. In my view, this Court does not have in rem jurisdiction to arrest bunkers independent of ship.”

For reasons which are set out hereafter, we respectfully agree with the view expressed by the learned Judge on the power of Admiralty Jurisdiction of this Court to pass an order of arrest of bunkers on the board of a ship.

22 Now, we turn to the landmark judgment of the Apex Court in the case of *m.v. Elisabeth*. The said decision arose out of a decision of Andhra Pradesh High Court. A vessel *m.v. Elisabeth* was lying in the

port of Marmagoa and on 8th February, 1984 the vessel left the port without issuing bill of lading or without any documents for the goods shipped as required by plaintiff – shipper. The goods were discharged and handed over to the consignee at the port of destination at the United Port Arab Emirates notwithstanding the direction of the plaintiff not to deliver the goods by reason of buyer's failure to pay the agreed price. The first defendant before the High Court was the vessel which was owned by the second defendant which was a foreign company in Greece. The suit was instituted in Andhra Pradesh High Court invoking Admiralty jurisdiction by means of proceedings in rem. In the said suit, the vessel was arrested when it entered the port of Vishakhapatnam on 13th April, 1984. On the owner of the vessel entering appearance and providing security in the form of a Bank Guarantee, the vessel was released from the arrest. The defendants in the said suit raised an issue of jurisdiction. The contention was as regards the lack of Admiralty jurisdiction in any High Court in India to proceed in rem against a vessel on the alleged cause of action arising from the carriage of goods from an Indian port to a Foreign port. In the said decision, the Apex Court considered the powers of Madras High Court of entertaining a suit in the Admiralty jurisdiction. In paragraph 13, the Apex Court held that the chartered High Courts in India are Colonial Courts of Admiralty under the Colonial Courts of Admiralty (India) Act of 1891 (for short

“the said Act of 1891”) exercising the same jurisdiction as was vested in the High Court of Admiralty in England under the Admiralty Court Act, 1861. In the said decision, the Apex Court did not agree with the view expressed by this Court in the case of *Kamalakar Mahadev Bhagat v. Scindia Steam Navigation Co. Ltd.*⁷.

23 It was observed that with a view to appreciate the extent of Admiralty jurisdiction, it is necessary to ascertain the scope and nature of jurisdiction of the High Court of Admiralty in England under the statute or otherwise in the year 1890. It was observed that by the Judicature Act of 1873, the High Court of Admiralty was merged with the High Court of Justice.

24 Thereafter, the Apex Court proceeded to consider the provisions of the Colonial Courts of Admiralty Act, 1890 and other enactments. In paragraphs 45 to 55 the Apex Court observed thus :-

“45. Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a right in personam to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment. A successful plaintiff in an action in rem has a right to recover damages against the property of the defendant. The liability of the shipowner is not limited to the value of the res primarily proceeded against ... An action though originally commenced in rem, becomes a personal action against a defendant

7. AIR 1961 Bom. 186

upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability'. (Roscoe's Admiralty Practice, 5th ed. p.29)

46. **The foundation of an action in rem, which is a peculiarity of the Anglo-American law, arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel.** A defendant in an admiralty action in personam is liable for the full amount of the plaintiff's established claim. Likewise, a defendant acknowledging service in an action in rem is liable to be saddled with full liability even when the amount of the judgment exceeds the value of the res or of the bail provided. **An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a 'sistership' i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.**

"The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner..." (Per Justice Story, *The United States v. The Big Malek Adhel*, etc., [43 US (2 How.) 210, 233 (1844)])

47. Merchant ships of different nationalities travel from port to port carrying goods or passengers. They incur liabilities in the course of their voyage and they subject themselves to the jurisdiction of foreign States when they enter the waters of those States. They are liable to be arrested for the enforcement of maritime claims, or seized in execution or satisfaction of judgments in legal actions arising out of collisions, salvage, loss of life or personal injury, loss of or damage to goods and the like. They are liable to be detained or confiscated by the authorities of foreign States for violating their customs regulations, safety measures, rules of the road, health regulations, and for other causes. The coastal State may exercise its criminal jurisdiction on board the vessel for

the purpose of arrest or investigation in connection with certain serious crimes. **In the course of an international voyage, a vessel thus subjects itself to the public and private laws of various countries. A ship travelling from port to port stays very briefly in any one port. A plaintiff seeking to enforce his maritime claim against a foreign ship has no effective remedy once it has sailed away and if the foreign owner has neither property nor residence within jurisdiction. The plaintiff may therefore detain the ship by obtaining an order of attachment whenever it is feared that the ship is likely to slip out of jurisdiction, thus leaving the plaintiff without any security.**

