
(2010) 06 KL CK 0039

High Court Of Kerala

Case No: Writ Petition (C) No. 10441 of 2010

Fithaly Fernando

APPELLANT

Vs

Principal Officer and
Shipping Master

RESPONDENT

Date of Decision: June 10, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Merchant Shipping Act, 1958 - Section 145, 2, 443

Citation: (2010) 3 KLT 741

Hon'ble Judges: S. Siri Jagan, J

Bench: Single Bench

Advocate: T.R. Aswas, for the Appellant; E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas, P. Gopinath, Thushara James and T.Y. Laliza, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

The petitioner is the Chief Engineer of a ship by name "MV Kinship Prosperity" owned by the 4th respondent. The ship bears the Indian flag. He has certain disputes regarding arrears of wages allegedly due to him from the 4th respondent. He has filed this Writ Petition under Article 226 of the Constitution of India invoking the admiralty jurisdiction of this Court for arrest and detention of the said ship for securing the petitioner's claim, if ultimately, the same is allowed by the competent authority. The petitioner therefore seeks the following reliefs:

- i) Arrest and detain the vessel "MV Kinship Prosperity" owned by the 4th respondent, more particularly described and scheduled separately to secure the claim of the petitioner, and forthwith communicate the same to the Harbour Master, Bombay Port/Conservator of Port in Bombay, to secure the claim of the petitioner raised in Exts. P15 to 17;

ii) issue a mandamus to respondents 1 to 3 to consider the matter of the claims raised by the petitioner under Exts. P15 to P17.

2. The 4th respondent fiercely opposes the Writ Petition controverting the contentions of the petitioner including the claim of the petitioner for wages itself. But, as far as this Court is concerned, this Court is only expected to decide the question as to whether this Court has jurisdiction to direct arrest and detention of the ship for securing the claim of the petitioner. The 4th respondent would contend that the admiralty jurisdiction of the High Court does not extend to Indian vessels in the matter of arrest and detention. That is why that jurisdiction has been specifically conferred by statute as contained in Section 443 of the Merchant Shipping Act, which also is confined to a foreign ship and not an Indian ship. I am not detailing the other contentions of the 4th respondent in this judgment insofar as according to me, that does not arise for consideration in the context of the jurisdiction of this Court in this Writ Petition.

3. Counsel for the petitioner would try to controvert the contentions of the 4th respondent regarding jurisdiction with the help of the decision of the Supreme Court in [M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa](#). According to him, the Supreme Court has, in that decision, held that the various international conventions regarding admiralty jurisdiction have been adopted by India. He would contend that the Brussels Conventions, which have been quoted in that decision, refer to only "a ship" and not a foreign ship alone in the matter of admiralty jurisdiction for arrest and detention of a ship. He would therefore submit that this Court has certainly jurisdiction to invoke its admiralty jurisdiction for the purpose of arrest and detention of an Indian vessel as well as for securing a seaman's wages, which also has been accepted as maritime claim by the Brussels conventions, which have been adopted by India.

4. I have considered the rival contentions in detail.

5. As I have already stated, the issue involved in this case is in a narrow compass to the extent of deciding whether this Court can invoke its admiralty jurisdiction to arrest and detain an Indian vessel for securing a seaman's wages.

6. The 4th respondent does not dispute the fact that the petitioner is an employee in the ship concerned. Of course, the 4th respondent vehemently disputes that any arrears of wages are due to the petitioner, for various reasons to which I am not going into insofar as that is not a matter which arises for consideration in this case. The petitioner submits that he has already invoked the jurisdiction of the Magistrate u/s 145 of the Merchant Shipping Act for recovery of arrears of wages from the 4th respondent. Now on the question of jurisdiction, on a reading of M.V. Elisabeth's case (supra), I am satisfied that the admiralty jurisdiction of the High Court for arrest and detention of a ship is confined to a foreign ship, which has been abundantly made clear in that decision. Paras. 80 to 82 of that decision are relevant for this purpose, which read as follows:

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 and 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 the Act, namely, one year (Article III(6)). The substantive rights recognized 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 High Court concerned 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. There 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.

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 High Court concerned, 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 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.

Therefore, I am satisfied that this Court cannot invoke its admiralty jurisdiction for the purpose of arrest and detention of the above said vessel for the purpose of securing the claim of the petitioner for seaman's wages. For that reason this Writ Petition is liable to be dismissed. "

7. However, the learned Counsel for the petitioner raises an apprehension that insofar as the Merchant Shipping Act does not confer any power on the Magistrate exercising jurisdiction u/s 145 of the Merchant Shipping Act to attach a vessel or to direct the 4th respondent to furnish security for the claim of the petitioner, he may be left with no remedy, if, before the claim can be finally adjudicated by the Magistrate, the 4th respondent sells off the Ship. In this connection, I note Section 445 of the Merchant Shipping Act, which reads as follows:

445. Levy of wages, etc., by distress of movable property or ship.-- (1) When an order under this Act for the payment of any wages or other sums of money is made by a Court or Judicial Magistrate of the first class or Metropolitan Magistrate or other officer or authority, and the money is not paid at the time or in the manner directed, the sum mentioned in the order with such further sum as may be thereby awarded for costs, may be levied by distress and sale of the movable property of the person directed to pay the same under a warrant to be issued for that purpose by such a Magistrate.

(2) Where any Court or Judicial Magistrate of the first class or Metropolitan Magistrate or other officer or authority has power under this Act, to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then if the person so directed to pay the same is the master, owner or agent of a ship and the same is not paid at the time or in the manner directed by the order of the Court or Judicial Magistrate of the first class or Metropolitan Magistrate or officer or authority may, in addition to any other power it or he may have for the purpose of compelling payment by warrant, direct the amount remaining unpaid to be levied by distress and sale of the ship and her equipment.

Section 445(2) authorizes the Magistrate to resort to distress and sale of the ship and her equipment for the purpose of recovery of amounts remaining unpaid as per the decision of the Magistrate, I am of opinion that, that power presupposes the power of the Magistrate to require the respondent in the case to secure probable amounts that may be assessed as due by the Magistrate to the claimant. That would include attachment of the ship also in the same way as power is conferred on a Civil Court for attachment before judgment.

With the above clarification, the Writ Petition is dismissed.