



M.V. ELISABETH AND ITS TRAIL WHERE THE INTERNATIONAL BECOMES DOMESTIC

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INTRODUCTION

Arrest of seagoing vessels is an issue which has a global evolution and has a quite unique significance. Arresting a Motor Vessel means the confinement of a ship by the due process of law in order to secure the oceans, it however, does not include the seizure of a ship after a judgment has been delivered. The Admiralty jurisdiction of the High Court would be considered to have been progressed up to at least the level of the Supreme Court of Judicature (Consolidation) Act, 1925, the last of the series of enactment in England on the subject prior to the year 1947 when India became independent. The Supreme Court of India took cognizance of the Arrest Convention, 1952 and held that such Convention itself has been enacted based on the felt necessities of the International trade and would therefore be applicable to India in order to enforce maritime claims against any foreign vessel. The Supreme Court of India in the famous case of *M. V. Sea Success (Liverpool & London S. P & I Association Ltd. v/s. M. V. Sea Success*¹) considerably widened the scope of Admiralty jurisdiction with the inclusion of the Arrest Convention 1999.

SCOPE AND OBJECTIVES

The study is primarily focused on understanding the nuances of International

Law which have been accepted and have thus become a part of the domestic law. This study is aimed to obtain an understanding the International Conventions and principles being made a part of the domestic legal jurisprudence and contributing to the development of the regime of admiralty law in India. Further, the interplay between the Constitutional scheme and the power of Courts to introduce international conventions into domestic jurisprudence is also an area of enquiry.

RESEARCH QUESTIONS

1. Whether the admiralty jurisdiction of local Courts or arrest of vessels extends to a foreign vessel where the claim lies in a foreign land?
2. Whether India is bound by international conventions on arrest of ships, in the absence of ratification, and to what extent?

RESEARCH METHODOLOGY

Doctrinal Research Methodology has been adopted. This method is the traditional method of research in the legal field. This method primarily deals mainly with the existing documents, data and authoritative materials on particular and specific matters. Doctrinal research is also based on secondary data such as conventional legal theories, laws, statutes and precedents.

HYPOTHESIS

- I. Admiralty jurisdiction of local Courts for arrest of vessels extends to foreign vessels irrespective of where the claim has arisen, but such power extends to the territorial

¹ JT 2003 ((9) SC 218



waters of India.

- II. India is bound by the convention on the arrest of ship even without ratification of the same.

CHAPTERISATION

The presented study is a detailed research on the topic “MV ELISABETH AND ITS TRAIL- *Where the International becomes Domestic*”. The study is an analysis of the M.V. Elisabeth case and its trail laying down various doctrines and the power of Courts to adopt international Conventions.

The research study has been presented with the chapterisation scheme. Each part of the study has a significant role in this paper. Hereunder a chapter-wise introduction of each chapter.

Chapter 1 – Introduction

Chapter 2 – MV Elisabeth and its dictum.

Chapter 3 – The Trail – other decisions

Chapter 4 – International Conventions inducted into the Domestic Law

Chapter 4.1 – International Conventions regarding arrest of ships.

Chapter 4.2 – Article 253 of the Constitution of India and the supremacy of Parliament in such matters.

Chapter 5 – Summary and Conclusion

Chapter 3

Maritime laws are considered to be one of the oldest branches of law. It can be traced to origin of Rhodian Sea Laws and the Rules of Oleron. When Britain conquered the world's

major sea power, the other common law countries had to rely on the jurisprudence as they evolved in the courts of England as was called the Court of the Lord High Admiral or in today's term the admiralty courts of adjudication.

The colonial courts were given powers similar to that of the admiralty courts of England through various statutes. India, even after independence continued to adhere to these statutes, oblivious of legal developments around the globe. However, the decision of the Indian Supreme Court in the M. V. Elizabeth case had raised several questions and also forced both the shipping community as well as the legislators to look into the plight of maritime law in India.

