

## **M/s. Seawaves Shipping Services Vs M/s. Adriatic Tankers Shipping Co., S.A., Greece, Owners and 2 Others**

**Court:** Madras High Court

**Date of Decision:** Oct. 26, 1995

**Acts Referred:** Merchant Shipping Act, 1958 " Section 3(15), 443, 444

**Hon'ble Judges:** Srinivasan, J; S.S. Subramani, J

**Bench:** Division Bench

**Advocate:** Ashok Viswanath, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

Srinivasan, J.

This appeal is against an order dismissing an application filed by the appellant for granting an interim order of arrest and sale

of the tanker m. t. Nova Progress lying at the Port of Kandla, Gujarat State, including the equipments and fittings and fixtures and bunkers, and

keep her under arrest within the said territorial waters of India until further orders. The appellant has filed the suit C. S. No. 1534 of 1995 on the

Original Side of the High Court for recovery of a sum of US \$ 41,837.07 equivalent to Indian Rs. 13,80,623.31 approximately with interest at

18% per annum from defendants 1 and 2, who are respondents 1 and 2 herein and for arrest and sale of the Tanker m.t. Nova Progress at the

Port of Kandla, Gujarat State together with all equipments, etc. There is also a prayer for issue of notice to the Port Conservator at the Port of

Kandla not to allow the vessel to sail from the Port until further orders. It is seen from the cause title itself that the plaintiff is a body corporate

having the Head Office in Tehran, Iran. It is said to be represented by a Power of Attorney Agent by name E. Rajamani, who claims to reside in

Madras. The first defendant, described as owners of the ship, are having their office in Greece, while the second defendant, described as the

Managers, is a Company registered under the- laws of Netherlands, having its office there. The third defendant is the Master of the ship Nova

Progress. The following allegations are made in the plaint. The plaintiff company was appointed as agents of the first and second defendants as

early as on 25-3-1994 and in the course of acting as such agent, it has been discharging the duties of bringing in the ship, observing the formalities

of the Port and Customs and Charters, whenever necessary and arranging for the discharge/leading, calibrating, payment of all statutory dues, crew

welfare, supply of fresh water, laundry, medical and other needs, arranging for bunkers, repairs and such other services as the situation warranted

to protect the interest and welfare of the officers, crew, oil and vessel and the owners/Managers. In the process of acting as such Agents for the

various vessels/tankers owned and/or managed by defendants 1 and 2, the plaintiff has accumulated an outstanding of U.S. \$ 41,837.07 equivalent

to Indian Rupees 13,80,623,31 approximately. The plaintiff had performed its job to the fullest satisfaction of the defendants and the payment had

become overdue. The same has been admitted by the defendants without dispute. In spite of repeated demands, there is no positive response from

either the first defendant or the second defendant. The second defendant has acknowledged the outstanding and dues and has been repeatedly

guaranteeing payment of the same. The defendants have not taken concrete steps to clear the dues. The plaintiff has learnt that the defendants are

experiencing financial stress and strain and they would go in for winding up proceedings. It is also learnt that in another proceeding, another ship

belonging to the first defendant has been arrested by this Court under its Admiralty jurisdiction. The only tangible asset of defendants 1 and 2 is the

ship lying at the Port of Kandla, Gujarat State. The cause of action arose on 27th August, 1995 when the ship berthed at the Port of Kandla. It is

within the Admiralty jurisdiction of this Court. Hence, the plaintiff has prayed for the reliefs set out already.

2. Along with the plaint, the plaintiff has filed nine documents. A perusal of the documents shows that no part of the cause of action has arisen in

this country. The services said to have been rendered by the plaintiff to the ships of defendants 1 and 2 are mostly at Iran and no part of them has

been rendered in this country. In fact the plaintiff requested the 2nd defendant in its letter dated 2-9-1995 to settle the dues by a remittance to

Barclays Bank, London.

