

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL SUIT NO.194 OF 2017

WITH

JUDGES' ORDER NO.24 OF 2017

IN

COMMERCIAL SUIT NO.194 OF 2017

Pacific Gulf Shipping (Singapore) Pte. Ltd., a)
company incorporated under foreign laws and)
having its office at 10 – Anson Road, # 16-06,)
International Plaza, Singapore – 079 903.)Plaintiff

Vs.

1) S.R.K. Chemicals Limited, a company)
incorporated under foreign laws and having its)
office at B.B.Z., S-60, Zanda Chowk, Gandhidham,)
Kutch.)

2) Cargo of 20,000 MTs of industrial salt laden/to)
be loaded on board the m.v. SHENG CHENG HAI)
at Kandla Port, Gujarat and within the Admiralty)
Jurisdiction of this Hon'ble Court)Defendants

Mr. Ashwin Shanker a/w. Mr. Bimal Rajasekhar for plaintiff.
Mr. Prathamesh Kamat a/w. Mr. Shiv Kumar Iyer, Ms. Aditi Maheshwari and
Ms. Tanvi Kulkarni i/b. Ganesh and Co. for defendant nos.1 and 2.

CORAM : K.R.SHRIRAM, J.

DATE : 8th FEBRUARY, 2018

P.C.:

1 By a judgment dated 1st September, 2017 in this suit, this Court was pleased to hold that Admiralty Court does not have jurisdiction to arrest defendant no.2 cargo.

2 By the said judgment, this Court was pleased to recall the order, passed on 10th February, 2017, of arrest of defendant no.2, viz.,

Cargo of 20,000 MT of salt and directed release of defendant no.2 to defendant no.1 its owners. While holding that a cargo cannot be arrested *de hors* the vessel, this Court was also pleased to frame an issue, which has modified by an order dated 5th January, 2018, and it reads as under :

“As this court has held that it did not have jurisdiction to arrest defendant no.2-cargo and the jurisdiction assumed by this court was on the basis of this arrest, whether the suit ought to be dismissed without reference to any other issue in the suit?”

3 Mr. Kamat, counsel for defendant nos.1 and 2 submitted, as this Court in its judgment of 1st September, 2017 has come to a conclusion that this Court did not have jurisdiction to arrest defendant no.2 cargo, there was nothing left in the suit and the suit has to be dismissed for want of jurisdiction as against defendant no.2. Mr. Kamat further submitted that thereafter only defendant no.1 will remain, who admittedly does not carry on business within the jurisdiction of this Court as the cause title itself shows the address of defendant no.1 to be “At Gandhidham, Kutch, Gujarat” and the suit has to be dismissed.

4 Mr. Kamat relied upon a judgment of this Court in *m.v. Geowave Commander*¹ and submitted that this Court in its judgment dated 1st September, 2017 while holding that this Court has no jurisdiction to arrest the cargo has relied upon *m.v. Geowave Commander* (Supra). Mr. Kamat also relied upon a judgment of this Court in *Siva Bulk Limited*

1. 2014 SCC Online Bom 1895

vs. m.v. Aodabao and Anr.² to submit that once an *ex-parte* order of arrest is recalled on the ground that this Court has no jurisdiction, then such action *in rem* terminates and the suit is liable to be dismissed. Mr. Kamat submitted that this is because arrest is a means of assuming jurisdiction and if the order assuming jurisdiction is vacated or recalled, then it means that the Court is of the view that there is no jurisdiction to arrest the cargo.

5 Mr. Kamat relied upon another judgment of this Court in **M/s. Greenwich Meridian Logistics (India) Pvt. Ltd. vs. M/s. Sapphire Kitchenware Pvt. Ltd.**³ to submit that as plaintiff's claim is not a maritime claim or as there is no maritime lien available, this suit in any event, cannot fall within the admiralty jurisdiction of this Court. Mr. Kamat also relied upon a judgment of this Court in **Global Integrated Bulkers Pte. Ltd. vs. Cargo of 14,072.337 Mts of Limestone**⁴ to submit that the admiralty jurisdiction of this Court cannot be invoked against cargo without a vessel being involved.

6 Mr. Shanker, counsel for plaintiff submitted that the order and the judgment dated 1st September, 2017 passed by His Lordship Hon'ble Mr. Justice S.C. Gupte has been carried in appeal and that appeal is still pending. Mr. Shanker further submitted that very important question of law arises and until that appeal is heard and disposed, this Court should not

2. Commercial Suit No.334 of 2016 pronounced on 18th July, 2017

3. Admiralty Suit No.31 of 2008 pronounced on 17th April, 2014

4. Judges' Order No.253 of 2017 in Commercial Admiralty Suit (lodging) No.665 of 2017 pronounced on 19th January, 2018

dismiss this suit.

It should be noted that there is no stay granted against hearing of this suit. In the order admitting the appeal, it is expressly stated “No *ad-interim relief*”.