48. **A ship may be arrested (i) to acquire jurisdiction; or (ii) to obtain security for satisfaction of the claim when decreed; or (iii) in execution of a decree.** In the first two cases, the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendant in the event of it being found that the arrest was wrongful and was sought and obtained maliciously or in bad faith. The claimant is liable in damages for wrongful arrest. This practice of insisting upon security being furnished by the party seeking arrest of the ship is followed in the United States, Japan and other countries. The reason for the rule is that a wrongful arrest can cause irreparable loss and damages to the shipowner; and he should in that event be compensated by the arresting party. (See Arrest of Ships by Hill, Soehring, Hosoi and Helmer, 1985).
49. **The attachment by arrest is only provisional and its purpose is merely to detain the ship until the matter has been finally settled by a competent court. The attachment of the vessel brings it under the custody of the marshal or any other authorized officer.** Any interference with his custody is treated as a contempt of the court which has ordered the arrest. But the marshal's right under the attachment order is not one of possession, but only of custody. Although the custody of the vessel has passed from the defendant to the marshal, all the possessory rights which previously existed continue to exist, including all the remedies

which are based on possession. The warrant usually contains a monition to all persons interested to appear before the court on a particular day and show cause why the property should not be condemned and sold to satisfy the claim of the plaintiff.

50. The attachment being only a method of safeguarding the interest of the plaintiff by providing him with a security, it is not likely to be ordered if the defendant or his lawyer agrees to "accept service and to put in bail or to pay money into court in lieu of bail". (See Halsbury's Laws of England, 4th edn. Vol. 1, p. 375 etc.).
51. The service of the warrant is usually effected by affixing it on the main mast or single mast of the ship. A ship which has been arrested under an order of attachment may be released by the court if sufficient bail is put in to cover the claim of the plaintiff as well as the costs of the action. The sureties are liable for the amount entered in the bail bond.
52. If the ship or cargo under arrest before judgment has not been released by the defendant by putting in sufficient bail and if the property is found deteriorating, the court has the power to order the sale of the property after notice has been duly issued to the parties interested.
53. If the plaintiff has finally obtained a decree of condemnation and sale of the ship, the court will issue an order to the competent officer commanding him to sell the property, in execution of the decree, and to bring the proceeds into court. Thereupon the officer shall issue proper notice and arrange for the sale of the property by auction. The proceeds of the sale are paid into the registry of the court and shall be disposed of by the court according to law.
54. A personal action may be brought against the defendant if he is either present in the country or submits to jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.
55. **An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The**

ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is, however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world who might dispute the plaintiff's claim."

(emphasis added)

In paragraphs 77, the Apex Court considered the provisions of the Merchant Shipping Act, 1958. Paragraphs 77 to 81 read thus:

"77. The Merchant Shipping Act, 1958 contains various provisions to enforce territorial jurisdiction. The Act being essentially regulatory in character, the various authorities, tribunals and Courts entrusted with the administration and enforcement of its provisions are specifically stated. The High Court is defined under section 3(15) as follows :

"3(15). '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;
- (b) the vessel is for the time being; or
- (c) the cause of action wholly or in part arises;"
- (a) International Convention relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952 (IMC);
- (b) International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952 (IMC);
- (c) International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision, Brussels, 10 May 1952 (IMC); and
- (d) International Conventions for the Unification of Certain Rules of Law relating to Maritime Liens

and Mortgages Brussels, 10 April 1926, and the Revised Convention on Maritime Liens and Mortgages, Brussels, 29 May 1967 (IMC).

Accordingly, a foreign ship falls within the jurisdiction of the High Court where the vessel happens to be at the relevant time - i.e., at the time when the jurisdiction of the High Court is invoked, or, where the cause of action wholly or in part arises.

