

INTRA-COURT APPEAL UNDER THE ADMIRALTY ACT TO THE COMMERCIAL APPELLATE DIVISION OF A HIGH COURT – THE SUPREME COURT LAYS DOWN HARMONIOUS INTERPLAY.

A CASE STUDY OF OWNERS AND PARTIES INTERESTED IN THE VESSEL M.V. POLARIS GALAXY V BANQUE CANTONALE DE GENEVE.

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In a much-awaited decision involving the issue of impleading Gulf Petrochem FZC as a proper/necessary party to the suit, the Supreme The Court of India had the opportunity of clarifying the scope of intra-court appeals from interim orders passed in admiralty actions being heard by the Commercial Division (Single Bench) (**“Commercial Division”**) to the Commercial Appellate Division (Division Bench) (**“Appellate Division”**) of the concerned High Court. The appeal before the Supreme Court of India arose from a decision of the Appellate Division of the High Court of Judicature at Madras rejecting the arguments against maintainability and allowing the appeal from the order of the Commercial Division which had ordered Gulf Petrochem FZC to be impleaded as the proper and necessary party to the admiralty suit. The authors were part of the legal team which represented the Appellants i.e., the registered owners of the vessel M.V. Polaris Galaxy (**“Vessel”**) in the aforesaid proceedings.

Facts

The Vessel was chartered by Polaris Marine Services, the commercial managers of the registered owners, to Profitable Wealth who in turn sub-chartered it to Gulf Petroleum FZC. Gulf Petrochem FZC purchased Marine Fuel (**“Goods”**) from Indian Oil Corporation Limited (**“IOCL”**) which was set to set to deliver to Aramco at the port of Fujairah (this was later changed to Singapore). The Respondents herein, i.e., Banque Cantonale De Geneve funded the transaction by issuing a Letter of Credit (**“LOC”**) in favor of IOCL. It is important to note that this LOC provided that in case of non-availability of the original Bill of Ladings (**“BOL”**), the payment under the LOC would have to be made against a Letter of Indemnity (**“LOI”**). In the BoL issued by the Master of the Vessel, the consignee of the Goods was Banque Cantonale De Geneve (**“Consignee Bank”**), and the party to be notified of the arrival of the vessel and her readiness of discharge cargo was Gulf Petrochem FZC (**“Notify Party”**).



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On 21 st May 2020, the Notify Party instructed the Master of the Vessel to discharge the Goods to one Chevron Singapore Private Limited (“**Chevron**”). On 24 th May 2020, the sub-charterers of the Vessel, i.e., the Notify Party provided an LOI to the charterers of the Vessel, i.e., Profitable Wealth that in turn provided an LOI to the commercial managers of the registered owners, i.e., Polaris Marine Services. On 27 th May 2020, IOLC issued an invoice to the Notify Party. The Consignee Bank released the payment under the LOC. On 31st May 2020, the Vessel arrived in Singapore and issued a notice of readiness to the Notify Party as per the BOL. The Notify Party again instructed the Master of the Vessel to notify Chevron who were the receivers of the Goods. On 11 th June 2020, the Notify Party issued an invoice to Aramco. However, in light of no payment being received by the Consignee Bank through Aramco after the due date of this invoice, the Consignee Bank issued instructions that the Goods were not to be discharged without its consent. However, as mentioned above, the Goods had already been discharged to Chevron as per the instructions of the Notify Party.



Previous proceedings

Consequently, the Consignee Bank filed a maritime claim for the misdelivery of cargo under S. 4(1)(f) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (“**Admiralty Act**”) pleading that the owner of the Vessel had discharged the cargo without production of the original BoL. The Court of first instance the Commercial Division (Single Bench) of the High Court passed an ex-parte order for the arrest of the Vessel. Eventually, the owners of the Vessel entered appearance, submitted security, and obtained vacation of the arrest of the Vessel. The Consignee Bank filed an application for a summary judgment under Order XIV Rule 8 and Order XIII A of the Civil Procedure Code 1908 (“**CPC**”), as amended by the Commercial Courts Act 2015 (“**Commercial Courts Act**”). In their reply to this application, the owners contended that the suit involved aspects and questions that (i) necessitated the presence of the Notify Party to effectively adjudicate the involved issues, and (ii) required a trial as opposed to a summary judgment. The Commercial Division observed that the LOI contained a clause providing for the delivery of cargo on obtaining indemnity in case of temporary non-availability of the BOL. Further, the Notify Party being the customer of the Consignee Bank was a key player on whose instructions the cargo was delivered to Singapore and was held to be a necessary and proper party to the admiralty suit.

