

INTERNATIONAL CONVENTION FOR ARREST OF SHIPS

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a device to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. To the courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicability of 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. In the absence of 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 found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

India did not sign and consequently did not ratify or promulgate either the International Convention Relating to the Arrest of Seagoing Ships, signed at Brussels on 10 May 1952 and at Geneva on 12 March 1999 but the principles were adopted by Supreme Court of India judgements in *m.v. Elizabeth* and in *m.v. ea Success* matter as part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held. Although the Admiralty Act (2017) has imported most of the articles from the conventions to the act but there are some grey areas not covered, the admiralty court will have to deal with.

The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in *Kamlakar v. The Scindia Steam Navigation Co. Ltd; Rungta Sons Ltd. v. Owners and Master of Edison; National Co. Ltd. v. M. S. Asia Mariner ; m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Go ; Liverpool and London S.P. and I Asson. Ltd -Vs- m.v. Sea Success I and Anr* amongst other decided judgments.

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 appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action.

A foreign vessel, no matter what flag she flies, owes temporary and local allegiance to the sovereign of any port to which she comes. Moreover, the persons in such a vessel likewise must obey the laws and regulations of the port. Such jurisdiction is discretionary. Once a foreign vessel passes out of territorial waters, she owes no further duty to the place, which she has left, unless there is a hot pursuit. However, her conduct on the high seas or in foreign ports may subject her to penalties on returning on a subsequent visit.

In the words of Chief Justice Marshall of the United States Supreme Court "it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction, and the government to degradation, if such (alien) individuals or merchants (trading in ships) did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country."

All foreign merchant ships and persons thereon fall under the jurisdiction of a coastal State as they enter its waters. Subject to the right of "innocent passage", the coastal State is free to exercise its jurisdiction over such ships in respect of matters on which the consequences extend beyond the ships. Such ships are subject to the local jurisdiction in criminal, civil and administrative matters. This jurisdiction is, however, assumed only when, in the opinion of the local authorities, the peace or tranquility of the port is disturbed, when strangers to the vessel are involved or when the local authorities are appealed to. Questions which affect only the internal order and economy of the ship are generally left to the authorities of the flag State. Coastal States are entitled to assume jurisdiction in respect of maritime claims against foreign merchant ships lying in their waters. These ships are liable to be arrested and detained for the enforcement of maritime claims. The courts of the country in which a foreign ship has been arrested may determine the cases according to merits, provided they are empowered to do so by the domestic law of that country or in any of the cases recognised by the International Convention relating to the Arrest of Seagoing Ships, Brussels, 1952. The maritime claims in respect of which the power of arrest is recognised in law includes claims relating to

damage caused by any ship either in collision or otherwise; claims relating to carriage of goods in any ship whether by charter party or otherwise, loss of or damage to goods etc. These principles of international law, as generally recognised by nations, leave no doubt that, subject to the local laws regulating the competence of courts, all foreign ships lying within the waters of a State, including waters in ports, harbour, roadsteads, and territorial waters, subject themselves to the jurisdiction of the local authorities in respect of maritime claims and they are liable to be arrested for the enforcement of such claims.

In India, carriage of goods by sea is governed by the Indian Bills of Lading Act, 1856, the Indian Carriage of Goods by Sea Act, 1925, the Merchant Shipping Act, 1958, and general statutes, such as the Marine Insurance Act, 1963, the Contract Act, 1872, the Evidence Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Code of Civil Procedure, 1908, the Criminal Procedure Code, 1973, the Companies Act, 1956 etc as well as the general principles of law such as the law of tort, public and private international law etc. In this connection, reference may also be made to the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 concerning the administration of the port and the jurisdiction over ships in ports, the Customs Act, 1962 containing various regulatory measures affecting ships, goods and persons in connection with importation or exportation of goods, as well as the provisions governing employment of labour. The Indian Bills of Lading Act, 1856 emphasis the negotiable and other characteristics of a bill of lading. The Carriage of Goods by Sea Act, 1925, contains the Hague Rules regulating the respective rights and liabilities of the parties to a contract governed by bills of lading or similar documents of title for carriage of goods by sea "from any port in India to any other port whether in India or outside India". The Merchant Shipping Act embodies rules regarding registration of Indian ships; transfers or mortgages of ships or shares; national character and flag; employment of seamen; safety, nuclear ships; collisions; accidents at sea and liability; limitation of liability; navigation; prevention of pollution; investigation and enquiries; wreck and salvage; coasting trade; sailing vessels;

penalties and procedure, etc. Many of these provisions have been adopted from rules formulated by various international conventions.

The Hague Rules are embodied in the Carriage of Goods by Sea Act, 1925, India never became a party to the International Convention laying down those rules (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels 1924). The Carriage of Goods of Sea Act, 1925 merely followed the (United Kingdom) Carriage of Goods by Sea Act, 1924. The United Kingdom repealed the Carriage of Goods by Sea Act, 1924 with a view to incorporating the Visby Rules adopted by the Brussels Protocol of 1968. The Hague-Visby Rules were accordingly adopted by the Carriage of Goods by Sea Act, 1971 (United Kingdom). The Indian Legislation has not, however, progressed, notwithstanding the Brussels Protocol of 1968 adopting the Visby Rules or the United Nations Convention on the Carriage of Goods by Sea, 1978 adopting the Hamburg Rules. The Hamburg Rules prescribe the minimum liabilities of the carrier far more justly and equitably than the Hague Rules so as to correct the tilt in the latter in favour of the carriers. The Hamburg Rules are acclaimed to be a great improvement on the Hague Rules and far more beneficial from the point of view of the cargo owners.

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. This power is recognised by several international conventions. These conventions contain the unified rules of law drawn from different legal systems. Although many of these conventions have yet to be ratified by India, they embody principles of law recognised by the generality of maritime States, and can therefore be regarded as part of our common law.

The judicial power of this country, which is an aspect of national sovereignty, is vested with the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested with every citizen implies the existence of the power of the Court to render justice according to law. Where the statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be the principles of justice, equity and good conscience.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is now in force and has repealed all the previous admiralty laws.