78. **The detention of a foreign ship is authorised in terms of sections 443 and 444. In view of their vital significance in the enforcement of maritime jurisdiction, we shall read these two sections in full.** Section 443 defines the character and scope of the power of detention:

"S.443. Power to detain foreign ship that has occasioned damage. - (1) Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly.

- (2) Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India or the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and

that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

- (3) In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceeding, be deemed to be the owner of the ship that has occasioned the damage."

(emphasis supplied)

The power of enforcement of an order of detention of a foreign ship is dealt with by Section 444.

"S.444. Power to enforce detention of ship. - (1) Where under this Act a ship is authorised or ordered to be detained, any commissioned officer of the Indian Navy or any port officer, pilot, harbour master, conservator of port or customs collector may detain the ship.

- (2) If any ship after detention, or after service on the master of any notice of, or order for, such detention proceeds to sea before she is released by competent authority, the master of the ship shall be guilty of an offence under this sub-section.
- (3) When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any person authorised under this Act to detain or survey the ship, the owner, master or agent of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea and shall also be guilty of an offence under this sub-section.
- (4) When any owner, or master or agent is convicted of an offence under sub-section (3), the convicting magistrate may inquire into and determine the amount payable on account of expenses by such owner, master or agent under that sub-section and may direct that the same shall be recovered from him in the manner provided for the recovery of fines."

These provisions relate to detention by reason of damage caused in any part of the world by a foreign ship to property belonging to the Government of India

or to an Indian citizen or company. The sections are wide in terms and the expression 'damage' is not necessarily confined to physical damage. Ordinarily damage is caused by physical contact of the ship, such as in collision. But damage can also be caused to property by breach of contract or acts of commission or omission on the part of the carrier or his agents or servants by reason of the negligent operation and management of the vessel, as, for example, when cargo is damaged by exposure to weather or by negligent stowage; or, by the misconduct of those in charge of the ship, like when cargo is disposed of contrary to the instructions of the owner or by reason of theft and other misdeeds. In all these cases, damage arises by reason of loss caused by what is done by the ship or by the breach, negligence or misdeeds of those in charge of the ship. It must however be noticed that the expression 'damage done by any ship' has been construed by the English Courts as not to apply to claims against the carrying ship for damage done to cargo. In *The Victoria* 1887 12 PD 105, the Court so construed section 7 of the Admiralty Court Act, 1861 (24 Victoriae c. 10). It has been held to apply only to physical damage done by a ship by reason of its coming into contact with something. See *The Vera Cruz*, [1884] 9 PD 96; *Currie v. M.Knight*, [1897] AC 97 and *The Jade*, [1976] 1 All. E.R. 920. In view of the specific provisions of the English statutes of 1920, 1925, 1956 and 1981, it was unnecessary for the English Courts to construe the expression broadly so as to include cargo claims and the like. The last two enactments contain an exhaustive list of maritime claims and questions in regard to which the High Court can exercise jurisdiction over any merchant ship by arresting it as it enters the waters of Britain. This power, as already noticed, is available, whatever be the nationality of the ship or its owner or the domicile or place of residence or business of the owner, or wherever the cause of action has arisen. About the words 'damage done by a ship' in section 7 of the Admiralty Court Act, 1861 and the decision in *The Victoria* [1887] 12 PD 105 to the effect that the section had no application to claims against the carrying ship for damage to cargo, the following observation significantly appears in

Halsbury's Laws of England, 4th ed. Vol. I (1), para 319 N. 12.

"...but this question is academic in the light of the fact that jurisdiction in respect of claims for damage to cargo carried in a ship is now expressly given by the Supreme Court Act 1981 s.20(2) (g)."

