

# INDIAN ADMIRALTY COURTS FLOUTING CONJOINING ACTIONS OF IN REM AND IN PERSONAM

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## OVERVIEW OF THE TOPIC:

1. The Appeal Court/ Division Bench of the Bombay High Court in the case of *Angsley Investments Ltd. v Jupiter Denizcilik*. has held that an action *in personam* against a foreign shipowner cannot be maintained before an Admiralty Court in isolation to an action *in rem* against the ship.

2. The Plaintiff/ Bunker Supplier invoked the admiralty jurisdiction of the Bombay High Court, by filing Admiralty Suit No. 15 of 2001 (“**AS 15/2021**”) and obtained an order of arrest dated 17 May 2001 against *M/V Lima II*/ Defendant No. 1 for a claim in relation to unpaid bunkers stemmed by the Plaintiff/ Bunker Supplier to *M/V Lima II*. The Plaintiff/ Bunker Supplier contended that the owner of *M/V Lima II*/ Defendant No. 2 was *in personam* liable for its claim.

3. *M/V Lima II* jumped arrest and escaped from the Kandla Port in breach of the order of arrest dated 17 May 2021 in AS 15/2021 passed by the Bombay High Court.

4. Four months later, in the month of August 2001, the Plaintiff/ Bunker Supplier thereafter filed an interim application in AS 15/2021 seeking an order of injunction against *M/V Yim Kim (formerly M/V Lima I)* by alleging that *M/V Lima II* and *M/V Yim Kim (formerly M/V Lima I)* are sister ships. By an ad-interim order dated 14th August 2001 passed in AS 15/2021, the Bombay High Court restrained *M/V Yim Kim (formerly M/V Lima I)* from leaving the port of Calcutta.

5. Thereafter, a party claiming to be a purchaser of *M/V Yim Kim (formerly M/V Lima I)* intervened in AS 15/2021 as was arrayed as Defendant No. 3. The Third-Party Purchaser/ Defendant No. 3 contended that, the Defendant No. 2 (the owner of both *M/V Lima II* and *M/V Lima I*) had sold *M/V Lima I* to one - Mercury Shipholding Inc. an intermediate party who had thereafter sold *M/V Lima I* to the Third-Party Purchaser/ Defendant No. 3 which is now trading as *M/V Yim Kim*.



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Thereafter the order of injunction restraining M/V Yim Kim (formerly M/V Lima I) from leaving the Calcutta port stood vacated in consideration of the Third-Party Purchaser/ Defendant No. 3 securing the Plaintiff/ Bunker Supplier alleged in personam claim against the owner of M/V Lima II/ Defendant No. 2 without prejudice to the rights and contentions of the Third-Party Purchaser/ Defendant No. 3.

6. The Plaintiff/ Bunker Supplier lead evidence before the Court of First Instance and a final judgment/ decree was passed in relation to the claim of the Plaintiff/ Bunker supplier. The Court of First Instance/ Trial Court of the Bombay High Court proceeded to decree the suit in favor of the Plaintiff/ Bunker Supplier by coming to the below findings of fact and conclusions of law:

6.1. There was no necessity for the Court to pass a formal order of arrest against M/V Yim Kim (formerly M/V Lima I) as she was the property of owner of M/V Lima II/ Defendant No. 2 at the time AS 15/2021 had been instituted.

6.2. As on 14th August 2001, the date of passing of the order of injunction restraining M/V Yim Kim (formerly M/V Lima I) from leaving the port of Calcutta, the Defendant No. 2 the party who was in personam liable for the claim of the Plaintiff/ Bunker-Supplier, M/V Yim Kim (formerly M/V Lima I) continued to be owned by Defendant No. 2 and not by the Third-Party Purchaser/ Defendant No. 3.

7. The Third-Party Purchaser/ Defendant No. 3, appealed against the decree/ final judgment passed by the Court of First Instance/ Trial Court before the Appeal Court/ Division Bench of the Bombay High Court. The Appeal Court/ Division Bench allowed the appeal by setting aside the decree/ final judgment passed by the Court of First Instance/ Trial Court and directed the Registry to return the security furnished by the Third-Party Purchaser/ Defendant No. 3.

8. The Appeal Court/ Division Bench chose not to get embroiled in disputed factual controversies by came to the below conclusions of law:

8.1. An in personam action cannot be brought against a foreign shipowner before an Indian Admiralty Court in the absence of a foreign shipowner entering appearance before the Indian Admiralty Court;

8.2. The mere presence of a foreign shipowners' vessels within the jurisdiction of the Admiralty Court would not confer *in personam* jurisdiction of the Indian Admiralty Court upon the foreign shipowner.



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The action *in rem* against the foreign-flagged vessel gets converted into an action *in personam* only when the foreign shipowner enters an appearance before the Indian Court by furnishing security to secure the release of the foreign-flagged vessel. Accordingly, since the Bombay High Court did not have jurisdiction over the owner of *M/V Lima III* Defendant No. 2, a decree/ final judgment could have never been entered against the owner of *M/V Lima III* Defendant No. 2;

8.3. An action *in rem* could have never been entered against *M/V Yim Kim* (formerly *M/V Lima I*) without having formally arrayed as a defendant in AS 15/2021. In these circumstances, the ad-interim order dated 14 August 2001 passed in AS 15/2021, the Bombay High Court restrained *M/V Yim Kim* (formerly *M/V Lima I*) from leaving the port of Calcutta could have never been equated with an order of arrest since an interim order cannot be passed against a third party which is not a party to the suit. The proper course of action was for the Plaintiff/ Bunker-Supplier to have amended its pleadings in the Plaint/ Statement of Claim in AS 15/2021 by arraying *M/V Yim Kim* (formerly *M/V Lima I*) as a Co-Defendant.

8.4. There is a clear difference between an order of arrest and an order of injunction. Whilst an order of arrest operates *in rem* and order of injunction only operates *in personam*. The Appeal Court/ Division Bench deprecated the practice of filing a hybrid writ conjoining an action *in rem* and an action *in personam* as was the practice in England, Singapore and Malaysia. A vessel cannot be treated as a juristic entity for the purpose of an action *in personam*.

8.5. Whilst a party seeking an order of arrest of a ship only needs to make out a prima facie case in relation to its maritime claim, the threshold for obtaining an order of injunction is considerably higher as the same is a discretionary remedy.

8.6. Given the manner in which AS 15/2021 has been framed by the Plaintiff/ Bunker-Supplier, the issue of whether or not *M/V Lima II* and *M/V Yim Kim* (formerly *M/V Lima I*) were sister ships is not dispositive to the outcome of AS 15/2021;

#### Analysis:

It has been a practice before the Bombay High Court to array a foreign shipowner as a co-defendant to the proceedings and thereafter seek a decree against a foreign shipowner. This judgment breaks new ground as it deprecates this practice of a Claimant invoking the jurisdiction of an admiralty court by instituting a hybrid writ conjoining an action *in rem* and an action *in personam* which is in line with the procedure in other jurisdictions such as the UK, Singapore and Malaysia. Additionally, this judgment provides more clarity on the distinction between an order of injunction and an order of arrest by observing that an order of injunction only operates *in personam* whereas an order of arrest operates *in rem*.



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