

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
COMMERCIAL DIVISION
Original Side

Present:- Hon'ble Justice I. P. Mukerji
Hon'ble Justice Md. Nizamuddin

APO 160 of 2020
GA 01 of 2020
AS 05 of 2020

JINDAL ITF LIMITED AND ANR.
Vs.
I-MARINE INFRATECH (INDIA) PVT. LTD.

For the Appellants	:	Mr. Ratnanko Banerji, Sr. Adv. Ms. Sumita Shaw, Mr. Kapil Guha.
For the Respondent	:	Mr. Krishnaraj Thakkar, Mr. Anurag Bagaria, Adv.
For Kolkata Port Trust	:	Mr. Tilak Bose, Sr. Adv Mr. Somnath Bose, Mr. Ashok Kumar Jena.
Judgment on	:	29.01.2021.

I. P. MUKERJI, J.-

This appeal is by the owner of the vessel M. V. MAHESHWARI, the second defendant in the suit.

It is against a judgment and order dated 21st December, 2020 passed by a learned single judge of this court affirming the order of arrest of the vessel made earlier by her on 9th December, 2020. The appellant was given the option of providing security of Rs.1,88,00,000/- with the Registrar, High Court, Original Side through a bank guarantee issued by a Scheduled Commercial Bank to obtain release of the vessel.

At the admission stage of this appeal, on 23rd December, 2020 a division bench of this court reduced the security to Rs.1.5 crores to be furnished by way of a banker's cheque or a demand draft. This deposit has been duly made by the appellant and the vessel released to them for their use. The appellant is plying the vessel, we are told.

Now, at this point of time the appeal is being pursued by them with a particular purpose in mind. They seek to withdraw the security from the Registrar and continue to ply the vessel without any security. The respondent/plaintiff insists that the security should be maintained till the disposal of the suit.

Now, the facts have to be told in detail.

On 27th May, 2013 the vessel 'M.V. MAHESHWARI' was built at Old Goa by Dempo Shipbuilding & Engineering Pvt. Ltd., Old Goa. It is a cargo barge of 72 metres length, 14 metres breadth, 4.25 metres depth, gross tonnage of 1368 and registered tonnage of 579. It was stated to be built in 2012 and could travel at a speed of 9.5 knots. It was registered under Section 19F of the Inland Vessels Act, 1917. It was also registered under the Merchant Shipping Act, 1958.

The respondent plaintiff is also the owner of the TUG Ferrari. On 24th November, 2014 under a Charter Party agreement, it chartered this TUG for hire to the appellant for transportation of men and materials between Kolkata and sandheads, Kolkata and Kanika Sands, Paradeep and Kanika Sands and so on. According to the respondent plaintiff, this Charter Party was extended till 4th May, 2018. Allegedly the appellant pre-maturely terminated the agreement and on or about 9th September, 2017 redelivered the tug to the respondent plaintiff. The claim of the respondent plaintiff for Rs.2,13,41,345/- substantially arises out of alleged loss of earnings in vessel hire for premature termination of this agreement.

Mr. Ratnanko Banerji, learned senior counsel for the appellant argued that the suit was not maintainable at all in the admiralty jurisdiction of this court because the vessel in question was an inland plying vessel, that is to say, a vessel that does not go out into the sea. It is registered under the Inland Vessels Act, 1917. Although it is also registered under the Merchant Shipping Act, 1958, on 1st August, 2019 the appellant surrendered the vessel's river sea certificate to the government. So, it

became an inland vessel. The admiralty jurisdiction is not attracted he submitted. The respondent plaintiff was left to the remedy of filing an ordinary suit. No order of arrest of the vessel could have been made. Hence, no question of furnishing any security by the appellant owner.

He submitted that the claim was in the form of damages.

In our prima facie view, the claim as framed appears to be a maritime claim and the learned single judge has held so.

Mr. Thakkar, learned counsel for the respondent plaintiff submitted that under Section 2(1)(a) thereof, the said Act of 1917 did not apply to vessels which were registered under the Merchant Shipping Act, 1958. The vessel in question was registered under Section 34 of the Merchant Shipping Act, 1958. Hence, the vessel 'M.V.MAHESHWARI' was not covered under the definition of vessels which were excluded from the operation of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 as provided in the proviso to sub-section 2 of Section 1 read with Section 2(1)(l) thereof.

He remarked that the learned single judge had rightly come to the conclusion that this kind of a vessel was not so excluded. So the moment the vessel was registered under the Merchant Shipping Act, 1958, it ceased to be an inland vessel described by Section 2(1)(a) of the 1917 Act.