The advancement and improvement of Admiralty Law in India can be followed to the celebrated decision of the Supreme Court in the M. V. Elizabeth v. Harwan Investment and Trading^{2,9} The vessel, MV Elizabeth had a place with Greek owner and was enrolled abroad. While carrying merchandise of the claimants, it disobeyed requests of the petitioners to remove the load the cargo from India and carry them abroad. The claimants got the vessel arrested at the Vishakhapatnam Port in Andhra Pradesh by the decision of the High Court of Andhra Pradesh, on its arrival venture. The power of the Andhra Pradesh High Court to capture the vessel was not an issue in the case as the court, as per Thommen J.

The essential issues to be chosen by the courts were: (a) regardless of whether the admiralty jurisdiction could be practiced on a vessel conveying payload 'out of the nation'



and (b) whether Indian courts could practice such power over a remote vessel in its waters. The Admiralty Courts Act, 1861, which was and still, at the end of the day relevant to India, confined admiralty jurisdiction to activities against ships conveying payload into a nation.

Various prior choices by different high courts attested that office of the admiralty was a locale unmistakable from whatever other power which the high court had and that the high courts had no forces past those given by the Admiralty Court Act, 1861.

The court deciding on the basis of sections 2 and 3 of the 1890 rule reached the conclusion that the rule has just pronounced the Indian courts of inherent original unlimited civil jurisdiction as provincial courts of admiralty and elevated them to the position of the English High Court. There was no fusion of any English rule into Indian law or legal conferment of forces. The admiralty jurisdiction of the English High Court was extended throughout the years through different enactments. In this way, the court said that "it would have been sensible and sound to credit to the Indian High Courts a comparing development and extension of admiralty jurisdiction during the pre-independence period."

CHAPTER 4

This case concluded that the India courts have the admiralty jurisdiction to even arrest a foreign ship in the Indian waters.

The clarity in respect of the fact that the admiralty was a jurisdiction that knew no boundaries, Justice Thommen threw light on the fact that it required a much-needed

backing by a statute. The contention that all high courts could arrest ships, it was imperative to know the claims in which admiralty courts would have an exclusive jurisdiction for adjudication. The claims are referred to as 'maritime claims' Section 20(2) of the Supreme Court Act, 1981(UK), listed out certain claims as 'maritime-claims'. The Ship Arrest Convention, 1952 mainly deals with maritime claims. But in India, the legal framework does not have a definite legislation on it. The maritime claims laid down in the Common law and the many international conventions, by virtue them being an integral part of customary international law, would get inducted into Indian admiralty law, when the legislation is deficient on it.

The issue whether the breach of a contract in connection with the ship would invite an action in rem or not, it was considered that maritime claim is capable of attracting a maritime lien, in case of ordinary maritime claims the remedy available was an action in personam and not in rem. The Ship Arrest Convention of 1999 should be used more often whereas it being among those conventions which are sparingly used in Indian admiralty decisions.

The convention of 1999 states that maritime claims can be enforced without any exception by way of an in-rem action.

CONCLUSION

The Supreme court dictated that the principles of International Convention on Maritime Laws would be applicable in India.

Although the Brussel convention has



not been adopted by legislation, the principles incorporated in the International Convention Relating to the Arrest of Seagoing Ships, Brussels (1952), are now a part of the common law of India and are, thus, applicable to the enforcement of maritime claims against foreign ships.

If a foreign ship is in territorial waters of India and a maritime claim is made under the admiralty jurisdiction of High Court, it is irrelevant where cause of action arose or defendant resides or carries on business or the nationality of the ship.

Arrest of Seagoing Ships, Brussels (1952)

SECONDARY SOURCES

▪ SCHOLARLY ARTICLE

- 1) Arrest of ships under UNCLOS with reference to Indian Maritime Law.

▪ WEBSITE

- 1) <https://opil.ouplaw.com/view/10.1093/law-ildc/337in03.case.1/law-ildc-337in03>

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3. Samareshwar Mahanty, *Maritime Jurisdiction and Admiralty Law in India* (Universal Law Publishing, Lexis Nexis, 2nd edn., 2018).
4. Srikant Hathi & Binita Hathi, *Maritime Practice in India* (BRUS Chambers, Mumbai, 5th Edition, 2009)

▪ INTERNATIONAL DOCUMENTS

- 1) International Convention relating to the