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The Consignee Bank appealed this order to the Appellate Division under S. 13(1) of the Commercial Courts Act. The Appellate Division rejected the contentions of maintainability of the appeal and allowed the appeal directing the trial court to dispose of the application for summary judgment accordingly. Giving immense value to the documents of international trade, here the BOL, the Appellate Division stated that the claim in the instant admiralty suit was a simple one based on the BOL wherein, ordinarily, the consignee named in the BOL is entitled to obtain delivery of goods, and only the named or endorsed consignee can issue instructions or authorize the discharge of cargo to any other third party. A notified party, although notified of the readiness of the vessel to discharge cargo, is still required to produce the original BOL to obtain delivery. In contrast, by agreeing to deviate from the norm and deliver the Goods to Chevron on instructions of the Notify Party in the absence of the original BOL, the carrier agreed to absorb the risk of such deviation against an LOI. Since the discharge of Goods took place without the authority of the Consignee Bank, the arrangement between the owners and third parties becomes irrelevant to the instant admiralty suit, thus extinguishing the requirement of the presence of the Notify Party. Additionally, this effectively leaves the owners with the only option to chase the indemnity.



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Issues before the Supreme Court

In order to decide whether the Appellate Division should have allowed the appeal and set aside the order of the Commercial Division, it was first necessary to decide whether an appeal lies from an order in an Admiralty Suit for the addition of party passed by the Commercial Division to the Appellate Division. Therefore, two issues were raised before the Supreme Court of India in the instant appeal.

(a) Whether there lies an appeal from an order of the Commercial Division of a High Court adding a party to the suit to the Appellate Division?

(b) If yes, whether the Appellate Division in the instant case had rightfully allowed the appeal in favor of the Consignee Bank?

Ratio

The court must proceed on the basis of the international documents but the court is also required to ascertain the nature of the underlying transaction. At this stage, it must be noted that the owners had not made any application to add the notifying party as a necessary or proper party but had added it as its contention in replying to the application for summary judgment filed by the consignee bank.

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1. Whether there lies an appeal

The issue arose due to non-obstante clauses in both the Admiralty Act and the Commercial Courts Act. Under the Admiralty Act, S.12, the provisions of CPC are made applicable to all proceedings before the High Court under the Admiralty Act, subject to such provisions of the CPC being inconsistent with or contrary to the provisions of the Admiralty Act. In such a case, the provisions of the Admiralty Act will prevail. Moreover, S.14, which contains the non-obstante clause 2, of the Admiralty Act makes an explicit way for the appeal to lie to the Division Bench of a High Court from any judgment, decree, or order of a Single Bench of the High Court. Under the CPC, the courts are granted the discretionary power to add or strike out parties at any stage of the proceedings, on an application by either of the parties or suo moto, if it deems fit that the presence of a party may be necessary for effective and complete adjudication of all questions involved in the suit. 3 This provision of the CPC squarely governs the issue in the present appeal as there is no inconsistency between this provision and the Admiralty Act. Whereas, proviso to S. 13(1-A) of the Commercial Courts Act restricts the appeal from a Commercial Division to the Appellate Divisions to orders specifically enumerated under Order XLII of the CPC. The non-obstante clause in this case lies in S. 13(2) where it is clearly stated that an appeal from a Commercial Division to the Appellate Division of a High Court will not lie except as provided under the provisions of this Act. This is further added by the general non-obstante clause contained in S. 21 of the Commercial Courts Act.

In light of admiralty and maritime laws being included in the definition of 'commercial dispute' under S. 2(2) of the Commercial Courts Act and S.12 of the Admiralty Act, it was clarified by the Supreme Court that it was beyond doubt that the Commercial Division of the High Court has the power to add a party to an Admiralty suit.