79. **In the absence of any statute in India comparable to the English statutes on admiralty jurisdiction, there is no reason why the words 'damage caused by a ship' appearing in section 443 of the Merchant Shipping Act, 1958 should be so narrowly construed as to limit them to physical damage and exclude any other damage arising by reason of the operation of the vessel in connection with the carriage of goods. The expression is wide enough to include all maritime questions or claims. If goods or other property are lost or damaged, whether by physical contact or otherwise, by reason of unauthorised acts or negligent conduct on the part of the shipowner or his agents or servants, wherever the cause of action has arisen, or wherever the ship is registered, or wherever the owner has his residence or domicile or place of business, such a ship, at the request of the person aggrieved, is liable to be detained when found within Indian jurisdiction by recourse to section 443 and 444 of the Merchant Shipping Act, 1958 read with the appropriate rules of practice and procedure of the High Court. These procedural provisions are but tools for enforcement of substantive rights which are rooted in general principles of law, apart from statutes, and for the enforcement of which a party aggrieved has right to invoke the inherent jurisdiction of a superior court.**
80. The Indian Carriage of Goods by Sea Act, 1925 applies to carriage of goods by sea under bills of lading or similar documents of title from a port in India to any other port whether in or outside India. (See Section 2). The Act imposes certain responsibilities and liabilities and confers certain rights and immunities upon the carrier (see Articles III & IV). In respect of a claim relating to an outward cargo, the cargo owner has a

right to bring a suit against a shipowner subject to the period of limitation specified under Act, namely, one year [Article III (6)]. The substantive rights recognised by the statute are of equal application to foreign merchant ships as they are to Indian merchant ships. The Carriage of Goods by Sea Act does not, however, contain any provision for the enforcement of the right by arresting the foreign vessel found in Indian waters. In the absence of arrest, no effective remedy against a foreign owner may be available to the cargo owner. The same is the position with regard to claims relating to cargo carried under a charterparty. It is, therefore, necessary that he should have recourse to the remedy available to him under the Merchant Shipping Act. That Act, as stated earlier, confers a right to arrest a vessel in respect of any damage caused by a ship. If that expression, in the absence of any other more appropriate statute, is understood sufficiently broadly as an enabling provision to effectively assume jurisdiction over a foreign ship for the enforcement of a substantive right recognised by law, there would be no difficulty in finding a remedy for the right the law has conferred on the cargo owner.

81. **The Merchant Shipping Act empowers the concerned High Court to arrest a ship in respect of a substantive right. A right conferred by the Indian Carriage of Goods by Sea Act, 1925 in respect of outward cargo is one of those rights which can be enforced by arrest and detention of the foreign ship in order to found jurisdiction over the vessel and its owners, just as it can be done in respect of inward cargo by reason of the substantive rights conferred by the Admiralty Court Act, 1861 read with the Colonial Courts of Admiralty Act, 1890, and other rules of law. The same principle must hold good for carriage under a charterparty. These and other laws, such as the law of contract, tort, crime, mortgage, marine insurance, customs, port operations, etc., and the Civil and Criminal Procedure Codes as well as the relevant rules of court regulating procedure and practice together constitute the body of substantive and procedural laws governing claims relating to inward and outward cargo, and such claims are enforceable against foreign ships by**

recourse to arrest and detention when found within jurisdiction. Viewed in this light, and by this reasoning, the Andhra Pradesh High Court, as a successor to the Madras High Court, does not lack admiralty jurisdiction in respect of claims relating to outward cargo.”

25 Further in paragraph 82 the Apex Court held thus :-

“82. The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action.”

In paragraph 83, the Apex Court has discussed the Brussels Convention of 1952 which has not been adopted by India. In paragraph 85, about the Brussels Convention, the Apex Court held thus:

“85. It is important to remember that the Brussels Convention on Arrest of Ships merely restricts or regulates the power of the coastal States and is not intended to confer power which they did not otherwise have as sovereign States. ‘Arrest’ to which the convention refers is detention of a ship to secure a maritime claim, and not seizure of a ship in execution or satisfaction of judgment.”

In paragraphs 86 to 92, the Apex Court concluded as under:

“86. The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.

87. In the words of Chief Justice Marshall :-

"The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power. The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself....".

(The Schooner Exchange v. M'Faddon & Ors. U.S. Supreme Court Reports, Cranch 5-9, p. 114, 133 (3 L.ed. 287).

88. Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. **Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.**

89. All persons and things within the waters of a State fall within its jurisdiction unless specifically curtailed or regulated by rules of international law. **The power to arrest a foreign vessel, while in the waters of a coastal State, in respect of a maritime claim, wherever arising, is a demonstrable manifestation and an essential attribute of territorial sovereignty. This power is recognised by several international conventions. These conventions contain the unified rules of law drawn from different legal**

systems. Although many of these conventions have yet to be ratified by India, they embody principles of law recognised by the generality of maritime States, and can therefore be regarded as part of our common law. The want of ratification of these conventions is apparently not because of any policy disagreement, as is clear from active and fruitful Indian participation in the formulation of rules adopted by the conventions, but perhaps because of other circumstances, such as lack of an adequate and specialised machinery for implementation of the various international conventions by coordinating for the purpose the concerned Departments of the Government. Such a specialised body of legal and technical experts can facilitate adoption of internationally unified rules by national legislation. It is appropriate that sufficient attention is paid to this aspect of the matter by the authorities concerned. Perhaps the Law Commission of India, endowed as it ought to be with sufficient authority, status and independence, as is the position in England, can render valuable help in this regard. Delay in the adoption of international conventions which are intended to facilitate trade hinders the economic growth of the nation.

90. The British statute assimilating Indian High Courts to the position of the English High Court in respect of admiralty jurisdiction is an enabling legislation and it is but one of the strands of jurisdiction vested in the High Court by virtue of the constitutional provisions. The jurisdiction of the High court is governed by the Constitution and the laws, and the continuance in force of the existing laws in not a fetter but an additional source of power. Access to court for redressal of grievance being an important right of every person, it is essential that the jurisdiction of the courts is construed harmoniously and consistently with its vital function in that respect, so that absence of legislation will not jeopardise that right.
91. Admiralty jurisdiction, despite the peculiarities of its origin and growth-rooted as it is in history and nurtured by the growing demands of international trade is nevertheless a part of the totality of jurisdiction vested in the High Court as a superior court of record, and it is not a distinct and separate jurisdiction as was once the

position in England before the unification of courts. The 1890 and 1891 Acts specifically conferred admiralty jurisdiction on the Indian High Courts by reason of their being courts of unlimited jurisdiction. These acts did not create any separate or distinct jurisdiction, but merely equated the Indian High Courts to the position of the England High Court (united and consolidated as that Court has been since 1875) for the exercise of admiralty powers within the jurisdiction of the former. The contrary view expressed in some of the decisions of the High Courts referred to earlier is clearly wrong.

92. **Once a foreign ship is arrested in Indian waters by an order of the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceeding must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the concerned High Court, as defined under the Merchant Shipping Act, 1958 [Section 3(15)] attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel.”**

(emphasis added)

26 The learned Senior Counsel appearing for the appellant relied upon the provisions of Section 2 of the Colonial Courts of Admiralty Act, 1890 as well as on the provisions of the said Act of 1891. The significance of the said Act of 1861 is that the Madras and Bombay High Courts were declared as Colonial Courts of Admiralty.

27 In paragraph 27 of the decision in the case of *m.v. Elisabeth*, the Apex Court observed that there is no reason why the jurisdiction of Indian High Courts should have been considered to have frozen on the date of the Colonial Courts of Admiralty Act, 1890 (for short “the Act of 1890”) came into force as far as the three High Courts in India are concerned.

28 The learned Senior Counsel appearing for the appellant relied upon Sub-Section (2) of Section 2 of the said Act of 1890 which provides that 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. Relying upon the said phraseology, he urged that the Admiralty jurisdiction is not confined to ships. He relied upon Rules 927 onwards of OS Rules and submitted that the use of the word property shows that the power to arrest in Admiralty jurisdiction is not confined to arresting ships. He also relied upon phraseology used in the Letters Patent of 1823. The use of the words property or places or matters or things is not conclusive. The use of the words has nothing to do with the action in rem taken under Admiralty jurisdiction. The reliance placed on Letters Patents of this Court from 1823 onwards, the Admiralty Courts Act, 1861 and Colonial Courts of Admiralty Acts of 1890 and 1891 will not help the Appellant as the contours of the

jurisdiction of the Chartered High Courts India are laid down by the Apex Court in the case of *m.v.Elisabeth*. Paragraphs 48, 55 and 82 of the said decision confine the Admiralty jurisdiction to arrest of ship. Moreover, paragraph 45 makes a reference to only cargo and ship.