Now, what is the dispute between the parties? Section 1(2) proviso to the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 provides that it would not apply to an inland vessel as defined in Clause 'a' of sub-section 1 of Section 2 of the Inland Vessels Act, 1917. Section 2(1)(a) of the Inland Vessels Act, 1917 describes "inland vessel" as one which ordinarily plies in inland water but does not include a fishing vessel or a ship registered under the Merchant Shipping Act, 1958.

Thus, the admiralty jurisdiction of the court cannot be invoked in respect of the vessels which do not go out into the open sea and only ply in inland waters.

There is no dispute that the vessel M. V. MAHESHWARI is registered under the Inland Vessels Act, 1917. The Certificate of Registration at Page 224 of the paper book denotes that this vessel is registered as an inland vessel under Section 19F of the said Act of 1917.

The notification of the Director General of Shipping dated 31st July, 2013 stipulated that vessels were permitted to undergo both inland and sea journeys and in case of such intention by the owner, the vessel had to be registered under the Merchant Shipping Act, 1958 in addition to the Inland Vessels Act, 1917. Reference may be made to Paragraph 1.5 of the notification which is set out below:-

“1.5 Registration & Classification

1.5.1 River-sea vessels under this Notification are required to be registered under Merchant Shipping Act, 1958 (as amended).

1.5.2 Owners of vessels registered under Inland Vessels Act, 1917 (as amended), desiring to carry out river-sea operations as envisaged in para 1.3 above may, at their choice, register their vessels under M.S. Act expressly for the purpose of application of the Notification, while retaining their original registry under I.V. Act.

1.5.3 River-sea vessels are required to comply with the requirements of construction, stability, subdivision, machinery and electrical installations as prescribed in Annex IV of this Notification.”

Under the said notification it is possible to have vessels which ply both in the river and in the sea, which are described as river-sea vessels in Paragraph 1.3 of the notification. Paragraph 1.5 of this notification says that these vessels are required to be registered under the Merchant Shipping Act, 1958.

Under paragraphs 1.5.1 and 1.5.2 of the notification owners of vessels under the Inland Vessels Act, 1917 could also register themselves under the Merchant Shipping Act while retaining their inland registration.

Learned Counsel for the appellant submitted that since the River Sea certificate under the Merchant Shipping Act, 1958 was surrendered by his client, there was no question of their plying the vessel under the Merchant Shipping Act, 1958 into the open sea. Hence, they were for all purposes an inland vessel.

We cannot accept this submission.

In our interpretation of the law, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 applies to every vessel but does not apply to an inland vessel defined in Clause (a) of sub-section 1 of Section 2 of the Inland Vessels Act, 1917 if that vessel is exclusively meant for plying inland. This is because vessels which are registered under the Merchant Shipping Act, 1958 are excluded from the definition of inland vessel, under the 1917 Act.

The vessel in question is registered under the said Act of 1917 as also under the Merchant Shipping Act, 1958. Hence, the 2017 Act applies to it. Although on 1st August, 2019 the owner surrendered their certificate of River Sea Safety to the authority, it has retained its registration under the Merchant Shipping Act, 1958. As long as the appellant's vessel remained registered under the Merchant Shipping Act, 1958 the respondent plaintiff had the right to invoke the admiralty jurisdiction of this court, irrespective of the fact whether it had the certificate to ply in the sea.

It has been held by the learned single judge that the respondent plaintiff has a maritime claim.

Now, if a plaintiff has a maritime claim, it is entitled to arrest a vessel from which the claim arose or any other vessel of the owner in a proceeding in rem provided the vessel is under the admiralty jurisdiction of the court.

This is a very valuable right for the plaintiff because the owner can only obtain release of the vessel upon furnishing adequate security to the satisfaction of the court. In an ordinary suit, this remedy is not available. The ordinary plaintiff has to wait till he obtains the decree. Only then he can execute it against any property of the judgment debtor by attachment and sale of his property. Arrest of a vessel is special to in rem admiralty jurisdiction. The respondent/plaintiff has rightly invoked it.

The learned single judge has rightly not vacated the order of arrest and directed the appellant owner to furnish security which they have duly done and obtained release of the vessel.

We find no infirmity in the impugned judgment and order. We affirm the same.

Only in case the appellant obtains cancellation or suspension of the registration of the vessel under the Merchant Shipping Act, 1958 would it be entitled to apply before this court for vacation of the order of arrest, return of the security and for conversion of the suit into an ordinary suit.

The appeal is disposed of accordingly, confirming the earlier interim order of the division bench made on 23rd December, 2020.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(MD. NIZAMUDDIN, J.)

(I. P. MUKERJI, J.)