

World Tanker Carrier Corporation

Vs

SNP Shipping Service Pvt. Ltd.

(Sujata V. Manohar, S. P. Kurdukar, D. P. Wadhwa JJ)

20.04.1998

JUDGMENT

MRS. SUJATA V. MANOHAR J

1. Leave granted.

2. World Tanker Carrier Corporation (hereinafter referred to as the 'WTCC') is the appellant in these appeals. WTCC is a foreign company registered in Monrovia, Liberia. It is the owner of a vessel m.t. "New World". The vessel is registered in Hong Kong. On 21st of December, 1994, New World was involved in a collision with a vessel m.v. "YA Mawlaya" in international waters 200 nautical miles off the coast of Portugal. Ya Mawlaya is a vessel registered in Cyprus. It is owned by M/s. Kara Mara Shipping Company Ltd. (hereinafter referred to as 'Kara Mara'), a company registered in Cyprus. The said company is referred to variously in these proceedings as disponent owner/charterer of Ya Mawlaya. On 20th October, 1994, Kara Mara sold the vessel Ya Mawlaya to Vestman Shipping Company Ltd., a company registered in Cyprus. Kara Mara thereafter became bare boat charterer of Ya Mawlaya. Prior to the sale of the said vessel Kara Mara had entered into a management agreement dated 11th of April, 1994 with SNP Shipping Services Pvt. Ltd. (hereinafter referred to as 'SNP'), a company registered in India for the management of the vessel Ya Mawlaya. According to the appellant, on the sale of the said vessel, Kara Mara's agreement with SNP came to an end. On the other hand, it is claimed by SNP that under the said management agreement they were put in charge of recruiting crew and officers of the said vessel. SNP entered into a sub-contract with one Holbud Ship Management Company Ltd. for the commercial management of the said vessel. Under this agreement, Holbud Ship Management Company Ltd. were in charge of booking cargo and collection of freight in respect of the said vessel. Holbud Ship Management Company is a company registered in the United Kingdom. Its holding company Holbud Ltd. is also a company registered in England. Thus in respect of the vessel Ya Mawlaya which is a foreign vessel registered in Cyprus, all persons and/or companies claiming ownership rights either as owners or as charterers, managers or sub-managers are foreign companies save and except SNP which is a company registered in Bombay, India. The vessel New World with which it collided and its owners are also foreigners/foreign companies.

3. As a result of the collision which took place between New World and Ya Mawlaya off the coast of Portugal on 21st of December, 1994, eight crew members of the vessel New World died. There were injuries to some of the crew members and there was damage to both the vessels. There was also damage to the cargo. At the time of collision Ya Mawlaya was carrying a cargo of soyabeans belonging to the Italian firm of Cereal Italia SRL which had been loaded on the vessel in New Orleans, United States of America. New Orleans was the last port of call of Ya Mawlaya before the

collision. On 3rd January, 1995 Kara Mara took proceedings in Lisbon, Portugal in which New World was arrested. It was released on a letter of guarantee for US 10, 073,000 by WTCC, P&I Club Britannia on 18th January, 1995.

4. Between 30th of December, 1994 and 31st of January, 1995, several proceedings were adopted by various claimants against the owners of Ya Mawlaya in the District Court of New Orleans, Louisiana, United States of America. These included an action by WTCC for recovery of damages for damage to their ship New World. Cereal also filed a civil action against both the vessels and against the owners of both the vessels for damage to their cargo. The legal heirs of some of the crew members who died in the collision also filed civil actions for various amounts. The appellant WTCC, between January 17 and \$ 20, 1995 got two sister vessels of Ya Mawlaya, Ya Latif and Ya Jaleel arrested in the action brought by the appellant in the United States of America. These vessels were released on the issue of a letter of undertaking for U.S. \$ 20 Million by P & I Club of Kara Mara and SNP- the New Castle Protection and Indemnity Association (hereinafter referred to as 'New Castle').

5. Kara Mara thereafter filed an action for limitation of liability in the Supreme Court of Hong Kong against WTCC and all possible claimants. The Court at Hong Kong has, however, stayed the writ in Hong Kong on the ground of Hong Kong being a forum non convenience by an order dated 6th September, 1995. Kara Mara also made a conditional application for limitation of its liability before the District Court at New Orleans. Kara Mara and all Ya Mawlaya interests have filed a common defence, inter alia, pleading that the court at New Orleans lacks jurisdiction and the actions should be dismissed on the ground of forum non convenience. This issue is under examination there.

