

Brief Note on the Judgment dated 14th September 2017 passed by the Supreme Court of India in

Chrisomar Corporation v MJR Steels

Civil Appeal No. 1930 of 2008

Third Element Enterprise, a Cypriot company, owned a vessel named *MV Nikolaos-S* which received bunkers from the Appellant Chrisomar Corporation at the port of Durban. Sale of Bunkers was acknowledged by the Master of the vessel. Appellant raised invoices for the supply of bunkers for an amount of USD \$ 94,611.25 which were not paid. When the vessel was docked at the Haldia port, India Appellant filed an admiralty suit No. 1 of 2000 before the High Court of Calcutta seeking arrest of the vessel. The High Court on 06.01.2000 ordered arrest of the vessel. On 25.01.2000 Third Element Appeared through its counsel and the court was informed about a settlement reached between the parties vide agreement dated 18.01.2000. Accordingly, High Court on 25.01.2000 vacated the order of arrest. But the vessel remained docked at the port of Haldia. On 02-05-2000 the vessel was re-arrested under the orders of the High Court as no payment was made to the appellant. At this stage, the respondent came into picture, claiming to be the owner of vessel *MV Nikolaos-S*. According to the written statement filed by the respondent, the vessel had exchanged many hands and one Fairsteel Corporation had sold and transferred the vessel to the Respondent vide agreement dated 21.01.2000. The Single Judge vide judgment dated 28.04.2005 held that the Appellants were entitled to recover their dues and the transfer of ownership of Respondent was not conclusively proved. It was further held that the order dated 25.01.2000 kept the suit alive and the order of re arrest dated 02.05.2000 recalled the order dated 25.01.2000, which in turn revived the order of arrest.

In the appeal before Calcutta High Court, the Division Bench reversed the decision of the Single Judge. The Division Bench noted the deposition of a witness for the plaintiff where the witnesses had stated that the vessel had been sold and on the date of re arrest, the Respondent was the owner and further came to conclusion that the vessel physically exchanged hands on 15.04.2000. It was further held that the successive transfers of title had not been proved by the Respondent but that would make no difference as there could be a good title by estoppel. The Division Bench also applied section 62 of Indian Contract Act to the out of court settlement dated 18.01.2000 and held that as there was novation of the original agreement in law therefore the cause of action pleaded in the Admiralty Suit No.1 of 2000 no longer subsisted. It was further held that claim made in the suit was abandoned when the settlement dated 18.01.2000 was acted upon.

Appellants moved the Supreme Court challenging the decision of the Division Bench. Appellants contended that the agreement dated 18.01.2000 would not amount to novation of the original agreement which was enforced by the order dated 02.05.2000 whereby the vessel was rearrested. It was further contended that the right vested in the appellant on the date of institution of suit is material and the ownership of vessel is to be seen on the date of institution of suit and not on the date arrest. Appellants also contended that the necessaries supplied to the vessel amounted to a maritime lien and therefore the present case was not merely a maritime claim but a maritime lien as well. It was also averred that Division Bench erred in coming to a conclusion that a sale had taken place whereas several documents produced by the plaintiff showed that no sale had taken place. On the other hand, the Respondents contended that there was no maritime lien in law for necessaries supplied to the vessel. It was further contended that it was important to note about the ownership of the vessel on the date of the arrest as a claim for supply of necessaries against the owner on the date of institution of the suit would not lie against the respondent on the date of arrest on 02.05.2000. The respondent also contended that section 62 of Contract Act would apply to the present case as the settlement dated 18.01.2000 replaced the original agreement, as a result of which, the original cause of action in the suit no longer remained.

The Supreme Court set aside the judgment passed by the Division Bench and restored the decree passed against the vessel by the Single Judge, allowing the appellant to recover the sums claimed in the suit from the security furnished with the Registrar of the Hon'ble High Court. The Court held that the respondent had failed to prove the change of ownership in its favour on the date of arrest. The other notable points of the judgment are as follows;