3. The plaintiff filed Application No. 5288 of 1994 for arrest of the ship. The same has been dismissed by a learned judge of this Court by order

dated 10-10-1995. The learned judge has pointed out in his order that the places where the services were rendered are not set out in the plaint

and it is not stated anywhere that the cause of action or any part thereof arose within the jurisdiction of this Court. The learned judge has also

observed that the fact that the vessel has berthed in Indian waters does not give jurisdiction to this Court to arrest the same under the Admiralty

jurisdiction. The learned judge has said:-

Counsel has not shown any statutory provision in support of his contention that this Court's admiralty jurisdiction extends to all of India's territorial

waters.

While dismissing the application, the learned judge has reserved liberty to the plaintiff to move the Court within whose territorial jurisdiction the ship

is now berthed and seek appropriate relief.

4-A. Aggrieved by the said order, the plaintiff has preferred this appeal. Learned counsel for the plaintiff has urged that Admiralty jurisdiction of

this Court is very wide and it extends over the entirety of territorial waters of this country. According to him, this Court can exercise its Admiralty

jurisdiction and direct the arrest of this ship in whichever Port in India it is berthed. It is submitted that the Courts in Bombay, Calcutta and Madras

have concurrent jurisdiction over the entirety of territorial waters of India while exercising Admiralty jurisdiction. However, learned counsel has

admitted that at the time of constitution of this High Court at Madras in 1861, the Admiralty jurisdiction was confined to the territories over which

the High Court could exercise its other jurisdiction and the same has been widened and enlarged by the provisions of the Colonial Courts of

Admiralty Act, 1890 followed by the Colonial Courts of Admiralty (India) Act 1891. According to learned counsel, the powers of this High Court

are the same as that of the High Court of England while exercising Admiralty jurisdiction and there is no provision of law confining or restricting it to

the State of Madras. Learned counsel has, in support of his contention, relied upon the ruling of the Supreme Court in *M.V. Elisabeth and Others*

*Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, .*

4. We are unable to accept the contentions of learned counsel for the appellant. The question which has arisen before us did not arise before the

Supreme Court in the case referred to above. The only contention before the Supreme Court was that no High Court in India was invested with

Admiralty jurisdiction to order the arrest of the vessel in respect of a cause of action relating to outward cargo because Section 6 of the Admiralty

Court Act, 1861 read with Colonial Courts Admiralty Act, 1890 conferring Admiralty jurisdiction on Indian Courts was confined to ""claims for

damage to cargo imported"". That contention was rejected by the Supreme Court in that case. While doing so, the Supreme Court has traced the

entire history of the Admiralty jurisdiction or the Indian High Courts. But, the Court had no occasion to expressly advert to the territorial limits of

such jurisdiction. There are, however, several passages in the judgment, which go to show that the Admiralty jurisdiction of a High Court has to be

exercised only with reference to the territorial jurisdiction of that Court in exercise of its appellate powers.

5. Before referring to the said passages in the judgment of the Supreme Court, we shall in brief advert to the law relating to the territorial limits of

the Admiralty Court in Madras from the inception. By the Royal Charter, dated 20-2-1798. Letters Patent were issued establishing Recorders"

Courts at Fort St. George, Madras and at Bombay. The Court at Madras was invested with jurisdiction similar to that of the King's Bench in

England within and throughout the Settlement of Fort St. George and the town of Madras and the limits thereof and the factories subordinate

thereto, and all territories which were and would be thereafter dependent on the Government of Madras. Regarding the Admiralty jurisdiction, the

clause read as follows:-

And it is Our further Will and Pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Court of the Recorder of Madras shall

be a Court of Admiralty, in and for Fort Saint George, and the said Town of Madras, and the Limits thereof, and the Factories subordinate

thereto, and all the Territories which now are, or hereafter may be subject to, or dependent upon the said Government.

The Proviso restricted the exercise of powers to such persons as were and would be amenable to the said Court of the Recorder in its ordinary

Jurisdiction.