6. During the pendency of all these proceedings, on 12th of May, 1995, SNP filed Admiralty Suit No. 26 of 1995 in the Bombay High Court. The suit which has been filed in the admiralty jurisdiction of the Bombay High Court is for limitation of SNP's liability in respect of the said collision. Prayers (a) to (e) in the Admiralty Suit No. 26 of 1995 pertain to setting up of a limitation fund and other connected reliefs. Prayer (f) is for an indemnity from Kara Mara, Vestman Shipping Company Ltd. and WTCC, in respect of all claims against SNP relating to the collision. Interim reliefs prayed for in Prayers (h) and (i) are to restrain those defendants who have instituted suits in the U.S. courts or elsewhere from, in any manner proceeding with the pre-trial proceedings or hearing of the complaints/civil actions instituted by them in the U.S. courts or elsewhere (anti-suit injunctions).

7. Originally, the only plaintiff in the Admiralty Suit No. 26 of 1995 was SNP. Subsequently, Holbud Ship Management Ltd., Holbud Ltd., H. Merali and Shaukat Merali, Directors of Holbud Ship Management Ltd. have got themselves transposed as plaintiffs 2 to 5.

8. On 15/16th of November, 1995, much after the filing of Admiralty Suit No. 26 of 1995, the vessel Ya Mawlaya was brought to the Port of Bombay under ballast. On the application of SNP in the Bombay High Court, the vessel was arrested on 17th of November, 1995 in the said suit. In January/February, 1996 three other admiralty suits were filed by the Second Officer, the Third Officer and the Chief engineer of Ya Mawlaya in respect of their claim for wages and loss of future wages. The vessel Ya Mawlaya has been arrested in these three suits also. One galaxy Multimodal Ltd. filed an application in the pending admiralty suit of SNP for a fresh arrest of the same vessel on the ground of non-payment for supply of necessities. And in that application also the ship has been arrested.

9. On 22nd of March, 1996 Kara Mara filed Admiralty Suit No. 28 of 1996 seeking limitation of their liability and setting up of a limitation fund in respect of their liability arising from the collision of Ya Mawlaya with New World. Although WTCC did not appear in the two admiralty suits initially, it has now appeared under protest to contest the issue of jurisdiction of the Bombay High Court to entertain these admiralty suits to be tried as a preliminary issue on a demurer.

10. In the two admiralty suits, the Bombay High Court has also granted anti-suit injunctions against WTCC restraining it from proceeding with its claims in the Court at New Orleans in the State of Louisiana, U.S.A. Contempt proceedings were taken out for breaches of the orders passed by the Bombay High Court in this connection. By an order of a learned Single Judge of the High Court in the contempt proceedings the defence of WTCC was ordered to be struck off. We are not referring to these proceedings in detail because of what has subsequently transpired on appeal before the Division Bench. On the question of jurisdiction, the Single Judge held that the court has jurisdiction. From both these orders, appeals were filed before a Division Bench of the Bombay High Court. The Division Bench, by its order dated 20/21st of August, 1997 in Appeal No. 556 of 1997, after considering the recalcitrant conduct of WTCC and the contempt committed by it, ultimately held that WTCC can be given one more chance to appear and defend the proceedings on condition that in future it complies with all the orders of the court. On the question of jurisdiction, the Division Bench by a separate order of 21.8.1997 held that the Court had jurisdiction to entertain and try the suits. Civil Appeal No. 8534 of 1997 filed before us by WTCC is against the order of 21.8.1997 holding that the Bombay High Court has jurisdiction to entertain and try the suit. Civil Appeal No. 8535 of 1997 is from the order dated 20/21.8.1997 in contempt proceedings.

11. Kara Mara and SNP also filed Motions to compel WTCC to deposit in India US \$ 15 million said to be received by WTCC from New Castle in settlement of its claim. According to WTCC, this amount was held in escrow by Messrs. Height Gardner Holland and Knight under certain arrangements, and until further orders of the Bombay High Court. The High Court, by its order dated 21.11.1997 in appeal in these Motions taken out in Admiralty Suit No. 28 of 1996, has passed an order directing WTCC to deposit in the Bombay High Court a sum of US \$ 12.3 million and interest accrued thereon to secure compliance by WTCC of orders of the Bombay High Court. Civil Appeal No. 8536 of 1997 has been filed by WTCC against this order of 21st of November, 1997.

12. The High Court has passed a further order dated 4.12.1997 in Admiralty Suit No. 26 of 1995 as also in Admiralty Suit No. 28 of 1996, posting these suits for ex parte hearing in January, 1998. Appeals arising out of S.L.P (C) Nos. 3 and 4 1998 have been filed against these orders. By interim orders in these S.L.Ps., the ex parte hearing of the two suits has been stayed.