7 Mr. Shanker submitted that the only ad-interim relief, he had pressed at the time of admission of the appeal, was not to release the security over the cargo but did not press for any stay of this suit.

In my view, that does not help Mr. Shanker because when the issue, as noted above, was framed, plaintiff knew that the next step in the suit was to consider whether the suit itself should be dismissed as the Court had come to a conclusion that it has no jurisdiction. Plaintiff should have, therefore, pressed for stay of the suit which plaintiff consciously did not. Therefore, this submission of Mr. Shanker does not help plaintiff in any way.

8 Mr. Shanker also submitted that when this Court delivered its judgment in *m.v. Aodabao* (Supra) there was no appeal pending. Certainly that cannot be a distinguishing factor. Mr. Shanker submitted that in the notice of motion in appeal there is a prayer that this suit should not be dismissed.

As noted above, plaintiff never pressed for ad-interim relief. Therefore, there is nothing coming in the way of this Court in deciding on

the issue framed as noted above.

9 Mr. Shanker submitted that in *m.v. Aodabao* (Supra) defendant was not from India whereas here defendant is within the admiralty jurisdiction of this Court. Mr. Shanker also submitted that part of the cause of action arose within the jurisdiction of this Court and, therefore, this Court will have jurisdiction. None of these can be of any assistance to plaintiff.

10 I have heard the counsel and also considered all the judgments sighted. The Learned Judge in the judgment dated 1st September, 2017 in this suit has expressly stated that this Court does not have jurisdiction. It will be useful to reproduce paragraphs 10, 14 and 16 of the said judgment which read as under :

10. It is thus beyond the pale of controversy that only that ship or cargo can be subjected to arrest, which is directly connected with the cause of action. An example would be a ship or cargo, for the salvage of which expenditure had to be incurred by the claimants, or a ship which was involved in the damage caused by the accident to the claimant's property. The only exception would be the case of a sister ship. Insofar as cargo is concerned, arrests have been permitted in the case of either salvage or unpaid freight. The case of unpaid freight, of course, is intimately connected with the arrest of a ship. If and to the extent a ship is liable to arrest for any maritime claim against the owner or demise charterer, as the case may be, so is the unpaid freight receivable by the owner or demise charterer of that ship from any cargo-owner. This freight can be attached by subjecting the cargo on board the offending ship to arrest. Originally, there existed a maritime lien for freight, which is "consequential upon", and absolutely dependent on, the existence of a maritime lien on the ship earning the freight⁵. This lien was liable to be terminated by payment of freight to the shipowner or demise charterer, as the case may be. Cargo is also susceptible to a maritime lien in respect of claims based on bottomry and respondentia and salvage. Other than for enforcement of these liens, there is no known case of arrest of cargo.

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14. In *M.V. Geowave Commander*¹⁰, a learned Single Judge of this Court considered whether this Court in exercise of its admiralty jurisdiction could arrest bunkers. The claim in the suit was against the bunkers on board with no claim against the vessel and independent of the vessel. The Court held that even if the bunker supplies are necessities and for a claim of necessities the vessel could be arrested, the same principle could not apply to the arrest of bunkers when there is no claim against the vessel and independent of the vessel. The Court went on to add that even the arrest of cargo or freight can only be upto the limited extent of the amount payable for the cargo or freight to the owner. The Court, in particular, observed as follows:

“In common law the freight is deemed earned only upon completion of voyage. Therefore, the owner of the cargo would pay for freight only when the cargo arrives at destination. In a situation where a person who has a claim against the owner of the ship brings an action in rem, he would also apply for and obtain the arrest of the cargo on board so that when the owner of the cargo comes to take delivery of the cargo, he would deposit the freight payable to the credit of the suit. Otherwise the owner of the ship would appropriate the freight. Similarly, if the freight is yet to be paid to the owner of the vessel against whom the claim is made, to that extent the freight could be arrested. Nothing more than that.”

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Learned Counsel for the Plaintiff relies on American, Australian and Canadian statutes, which permit arrest of cargo without reference to the arrest of the ship. Learned Counsel submits that under the principles of *M.V. Elisabeth* read with the subsequent case of *M.V. Sea Success I*, our Courts should recognize the remedies adopted by American, Australian and Canadian Maritime Law. The argument does not merit countenance. The principle of *M.V. Elisabeth*, which was reiterated by *M.V. Sea Success I*, for deriving powers of arrest from various International Conventions was that these conventions contain unified rules of law drawn from different legal systems and that although many of these conventions are yet to be ratified by India, they embody principles of law recognized by the generality of maritime states, and can therefore be regarded as part of our common law. It is one thing to adopt these principles recognized by the generality of maritime states as part of our common law, but quite another to actually incorporate statutory provisions of particular maritime nations as part of our law. These former conventions could be termed as International common law or transnational law rooted in and evolved out of the general principles of national laws, and in the absence of any specific statutory provisions in our municipal law, can be adopted and adapted by Indian Courts to supplement and complement our national statutes on the subject. These principles, as