The issue was that to put it briefly, while the Admiralty Act allows an appeal from the Single Bench of a High Court to the Division Bench of the High Court, the Commercial Courts Act restricts appeals to orders listed under Order 43 of the CPC. Moreover, the provisions of the CPC will only apply to a suit under the Admiralty Act if not inconsistent with its provisions.



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To reconcile the issue and decide which of the non-obstante clauses containing conflicting provisions will prevail, the Supreme Court reiterated the following rules of common law:

- Special statute prevails over general statute, and
- In case of both statutes being special, the later enacted statute would prevail. However, this rule is not absolute. The answer may very well depend on the object of the enactment as well as the object of giving overriding effect to the enactment of any specified provision thereof. In other words, it will depend on the consideration of the purpose and policy underlying the enactments.

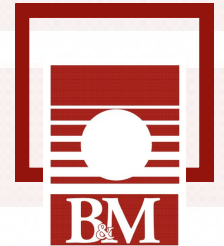
The Hon'ble Court held that both the statutes in question were special statutes. Further, on the purpose of the statutes, the Court held that it could not have been the legislative intent to make every single order passed in the course of a trial appealable under S.14 of the Act. If the contrary was the case, it would defeat the very purpose of the Commercial Courts Act wherein the appeals are restricted to orders listed in Order 43 of the CPC. The Court added that a harmonious reading of the two statutes made it clear that S.14 of the Admiralty Act only governs the orders passed under the in-rem jurisdiction of the High Court, whereas

“orders passed in the trial of a suit and on applications made under the provisions of the CPC are not orders under the Admiralty Act but orders under the CPC which would be appealable only if they fall under Order 43 of the CPC as provided in S.13 of the Commercial Courts Act.”

Further, as S.14 and S.12 of the Admiralty Act were required to read harmoniously with S.13 of the Commercial Courts Act and with Order 43 of the CPC, the Court held that:

“an intra-court appeal under the Admiralty Act to the Commercial Division of the High Court would lie from any judgment, decree or final order under the Admiralty Act or an interim order under the Admiralty Act relating to the orders specified in Order 43, Rule 1.”

Therefore, the Supreme Court of India held that the order of the Commercial Division of the Madras High Court was not an appealable order under S.14 of the Admiralty Act.



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2. A proper and necessary party

The Supreme Court started by studying the purpose and nature of a BOL. It reiterated the three purposes of a BOL being (i) receipt of shipped goods by carrier, (ii) document of title, and (iii) evidence of contract of carriage. The Hon'ble Court recognized that while there was no holistic definition of a BOL, its purpose was much clearer. While the BOL contained evidence of the contract of carriage, it was open to the carrier to deduce the extensive or the true terms of such contract. Additionally, it is also the possibility of fact for the consignee to not be the owner of the Goods and to have authorized or instructed the carrier to release the goods to the notifying party or to any other party. The Supreme Court stated that the question of misdelivery, i.e., delivery of goods to a person other than the named or endorsed consignee under the BOL was a question of facts. only evidence. Corollary to this, whether the Consignee Bank had anything to do with the instructions that might have been given by the Notify Party is also a question to be decided through trial. The Hon'ble Court relying on *Anil Kumar Singh v Shivnath Mishra* held that the Notify Party was a party whose presence was necessary to reach a complete and final decision on the questions involved in the admiralty suit even if the Consignee Bank chose not to claim any relief against the Notify Party by way of the present suit.

In light of the above, the Supreme Court overruled the decision of the Appellate Division and therefore, clarified the scope of intra-court appeals in the present context, and held that Gulf Petrochem FZC was a proper and necessary party to the admiralty suit.

Conclusion

The judgment brings clarity to the scope of intra-court appeals in light of the seemingly contradictory provisions in the Admiralty Act and the Commercial Courts Acts both of which crowned non-obstante clauses. Bringing a harmonious interpretation, the Supreme Court of India has both clarified and limited the scope of such appeals in admiralty suits enabling the judicial system to deal with both maritime claims and admiralty suits in a time-sensitive manner.

Moreover, the judgment throws light on the plight of both the carrier and the rightful consignee under a valid BOL when cargo is delivered on instructions of a third party such as the charterer, or the notify party in the present case, against a Letter of Indemnity. In a much-needed relief, the Supreme Court has given effect to justice in opening the gates for such innocent parties to implead the necessary and proper party in order to determine essential questions of facts.



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