6. The Charter of 1800 established a Supreme Court of Judicature at Fort St. George, Madras and declared it to be a Court of Record. The

jurisdiction was throughout the Settlement of Fort St. George and the Town of Madras and the limits thereof and the Factories subordinate thereto

and all Territories which were then and thereafter may be subject to or dependent on the Government of Madras with the same authority as the

King's Bench in England. The said Court was a Court of Admiralty in and for the same territories for which the Court of Recorder was the

Admiralty Court. There was a similar Proviso as found in the earlier Charter restricting the jurisdiction to persons who were and would be

amenable to the ordinary jurisdiction. By Letters Patent dated 21-1-1808, the Chief Justice of Madras was appointed to be the Commissary in

Vice-Admiralty Court of Madras. One of the powers conferred was to arrest all ships etc. whosoever they shall be met with or found within

Madras and the Territories thereof.

7. The Letters Patent constituting the High Court of Judicature for the Presidency of Madras was issued on 26-6-1862. Clauses 31 and 32 dealing

with Admiralty and Vice-Admiralty Jurisdiction read as follows:-

31. And We do further ordain mat the said High Court of Judicature at Madras shall have and exercise all such Civil and Maritime jurisdiction as

may now be exercised by the said Supreme Court as a Court of Admiralty, or by any Judge of the said Court as Commissary to the Vice-

Admiralty Court, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as is now

vested in any Commissioner or Commissioners appointed by Us or Our predecessors, under the powers given by an Act passed in the Session of

Parliament held in the Thirty-ninth and Fortieth Years of the reign of His late Majesty King George the Third, ""for establishing further regulations

for the government of the British territories of India, and the better administration of Justice within the same.

32. And We do further ordain that the said High Court of Judicature at Madras shall have and exercise all such Criminal jurisdiction as may now

be exercised by the said Supreme Court as a Court of Admiralty, or by such Commissary to the Vice-Admiralty Court, or by any such

Commissioner or Commissioners as aforesaid. It is seen that the jurisdiction was the same as that of the Supreme Court which functioned earlier.

8. The provisions in the next Letters Patent dated 28-12-1865 were similar as found in Clauses 32 and 33 in the following terms:-

32. And We do further ordain that the said High Court of Judicature at Madras shall have and exercise all such Civil and Maritime jurisdiction as

may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and

adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

33. And We do further ordain that the said High Court of Judicature at Madras shall have and exercise all such Criminal jurisdiction as may now

be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connection with maritime matters, or matters of

prize.

9. Thereafter the Colonial Courts of Admiralty Act 1890 was passed. Section 2 is in the following terms in so far as it is relevant: (1) Every Court

of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such

declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act

mentioned, any may for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other civil jurisdiction and

such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British

possession the Governor is the sole judicial authority the expression ""Court of Law"" for the purposes of this section includes such Governor. (2)

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, as

the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise and the Colonial Court of Admiralty

may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to

international law and the comity of nations. (3) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is

contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression

Colonial Court of Admiralty"" were therein, substituted for ""Vice- Admiralty Court"" or for other expressions respectively referring to such Vice-

Admiralty Courts or the Judge thereof, and the Colonial Court of Admiralty shall have jurisdiction accordingly: Provided as follows:(a) any

enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England when applied to Colonial Court

of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales: and (b) A

Colonial Court of Admiralty shall have under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873, and any enactment relating to prize

or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High

Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorized, shall not by virtue of this Act exercise any

jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; and (c) A Colonial Court or Admiralty shall not have jurisdiction

under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and (d) A Colonial Court

of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea or under any Act

providing for the discipline of Her Majesty's Navy than may be from time to time conferred on such Court by Order in Council Section 15 defined

the expression ""unlimited civil Jurisdiction"" as civil jurisdiction unlimited as to the value of the subject-matter at issue or as to the amount that may

be claimed or recovered. Section 17 abolished Vice-Admiralty Courts is any British Possession.