29 We have already made an extensive reference to the law laid down by the Apex Court in the case of *m.v.Elisabeth* which continues to bind this Court. In paragraph 82, the Apex Court has unequivocally laid down that Admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of the ship. The Apex Court had an occasion to consider the provisions of the Admiralty Court of 1861 and the Colonial Courts of Admiralty Act, 1890 and the said Act of 1891.

30 Reliance was placed by the learned counsel appearing for the appellant on a decision of the Division Bench of this Court in the case of *m.v. Mariner IV, a Foreign Flag Vessel and another v. Videsh Sanchar Nigam Ltd.*⁸. The controversy before this Court was whether in exercise of Admiralty jurisdiction a sister ship of the offender ship can be arrested. Reliance is placed on paragraph 29 of the said decision which reads thus :-

“29. The aforesaid observations of the Apex Court in our opinion very clearly suggest that unless there is any prohibition by the municipal laws the principles of

8 1998(1) Mh.L.J.

trans-national law or international conventions could be applied for affording remedy for the satisfaction or realisation of maritime claim. It is clear that every person, thing and foreign vessel entering Indian waters comes within the jurisdiction of the High Court of coastal state by the very act of its entering the Indian territorial waters. In such a case if any one has any maritime claim against the owner of offending ship then not only the offending ship but also any other property or ship belonging to such a person within Indian territorial waters, can be attached or arrested by the High Court of the coastal state. Such a course is not only not prohibited by any municipal laws but in our opinion the provisions of Order XXXVIII and particularly Rule 5 thereof clearly shows acceptance of such principle by the municipal laws.”

The Division Bench has extensively considered the decision in the case of *m.v. Elisabeth*. Firstly the said decision of this Court does not deal with the issue of jurisdiction to arrest bunkers on board. Secondly, it holds that if anyone has any maritime claim against the owners of offending ship, at his instance, not only the offending ship but also any other property or ship can be attached or arrested. Perhaps the Division Bench relied upon the Brussels convention. In the facts of this case, the fourth respondent is the owner of the ship (second respondent) against whom the appellant has no maritime claim.

31 In paragraph 29, the Division Bench has observed that any other property or ship can be attached or arrested. Attachment referred to therein is in respect of any other property and the arrest referred to

therein is in respect of the ship and not in respect of any other property. Therefore, the said decision will not help the appellant in any manner.

32 Reliance placed by the appellant on the decision in the case of *Heinrich Bjorn* will not help the appellant. The reason is that in the subsequent decision of the Court of Appeal in the case of *Beldis*, it is held that the observations in the judgment in the case of *Heinrich* are erroneous. The relevant part of the decision in the case of *Beldis* records thus :-

“In many continental systems of law and procedure (e.g., in Germany, Sweden, Belgium, and to a certain extent in France) there is a right of arrest for founding jurisdiction and obtaining bail in respect of any ship or other property of a defendant although wholly unconnected with the cause of action sued on. But in England I have never heard of such an arrest and I do not believe any attempt has even been made here to exercise such a right in practice within the memory of any living practitioner in the Admiralty Court – until the plaintiffs in the present action made it. In my view there is no such right in English law to-day.

Mr. Miller for the respondents naturally relied strongly upon the expression of opinion in the Court of Appeal in the case of the *Heinrich Bjorn*, 10 P.D. 44, which appears in the judgment of the Court (composed of Brett, M.R., Bowen and Fry, L.JJ.) and delivered by Fry, L.J., at P. 54. The learned Lord Justice there says in regard to the procedure in rem : “The arrest need not be of the ship in question, but may be of any property of the defendant within the realm.” That observation was, however, purely obiter. Apart from an unfounded contention of a bottomry bond, which the

Court rejected, the only question of law relevant to the decision of the case was whether a maritime lien attaches in English law to a valid claim for necessaries. That was necessarily the sole issue in that case, since the ship for which the necessaries had been supplied had passed by sale from the ownership of the ship owner for whom he necessaries had been supplied to that of new owners who had nothing to do with the voyage when the necessaries were supplied. If there was a maritime lien the new owners took subject to the lien; if there was no maritime lien their ship was free and the plaintiff had no right to arrest it in their hands. **The opinion of the Court in the Heinrich Bjorn is entitled to great respect; but it is not binding on us, and in my view the dictum is erroneous.**"

