

Arrest of Inland Vessel: Bombay High Court judgement sets a new course in Admiralty Law?

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In a recent case before the Bombay High Court, a Single Judge of the Bombay High Court has upheld the arrest of an inland vessel which was plying in the non-inland waters. The judgement has the prospect of expanding the scope of the Admiralty Act if the same is upheld in appeal.

Facts in Brief

Coastal Marine Constructions and Engineering Ltd (hereinafter referred to as “Plaintiff”), the Plaintiff in the matter filed an admiralty suit against m.v Lima V for its maritime claim of INR 1,77,21,679.27 inclusive of costs. As per the case of the Plaintiff, the Plaintiff and the Owners of the Defendant Vessel entered into a contract under which the Defendant had to provide a vessel for Plaintiff’s project site in Dwarka, Gujarat. As per the conditions of the contract, the vessel was to be provided by the Defendants within 15 days of the advance payment being received by it. It was the case of the Plaintiff that the Defendant had breached the terms of the contract by a) not providing the vessel within 15 days from the payment being received by the Defendant; b) the vessel provided by the Defendant was not of the specifications as agreed between the parties. Due to the vessel not being of the contractual specification, the Plaintiff had to tow the vessel to the project site. Due to these reasons, the Plaintiff had to incur additional costs to make the vessel operational.

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In the admiralty suit, the Plaintiff claimed a) Loss of Hire due to the delayed delivery of the Vessel; b) amounts expended towards the hire of tugs to tow the Vessel c) refund of hire paid. The Plaintiff was granted an *ex-parte* order of arrest by the Ld. Judge as he was of the view that the Plaintiff has *prima facie* made a case for arrest of the vessel and that the balance of convenience lies in favour of the Plaintiff.

The Defendant entered appearance after depositing the decretal amount and filed an application for setting aside the *ex-parte* order of arrest. In the said application, the Defendant also claimed compensation to the tune of Rs 15,00,000 towards loss and damages sustained by the Defendant on account of the unjust arrest of the Defendant vessel.

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Arguments canvassed by the parties

Inter alia the Defendant tried to argue that the vessel being registered under section 19F of the Inland Vessels Act, 1917 (hereinafter referred to as “Inland Vessel Act”), was outside the scope and purview of the Admiralty (Jurisdiction and Settlement of Marine Claims) Act, 2017 (hereinafter referred to as “Admiralty Act”) under which the Plaintiff has arrested the vessel. The Defendant submitted that the Admiralty Act is very clear in its applicability and clearly takes an inland vessel out of its purview. In support of these, the Defendant produced the registration certificate of the Vessel under the Inland Vessels Act.

In counter to the argument raised by the Defendant regarding the vessel being registered under the Inland Vessel Act and hence it being outside the purview of the Admiralty Act, the Plaintiff put forth the argument that the mere registration of the vessel under the Inland Vessel Act would not take it out of the purview of the Admiralty Act and it is upon the Defendant to show that the vessel ordinarily plied on inland waters. The Plaintiff also tried to show that they employed the said vessel to perform in non-inland waters only and that too on the representation of the Defendant.

Court Findings

Before going into the Court’s findings, it is important to look at the important provisions of the Admiralty Act and Inland Vessels Act.

The Admiralty Act under section 1(2) defines the applicability of the Admiralty Act. As per section 1(2), the act is applicable to all vessels irrespective of the place of residence or domicile of the owner. The first proviso to the section provides that the act is not applicable to ‘*an inland vessel defined in clause (a) of subsection (1) of section 2 of the Inland Vessels Act, 1917 or.....*’. The second provision takes out the warships, naval auxiliary and vessels operated by the Central or State Government for non-commercial purpose.

The Inland Vessels Act defined inland vessels under section 2 (a) as

“(a) "inland vessel" or "inland mechanically propelled vessel" means a mechanically propelled vessel, which ordinarily plies on inland water, but does not include fishing vessel and a ship registered under the Merchant Shipping Act, 1958 (44 of 1958);”

The Inland Vessels Act also defines inland water as

“(b) "inland water" means -



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(i) any canal, river, lake or other navigable water within a State:

(ii) any area of any tidal water deemed to be the inland to be smooth and partially by the Central Government under Section 70,

(iii) Waters declared by the Central Government to be smooth and partially smooth waters under clause (4) of Section 3 of the Merchant Shipping Act, 1958;"

Furthermore, the Inland Vessels Act, in section 19A specifically provides for registration of an inland vessel without which the vessels will not proceed on voyage or be used for service.

The Bombay High Court while dismissing the application filed by the Defendant to set aside the *ex-parte* order, looked into the intent of the legislature in using the word 'defined' in section 1(2) of the Admiralty Act. The High Court after going through the abovementioned provisions came to a finding that there is a reason why the legislature has used the word 'defined' in the Admiralty Act and not used the word 'registered'. It was also of the view that these 2 words have different connotations in law and cannot be used interchangeably. The Court held that registration of the vessel under the Inland Vessels Act will not be the determining factor for a vessel to be outside the purview of the Admiralty Act. The *sine qua non* for an Inland Vessel to be outside the purview of the Admiralty Act would be whether it plies on inland waters or not. The High Court was of the view that if the intent of the legislature was to keep the vessels registered under the Inland Vessels Act outside the purview of the Admiralty Act, the legislature would have used the word 'registered'. However, since the word is 'defined', it is clear that only those inland vessels which are defined as inland vessels under the Inland Vessels Act would be outside the purview of the Admiralty Act and after a reading of the Inland Vessels Act, it is clear that the Inland Vessels are those vessels which ordinarily plied in inland waters and hence it would be only those Inland Vessel which ordinary plied in inland waters would be outside the purview of the Admiralty Act. The Court while rejecting the application for setting aside the *ex-parte* order of arrest also relied on the fact that the vessel was admittedly employed to work in non-inland waters and the Defendant did not bring on record the details of previous voyages and the log book of the vessel as it would have thrown light on the fact whether the vessel was ordinarily plying in inland water.



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Conclusion

The Calcutta High Court in the case of *Jindal ITF Limited and Another versus I-Marine Infratech (India) Pvt. Ltd* (the judgment was relied upon by the Defendant but the Bombay High Court found it of little assistance) was also seized with the issue of an arrest Inland Vessel which was registered under both the Inland Vessel Act and Merchant Shipping Act, 1958. The Division Bench of the Calcutta High Court held that since the vessel was registered under the Merchant Shipping Act, 1948 the provisions of the Admiralty Act would be applicable to it even though it had another registration under the Inland Vessels Act. The Calcutta High Court also observed the arrest of the vessel could only be vacated on the ground that the vessel was registered under the Inland Vessel Act only when it cancels or suspends its registration under the Merchant Shipping Act, 1958.

On a conjoint reading of the Bombay High Court judgement and the Calcutta High Court judgement, it is quite clear that it will not be sufficient for the Vessel to be registered under the Inland Vessels Act to bring it out of the ambit of the Admiralty Act if the arresting party can show that the Vessel, even though was registered under the Inland Vessels Act, was ordinarily plying in non-inland waters and/or it was being employed to work in non-inland waters on the representation of Defendant.

It will also be interesting to see how the courts look into the aspect of a vessel registered under the Inland Vessels Act plying on non-inland waters.

The Defendant has filed an appeal against the judgement, but till the date of writing of this article no stay has been granted on the order. We will now have to wait for the decision in the appeal filed by the Defendant against the judgement to see if this judgement is reversed or if this would now be the law.



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