10. Section 3 reads as follows:-

The legislature of a British possession may by any Colonial Law: (a) declare any Court of unlimited civil jurisdiction, whether original or appellate,

in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under this Act, and limit

territorially, or otherwise, the extent of such jurisdiction; and (b) confer upon any inferior or subordinate Court in that possession such partial or

limited Admiralty jurisdiction under such regulations and with such appeal, (if any) as may seem fit Provided that any such Colonial law shall not

confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

11. The Act did not alter in any manner the territorial jurisdiction of the Admiralty Courts in India. By Act XVI of 1891, the High Court of Madras

was declared to be a Court of Admiralty along with High Courts of Bombay and Fort William in Bengal. There was no subsequent legislation

either by the British Parliament or by Indian Legislature enhancing the territorial limits of the High Courts at Madras, Bombay and Calcutta in their

Admiralty Jurisdiction. With reference to the subjects and causes, the scope of the jurisdiction has been as wide as that of the High Court of

England. But with reference to territorial limits it can by no stretch of imagination be said that all the three High Courts had and have concurrent

jurisdiction over the entirety of Indian Territorial waters. If that contention is accepted it will lead to uncertainty and conflict of decisions. With

reference to the same incident, one suit may be filed in Bombay and another suit in Madras. Law in a civilized country has to necessarily prescribe

a definite forum. Otherwise, questions relating to Forum non Convenience will often arise and transfer of proceedings from one High Court to

another will be sought.

12. In *Continental Grain Co. v. Barge FBL-585* (364 U.S. 19), the question presented for decision by the Supreme Court of United States was

whether a District Court sitting as a Court of Admiralty in New Orleans could transfer an action to the District Court in Memphis, Tennessee,

when the action contained both a libel in rem and a libel in personam. A majority of seven Justices upheld the order of transfer made by the District

Court and confirmed by the Court of Appeals. Two judges dissented opining that the transfer of the "in rem libel" was not permissible because

such action could not have been brought in the transferee Court at Memphis at the time of the filing of the action since the barge at that time was at

New Orleans. Justice Black speaking for the majority referred to the fiction that a vessel may be assumed to be a person for the purpose of filing a

law suit and enforcing a judgment. This fiction, he said, was to enable a client to bring an action in any port where the vessel might be found

although the owner was not amenable to process. In so far as that aspect is concerned, Justice Whit-taker who wrote the dissenting opinion stated

the same principle and pointed out that the action could not have been brought in Memphis as the vessel was at New Orleans, at that time, thus it is

a settled principle in Admiralty law that the vessel must be within the jurisdiction of the Court for being proceeded against.

13. The very same principle was stated by the Rangoon High Court in ""The Owners of the Steamship ""HEIWA MARU"" v. Bird & Co. (AIR

1923 Rangoon 163) in the following words :-

It seems clear therefore that a claim for necessities can be enforced in a Colonial Court of Admiralty by a suit in rem, and such a suit can

presumably be instituted in any Admiralty Court within whose jurisdiction the ship happens to be at the time when the suit is instituted, so that if

respondents suit is a suit in rem, there would seem to be no doubt about the jurisdiction of this Court which undoubtedly has Admiralty

jurisdiction.

14. Now we shall refer in detail to the judgment of the Supreme Court in M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt.

Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, . The relevant facts are:- M.V. Elisabeth is a vessel of foreign company carrying on

business in Greece who had an agent at Goa. The vessel, its owner and the agent are the three defendants in the action. The plaintiff is a private

limited company having registered office in Goa. According to the plaintiff the defendants acted in breach of duty by the vessel leaving the port of

Marmagao on 8-2-1984 and delivering the goods to the consignee in United Arab Emirates in spite of the plaintiffs instructions to the contrary. The

suit was instituted in Andhra Pradesh High Court in rem and the vessel was arrested when it entered the port of Vishakapatnam. The defendants

raised a preliminary objection as to the jurisdiction of the Court on the ground that a foreign ship owned by a foreign company not having a place

of residence or business in India was not liable to be proceeded against on the admiralty side in respect of a cause of action arising from carriage of

goods from a port in India to a foreign port. It was not the contention of the defendants that the alleged cause of action not having arisen in Andhra

Pradesh, the suit ought not to have been filed in that State. The only contention was that jurisdiction could be exercised only in respect of cause of

action arising from carriage of cargo to Indian Port and not carriage of cargo from Indian port to foreign port.