held in M. V. Elisabeth, “aid the court in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping.” There is one more aspect, which we could bear in mind in this regard. The general observations in M.V. Elisabeth that the powers of the court are plenary and unlimited unless barred expressly or by necessary implications and absent such curtailment of jurisdiction, all remedies which are available to the court to administer justice are available to a claimant against a foreign ship found within the jurisdiction of the High Court concerned, do not suggest that our courts could order arrest of cargo hitherto unknown to our law. This is not a procedural matter, where our courts have to evolve their own procedure to meet with any contingency and whilst doing so, seek aid of any law or legal principle adopted by a foreign jurisdiction. Arrest of cargo in connection with a claim unconnected with it would be a matter of substantive law and not just a procedural issue. It is a matter pertaining to jurisdiction. It must be shown that the Admiralty Court does have such jurisdiction, either with reference to a statute or the authority of a decided case of our Court. As I have explained above, neither law nor authority supports such a proposition.

(emphasis supplied)

11 In paragraph 10, this Court has observed that a cargo could be arrested only if there is a maritime lien over the cargo in respect of claims based on bottomry and respondentia and salvage. The only other situation where the cargo could be arrested is where a freight is yet to be paid to the owner of the vessel against whom the claim is made on a cargo which is yet to be delivered. To that extent, the cargo could be arrested. This is because in a situation where a person, who has claim against the owner of the ship, brings an action *in rem*, he would also apply for and obtain arrest of the cargo on board so that when the owner of the cargo comes to take delivery of the cargo, he would deposit the freight payable to the credit of the suit. This was because in common law the freight is deemed earned only upon completion of voyage and therefore, the owner of the cargo would pay for

freight only when the cargo arrives at destination. While concluding, this Court has held that the Admiralty Court does not have jurisdiction to arrest the cargo *de hors* the vessel.

12 Infact since the Court has come to a conclusion that this Court does not have jurisdiction to arrest the cargo and the jurisdiction was assumed by this Court on the basis of arrest of the cargo, in my view, this suit ought to be dismissed so far as defendant no.2 is concerned without reference to any other issue. Therefore, the issue as framed and quoted in paragraph 2 above, is answered in the affirmative.

13 Now remains defendant no.1. Admittedly, defendant no.1 carries on business at Gandhidham, Kutch, Gujarat. In the plaint, there is not even an averment that defendant no.1 carries on business within the jurisdiction of this Court. Mr. Shanker submitted that paragraph 2 of the plaint has an averment that defendant no.1 carries on business within the jurisdiction of this Court. It is not correct. Paragraph 2 reads as under :

2. Defendant no.1 is a salt trading and export company, having its address as mentioned in the cause title above. Defendant no.2 is a cargo of 20000 Mts of industrial salt laden/to be laden on board the m.v. SHENG CHENG HAI currently at port and harbour Kandla (in the Adani Kandla Bulk Terminal/Tuna Tekra Terminal), within the Admiralty jurisdiction of this Hon'ble Court. Defendant no.2 belongs to Defendant no.1.

It only says defendant no.2 is within the admiralty jurisdiction of this Court. Nothing is stated about defendant no.1.

14 Moreover, paragraph 14, which is the jurisdiction clause in the
plaint, reads as under :

14. Defendant no.2 cargo is presently in Kandla Port, i.e., within this Hon'ble Court's admiralty jurisdiction. This Hon'ble Court, in exercise of its Admiralty and Vice Admiralty jurisdiction, is competent to receive, entertain and try the present suit.

Again so far as defendant no.1, it is silent. And it does appear, plaintiff has consciously omitted to say anything about defendant no.1 and jurisdiction.

15 The averment in the plaint is that this Court has jurisdiction because defendant no.2, which was in Kandla Port, was within this Court's admiralty jurisdiction. This Court having come to a conclusion that there is no jurisdiction against defendant no.2, the question of Court exercising jurisdiction over defendant no.1 does not arise.

16 In the circumstances, suit stands dismissed with cost in the sum of Rs.1 lakh. The amount to be paid by way of cheque drawn in favour of the Advocate on record for defendants within four weeks from today. Judge's order accordingly stands disposed.

17 Mr. Kamat states that prayer clause –(d) in the notice of motion (lodging) no.74 of 2017 was as under :

(d) That this Hon'ble Court be pleased to direct the Plaintiff to pay the Applicant a sum of Rs.1050/- per day (One Thousand and Fifty only) towards expenses incurred by the Applicant towards storage of 20,000 MT cargo as security and also additional costs incurred by the Applicant towards legal expenses.

Mr. Kamat states that the same was kept open to be argued at the hearing of the suit.

Liberty is given to defendant no.1, as owner of defendant no.2, to take out within three weeks a fresh notice of motion in terms of prayer clause – (d) of notice of motion (lodging) no.74 of 2017.

(K.R. SHRIRAM, J.)