- a. The judgment traces the history of admiralty laws in India and refers to the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 where maritime claims and maritime liens have been defined. The difference between a maritime claim and a maritime lien was noted where important materials are supplied to a vessel for her operation or maintenance would be regarded as a maritime claim and maritime lien was one which attached to the property of the vessel whenever cause of action arises and travels with the vessel and subsists wherever the whenever action may be commenced. The judgment of Supreme Court in *M.V Won Fu* 2003 I SCC 305 was also referred where it was observed that “*only a small number of claims give rise to maritime liens*” where the Court also noted 5 such circumstances viz. a) damage done by a ship b) salvage c) seamen’s and Master’s wages d) Master’s disbursement e) bottomry. The judgment passed by the Calcutta High Court in *Bailey Petroleum Company Limited v M.V Dignity* 1993 SCC Online Cal 18 was referred where it has been held that supply of necessaries to a vessel does not constitute a maritime lien. The Court referred to another judgment of Calcutta High Court in *Saba International Shipping and Project Investment (P) Ltd. v. M.V. Brave Eagle*, 2001 SCC OnLine Cal 556, where the High Court noted the difference between a Maritime Claim and Maritime Lien and it was observed that “*All cases of maritime lien are based on maritime claims but all maritime claims do not give rise to a maritime lien on the ship. Normally a lien in the general law is a rather limited right over someone else's property. It is a right to retain possession of that property usually to receive a claim. But a maritime lien differs from other liens in one very important respect. Liens generally require possession of the “res” before they can come into effect. As an example an innkeeper has a lien over his guest's luggage against the payment of the bill, but if the guest is smart enough to remove his luggage, the innkeeper is left without a lien. But a maritime lien does not require prior possession for its creation. In a fit and proper case a claimant on the strength of his maritime lien can secure the arrest of a ship which then comes under the possession of the court and she cannot be moved without the court's order.*” Lastly the Court also referred to the definition and characteristics of Maritime Lien as mentioned in Convention on Maritime Liens and Mortgages, 1993, and held that a claim for necessaries supplied to a vessel does not become a maritime lien which attaches to the vessel. Coming to the legal position prevailing in India the Court held that “*It is clear that in our country at least claims for necessaries, though maritime claims, do not raise a maritime lien*”.
- b. On the issue of whether ownership of vessel is to be seen at the time of institution of the suit or at time of arrest, the judgment refers to Article 3 of International Convention on Arrest of Ships, 1999 being part of national law in view of law laid down in *M.V Elisabeth v Harwan Investment & Trading (P) Ltd. (1993) Supp. 2 SCC 433*. According to the 1999 Convention, arrest of vessel is permissible only if a maritime claim is asserted against a person who owned the ship at a time when the maritime claim arose and the ship owner should be the same person when the arrest is affected. The court then went on to observe that a maritime claim can be asserted only at the time of arrest and not at the time of institution of suit and held that “*It is therefore clear that the relevant date on which the ownership of the vessel is to be determined is the date of arrest and not the date of institution of the suit*”.
- c. On the issue of applicability of section 62 or 63 of the Contract Act to the facts of the case particularly relating to the original agreement and the subsequent agreement dated 18.01.2000 entered between the parties, the Court observed “*It is clear that where parties to a contract agree to substitute a completely different contract for the first, or to rescind a contract, the performance under the original contract and/or rescinded contract comes to an end. When parties to a contract “alter” a contract, the question that has to be answered is as to whether the original contract is altered in such a manner that performance under it is at an end*”. Coming to the present case, the court observed that the original contract has been performed only by one party and the second agreement has been entered so that the appellant instead of accepting original performance, may accept any satisfaction as it thinks fit. The agreement deals with the payment aspect of original transaction while keeping the original transaction alive. While referring to various clauses of the agreement dated 18.01.2000, the court held that original agreement was kept alive by the agreement dated 18.01.2000. The court then concluded that the agreement dated 18.01.2000 did not amount to novation of the original

- agreement and was in fact entered while keeping the original agreement alive. It was also observed that agreements like the one dated 18.01.2000 are to be construed as ordinary businessmen would do and not legalistically and it was held by the court that *“Reading the agreement through the prism of a businessman's eye, it is clear that all that the agreement does is to reinforce the original agreement by seeing that the payment under the said agreement is made. We, therefore, disagree with the view taken by the Division Bench that there is a novation of the original agreement in the fact circumstance of the present case.”* The Court also noted that for section 63 to apply such settlement to constitute a new and independent agreement it must supersede the original cause of action altogether which was not done in the present case. Reliance of the Respondents on a judgment of Singapore High Court was rejected by the court as the case cited was distinguishable on facts and it was observed that the Courts in India while applying section 63 of Contract Act have enforced the section according to its terms and not in accordance with English laws.
- d. On the issue of ownership of vessel on the date of arrest as contended by the respondents, the Court rejected the finding of the Division Bench of the High Court that the Respondent No.I had become owner of the vessel. The Court also rejected the reliance of the Respondent No.I on the Notarised Bill of Sale between Fairsteel and Respondent No.I (fourth sale agreement) and Notice of Readiness as the Physical Delivery Certificate was issued by the agent of Third Element Enterprises and not Fairsteel who was the seller as per the documents. Further the Court also noted in the Bill of Sale between Third Element Enterprises and Eastern Wealth Investments (first out of four sale agreements) which mentioned 1 USD as sale consideration. The Court further held that the Respondent No.I failed to prove back to back sale of the vessel particularly in its favor on the date of re-arrest.

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