(emphasis added)

33 The decision of the Court of Appeal in the case of *Banco* was rendered in 1971. The said decision considered the provisions of Administration of Justice Act, 1956 which incorporates Brussels convention. The Court of Appeal held thus :-

"The Courts of common law were, however, jealous of the jurisdiction of the old Court of Admiralty and issued prohibitions against it. They succeeded in cutting down its jurisdiction a great deal. So much so that its jurisdiction in rem to arrest goods became limited to a jurisdiction to arrest the offending ship itself. The right to arrest was conterminous with the maritime lien. Where there was a maritime lien, the right to arrest the ship existed. Where there was no maritime lien, there was no right to arrest the ship. A maritime lien, of course, existed only in respect of the offending ship. It lay for such claims as salvage, wages and collision damages. The claimant had a right to arrest the offending ship for his claim, whenever he could get hold of her. Even if she had been sold to an innocent purchaser for value, still he could arrest her for any claim in respect of which he had a maritime lien : see *The Bold Buccleugh*, (1851) 7 Moo. P.C. 267.

Later on, the right to arrest was extended beyond the extent of a maritime lien so as to cover necessities, see *The Heinrich Bjorn*, (1885) 10 P.D. 44. **But it only applied to arresting the ship itself for which the necessities were supplied. It did not apply to any other ship. Finally, in 1935, this Court held that the procedure in rem to arrest a ship only applies to the ship to which the cause of action relates. It does not apply to a ship or other property of the defendant unconnected with the cause of action : see *The Beldis*, [1936] p. 51; (1935) 53 Ll.L.Rep. 255.**

I ought to pause here to add a word so as to avoid confusion. If the defendant enters an appearance, the action in rem proceeds just as an action in personam. If judgment is entered against the defendant, it can be executed against any of his property within the jurisdiction, be it his other ships or any other goods. A writ of *fi. fa.*, or other writ of execution, can be issued against his property but only after judgment has been obtained: see *The Dictator*, [1892] P 304; *The Gemma*, [1899] P 285; *The Dupleix*, [1912] P 8. If no appearance is entered, however, the action remains, as it began, an action in rem only, operating only against the ship arrested. If judgment is entered in default of appearance, it can be enforced by sale of the ship, but not against the defendant personally, of. *Castrique v. Imrie and Tomlinson*, (1870) L.R. 4 H.L. 414 at p. 432.”

(emphasis added)

The Court noted the position of law as obtaining in 1936

which reads thus :-

“The history of actions in rem and the jurisdiction of the Admiralty Court with regard thereto, up to 1936, was exhaustively considered by Sir Boyd Merriman, P., in *The Beldis*, [1936] P 51; (1935) 53 Ll.L. Rep. 255. By that judgment it was made clear that it was only the allegedly offending vessel which could be made the “res” so as to give the Admiralty Court jurisdiction in

an action in rem where an action in rem where an action in rem was permissible. Jurisdiction in rem could not be created by the arrest or seizure of any other vessel, whether or not it was a sister vessel, nor of any other property. Admiralty procedure could not lawfully be used for the arrest or seizure of any property other than the allegedly offending vessel.”

After considering the provisions of the Act of 1956 and the Brussels Convention, the Court of Appeal held that the offending ship or any other ship of the same ownership can be arrested.

34 Therefore, the contention that even in England, Admiralty Court in exercise of Admiralty jurisdiction can order arrest of bunkers on board of vessel cannot be accepted at all. Therefore, in our view, the decision of the learned Single Judge in the case of *Pennisula Petroleum* is correct which holds that this Court in exercise of Admiralty jurisdiction has no power to arrest bunkers on the board of a ship. The view taken is consisted with the decision of the Apex Court in case of *m.v. Elisabeth*. After having gone through other decisions relied upon by the appellant, we find that none of them support the proposition to the contrary.

35 Accordingly, we see no merit in the Appeal and the same is dismissed.

36 Even if the second respondent makes an application for return of security in terms of the impugned order of the learned Single Judge, the same shall not be acted upon for a period of twelve weeks from today.

(SMT. ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)