

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 65 OF 2017

Mr. Joao Martin Fernandes,
Alias Martin Fernandes
43 years of age,
Son of Minguel M Fernandes,
Indian Citizen, r/o H.No.370, 4th Ward
Colva, Salcete, Goa.

... Appellant

Versus

1. The Union of India
Through the Ministry of Defense,
Raisina Hill,
New Delhi.
2. The Indian Coast Guard,
Through the Director General,
Ministry of Defense,
Government of India,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi 110001

.... Respondents

Mr. Nigel Da Costa Frias with Ms. M.Correia, Advocates for the
Petitioner.

Mr. Mahesh Amonkar, Standing Counsel for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 24 October 2018.

Oral Judgment (Per N.M.Jamdar, J) :

First Appeal was initially filed as Writ Petition which has now been converted into First Appeal by order dated 13 February 2017 passed by this Court.

2. By this First Appeal, the Appellant-Plaintiff has challenged the order passed by the learned District Judge, South Goa, Margao dated 13 January 2016 rejecting the Plaint filed by the Plaintiff.

3. The Appellant-Plaintiff is the owner of fishing trawler known as 'Sea Messiah'. According to the Appellant, on 24 April 2013 when the fishing trawler went for fishing activities from Cutbona Jetty at Velim, Goa, there were 29 fishermen on board. When the fishing trawler was at high seas in the early morning of 25 April 2013 the Coast Guard Vessel ICGS Vaibhav collided with the trawler of the Appellant. According to the Appellant, the trawler split into two parts and six crew members perished by drowning. The Appellant-Plaintiff filed Civil Suit No.30 of 2014 seeking compensation to the tune of Rs.3,69,07000/- with interest @12% p.a.

4. The Respondents-Defendants filed their Written Statement and contested the Suit. They also raised an issue of the jurisdiction stating that the incident occurred at high seas beyond the territorial jurisdiction of the Court. The learned District Judge framed a preliminary issue on jurisdiction. The learned District Judge, however, decided the issue of the jurisdiction on a point other than the one raised by the Respondents that the Civil Court did not have jurisdiction in view of the fact that jurisdiction in respect of Admiralty was vested in the High Court. The learned District Judge relied upon the decision in *Kamlakar Mahadev Bhagat Vs. Scindia Steam Navigation Co.Ltd., Bombay*¹.

5. We have heard Mr. Nigel Da Costa Frias, learned counsel for the Petitioner and Mr. Mahesh Amonkar, learned Standing Counsel for the Respondents.

6. The learned counsel for the Appellant submitted that the decision in *Kamlakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd., Bombay*, was rendered in the context of Bombay City Civil Courts Act and it has no relevance. The learned counsel also submitted that the Plaint should not have been rejected and if the learned Judge was of the opinion that the Civil Court had no

¹ AIR 1961 Bombay 186

jurisdiction, the plaint should have been returned.

7. Both, the learned counsel for the Appellant and the Respondents have pointed out to us the second proviso to Section 1 (2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which reads thus:

“1. (1) This Act may be called the Admiralty (Jurisdiction and Settlement of Maritime Claims), Act, 2017.

(2) It shall apply to every vessel, irrespective of the place of residence or domicile of the owner:

Provided that this Act shall not apply to an inland vessel defined in clause (a) of sub-section (1) of Section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of this Act:

Provided further that this Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.”

8. Therefore, the position as on today is that a claim involving vessel operated by the Central Government will be outside the purview of the Act, 2017.

9. That the incident involved a vessel operated by the Respondents – Indian Coast Guard i.e. Central Government is not in dispute, because that is also the case of the Appellant-Plaintiff. In view of the fact that the Vessel of the Central Government is involved, the suit cannot be tried under the Act of 2017 and consequently in this Court.

10. Section 9 of the Code of Civil Procedure is all comprehensive. The Civil Court, unless the jurisdiction is expressly and impliedly barred, can entertain all the suits. In these circumstances, the impugned order will have to be set aside and Civil Suit No.30/2014 will have to be restored to the file of the learned District Judge, South Goa, Margao. While passing the impugned order, the learned District Judge has not adverted to the issue of jurisdiction as taken by the Defendants, which we have not foreclosed by this order. The issue of jurisdiction as taken by the Respondents will be considered by the learned District Judge on its own merits, which will also require evidence.

11. Accordingly, the First Appeal is allowed and the judgment and order dated 13 January 2016 passed by the learned District Judge, South Goa, Margao, in Civil Suit No.30 of 2014 is quashed and set

aside, The Civil Suit no.30 of 2014 stands restored to the file of the learned District Judge, South Goa, Margao to be tried as above.

12. The parties will appear before the learned District Judge, South Goa, Margao, on 19 November 2018 at 10.00 a.m.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.