15. That contention was overruled by the High Court and the aggrieved defendants approached the Supreme Court. While affirming the judgment

of the High Court, the Supreme Court traced the history of Admiralty Jurisdiction and pointed out the wide scope thereof. For the purpose of this

case, the following passages are relevant:-

(Para 20)

The Colonial Courts of Admiralty were, in relation to their respective territories, invested with the same jurisdiction, ""over places, persons, matters

and things"" as in the case of the English High Court in respect of England and Wales.

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(Para 56):

An action in rem 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 admit to the jurisdiction of the Court, thereby making himself liable to the proceedings

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.

(Underlining/italics ours)

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(Para 66):

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the

applicable provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited

unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the courts to

administer justice are available to a claimant against a foreign ship and its owner and within the jurisdiction of the concerned High Court,

(underlining/italics, ours)

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(Para 78): 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 S. 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.

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,

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(Para 79):

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, xxxxx xxxxx xxxxx

(Para 80) :

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 unauthorized acts or negligent conduct on the part of the ship-owners 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 Ss. 443 and 444 of the

Merchant Shipping Act, 1958 read with the appropriate rules of practice and procedure of the High Court, xxxxx xxxxx xxxxx (Para 82): The

Merchant Shipping Act empowers the concerned High Court to arrest a ship in respect of a substantive right, (underlining/italics, ours) (Para 83):

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, (underlining/italics, ours) xxxxx xxxxx xxxxx (Para 89): 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, xxxxx xxxxx xxxxx (Para 90): 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, xxxxx xxxxx xxxxx (Para 93) :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, (*underlining /italics, ours*) xxxxx xxxxx xxxxx

(Para 94) : All foreign ships entering Indian waters are presumed to know that they fall within the jurisdiction of this country during their stay here.

The vessel in question was lying in the Port of Vishakapatnam when she was arrested in respect of a cause of action relating to cargo. The sole

contention of the defendants as regards jurisdiction was that no High Court in India was invested with admiralty jurisdiction to order the arrest of

the vessel in respect of a cause of action relating to outward cargo because S. 6 of the Admiralty Court Act, 1861 (read with the Colonial Courts

of Admiralty Act, 1890) conferring Admiralty jurisdiction on Indian High Courts confined it to "claims for damage to cargo imported. This

contention, for the reasons we have stated, has no merits. The High Court, in our view, rightly assumed jurisdiction by the arrest of the vessel while

it was lying in the port of Vishakapatnam. xxxxx xxxxx xxxxx (Para 101): Since the jurisdiction to entertain a suit on tort or contract in relation to

cargo going out of the country in a ship is found to exist under 1890 Act the High Court of Andhra Pradesh was competent to direct arrest of the

foreign ship when it appeared in Indian waters.

16. It will be seen from the above passages that the Supreme Court has used the expression "concerned High Court" in more than one place. That

shows mat the Supreme Court proceeded on the principle that each High Court exercises jurisdiction exclusively over a particular territory. In that

case, the vessel was within the territorial jurisdiction of Andhra Pradesh High Court and, therefore, the question which is now before us did not

arise. The plaintiff in that case was an Indian Company and part of the cause of action arose in this country. In the present case, the plaintiff is a

foreign company and no part of the cause of action is stated to. The definition of "High Court" found in Section 3(15) of the Merchant Shipping

Act lends support to our view. We have no hesitation in rejecting the prayer of the appellant for arrest of the ship pending the disposal of the suit.

In our opinion, the view expressed by the learned judge is correct and there is no merit in the appeal. In fine, the appeal suffers a dismissal.