

DETAINING VESSEL UNDER MERCHANT SHIPPING ACT

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.
- b. the port of registry of the vessel is situate;
- c. the vessel is for the time being; or
- d. 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.

The detention of a foreign ship is authorised in terms of Ss. 443 and 444. In view of their vital significance in the enforcement of maritime jurisdiction, we shall read these two sections in full. Section 443 defines the character and scope of the power of detention:

"S.443. Power to detain foreign ship that has occasioned damage-

(1) Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian Ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly.

(2) Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India or the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceedings be deemed to be the owner of the ship that has occasioned the damage."

The power of enforcement of an order of detention of a foreign ship is dealt with by S.444.

"S.444. Power to enforce detention of ship.

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2. Where under this Act a ship is authorised or ordered to be detained, any commissioned officer of the Indian Navy or any port officer, pilot, harbour master, conservation of port or customs collector may detain the ship.

3. If any ship after detention, or after service on the master of any notice of, or order for, such detention proceeds to sea before she is released by competent authority, the master of the ship shall be guilty of an offence under this sub-section.

4. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any person authorised under this Act to detain or survey the ship, the owner, master or agent of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea and shall also be guilty of an offence under this sub-section.

5. When any owner, or master or agent is convicted of an offence under sub-section (3), the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner, master or agent under that sub-section and may direct that the same shall be recovered from him in the manner provided for the recovery of fines."

These provisions relate to detention by reason of damage caused in any part of the world by a foreign ship to property belonging to the Government of India or to an Indian citizen or company. The sections are wide in terms and the expression "damage" is not necessarily confined to physical damage. Ordinarily damage is caused by physical damage. 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. In all these cases, damage arises by reason of loss caused by what is done by the ship or by the breach, negligence or misdeeds of those in charge of the ship. It must however be noticed that the expression "damage done by any ship" has been construed by the English Courts as not to apply to claims against the carrying ship for damage done to cargo. It has been held to apply only to physical damage done by a ship by reason of its coming into contact with something. See *The Vera Cruz*, (1884) 9 PD 96; *Currie -v- M. Knight*, (1897) AC 97 and *the Jade*, (1976) 1 All ER 920.

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. The Act imposes certain responsibilities and liabilities and confers certain rights and immunities upon the carrier (Arts. III & IV). In respect of a claim relating to an outward cargo, the cargo owner has a right to bring a suit against a ship owner subject to the period of limitation specified under the Act, namely one year (Art.III (6)). The substantial rights recognised 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 charter party. 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.

The Merchant Shipping Act empowers the concerned High Court 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 ascertain jurisdiction over the vessel and its owners, just as it can be done in respect of inward cargo by reason of substantive rights conferred by the Admiralty Act (2017) and other rules of law. The same principle must hold good for carriage under a charter party. These 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 located within the courts 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.

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. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered his appearance and furnished security to the satisfaction of the High Court for the release of his ship, the proceedings than continue as a personal action.

The Merchant Shipping Act, 1958 provides a detailed Code of substantive and procedural rules regulating shipping as an industry and the control exercised over it by the competent authorities in conformity with various international conventions which have, under the auspices of International

Organisations such as the IMO or the ILO, unified and developed various aspects of shipping laws. Conventions regulating sea traffic, safety of life at sea, employment of seamen, wages, hours of work, social security, etc. are cases in point. Likewise, the substantive rules concerning transport of goods are contained in the Indian Bills of Lading Act, 1856 and the Indian Carriage of Goods Act, 1925. But the jurisdictional questions concerning arrest of foreign ships for enforcement of claims against the ship owner as a transporter of goods, which in England are regulated by the Supreme Court Act, 1981, are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matters of collision, maritime liens and mortgage etc. have been incorporated into the municipal laws of many maritime States, India, as stated above, lags behind in adopting these unified rules. By reason of this void, doubts about jurisdiction often arise, as in the present case, when substantive rights, such as those recognised by the Carriage of Goods by Sea Act, are sought to be enforced. The remedy lies, apart from enlightened judicial construction, in prompt legislative action to codify and clarify the admiralty laws of this country. This requires thorough research and investigation by a team of experts in admiralty law, comparative law, and public and private international law. Any attempt to codify without such investigation is bound to be futile.

No Indian statute defines a maritime claim. The Supreme Court Act, 1981 of England has catalogued maritime claims with reference to the unified rules adopted by the Brussels Convention of 1952 on the Arrest of Seagoing Ships. Although India has not adopted the various Brussels Conventions, the provisions of these Conventions are the result of international unification and development of the maritime laws of the world, and can, therefore, be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject. In the absence

of a general maritime code, these principles aid the Courts in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping. "Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities."

There have been a few occasions in Bombay that the provisions for temporary detention of a foreign ship under sub-section (2) of the said section having been availed of and the ship owners having quickly settled the claim. However, the reason why attention is drawn to this section here is because the term "High Court" therein in relation to a vessel is defined by the Act to mean the High Court within the limits of whose appellate jurisdiction the vessel is for the time being. This would have the effect of conferring on the High Courts of the littoral states of India jurisdiction in respect of claims covered by the said section. As already stated, the provisions of this section as a whole have not been widely invoked perhaps because the existence of that section in the said Act may have been missed by those connected with maritime litigation.