13. We have heard all these appeals together since common questions of law arise in all these appeals. The first question that requires consideration is the question of jurisdiction. In order to consider the question of jurisdiction, it is necessary first to examine the nature of a limitation action.

14. Describing the nature of a limitation action, Baer in his book "Admiralty Law of the Supreme Court" at page 154 traces the historic origins of limitation of liability as follows:-

"[M]en would be deterred from employing ships, if they lay under the perpetual fear of being answerable for the acts of their masters to an unlimited extent." Thus wrote the renowned Dutch jurist, Hugo Grotius, in 1625. To impose liability on ship owners for acts of their masters would be "neither consonant to natural equity.....norconducive to the public good." Referring to the law of his own nation, Grotius

continued, "[I]t is an established rule that no action can be maintained against the owner for any greater sum than the value of the ship and cargo."

Although by no means uniform, some sort of rule of limited liability on the part of the shipowner has been the law of the leading maritime nations of continental Europe since the middle ages.....".

15. In 1924 several leading nation adopted the International Convention for the Unification of certain Rules relating to the limitation of liability of owners of sea-going vessels. This is commonly referred to as the Brussels Convention of 1924. In 1957 a new convention on Limitation of Liability of Sea Going Vessels was drafted to replace the Brussels Contention of 1924. The new convention, commonly referred to as the brussels Limitation Convention of 1957 was signed by many leading maritime nations of the world. It is also signed by India. The Convention fixes the limit of liability of an owner of a sea-going vessel on the basis of the tonnage of the vessel without regard to the vessel's value. It was to incorporate this Convention in our statute law that Part XA was inserted in the merchant Shipping Act, 1958.

16. The right of an owner to bring a limitation action is governed by Part XA of the Merchant Shipping Act, 1958. The whole purpose of limitation of liability is to protect an owner against large claims, far exceeding the value of the ship and cargo, which can be made against him all over the world in case his ship meets with an accident causing damage to cargo, to another vessel or loss of personal life or personal injury. A limitation action, through it is normally filed in the admiralty jurisdiction of a court, is somewhat different from an ordinary admiralty action which normally beings with the arrest of the defaulting vessel. The vessel itself, through its matter is a party in the admiralty suit, and the plaintiff must have claims prostable in admiralty against the vessel. In the case of an action for limitation of liability, it is the personal right of the owner of the vessel to file a limitation action or to use it as a defence to an action against him for liability. It is a "defensive" action against claims in admiralty filed by various claimants against the owner of the vessel and the vessel. A limitation action need not be filed in the same forum as a liability action. But it must be a forum having jurisdiction to limit the extent of such claims and whose decree in the form of a limitation fund will bind all the claimants.

17. In the case of *Volvox Hollandia*, [1988 (2) Lloyds, Law Reports page 361], the English Court describing the nature of a limitation action observed that the purpose of limitation proceedings is, of course, to obtain a decree in rem against all claimants for a single sum limited to the amount of a limitation fund. Referring to the Brussels Convention of 1957, the Court referred to Article 4 which provides that the Rules relating to the constitution and distribution of the limitation fund, if any, and all Rules of procedure shall be governed by the national law of the State in which the fund is constituted.

18. The Brussels Convention 1957 does not specify the appropriate forum in which a limitation action properly so called, may be instituted by the ship owner. However, Article 7 of the Brussels Convention, 1957 gives to a Contracting State the right to exclude certain persons from the benefit of its provisions. Thus persons not ordinarily resident in a Contracting State nor having their principal place of business in the Contracting State and ships not flying the flag of the Contracting State can be excluded.

19. Article 7 is as follows:

"This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 here of the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State. Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in accordance with the provisions of Article 5 hereof, is not ordinarily resident in a Contracting State, or does not have his principal place of business in a Contracting State or any shipping respect of which limitation of liability or release is sought which does not at the time specified above fly the flag of a Contracting State."

20. Under principles of Private International Law, a court cannot entertain an action against a foreigner resident outside country or a foreigner not carrying on business within the country, unless he submits to the jurisdiction of the court here. This principle applies to actions in personam.

21. Regarding actions in rem, Cheshire and North in Private International Law, Twelfth Edition, Explain the position with reference to admiralty actions. It is stated (P. 213).

"..... the only action in rem known to English law is that which lies in an Admiralty court against a particular res, namely a ship or some other res, such as cargo, associated with the ship. The Supreme Court Act 1981 lists the claims that lie within the Admiralty Court and goes on to make detailed provision as to when an action in rem may be brought. To take one instance, the rule has long been that a maritime lien attaches to and remains enforceable against a ship that collides with and damages another..... That the ship is the defendant in an action brought to enforce the lien is underlined by the legal process available to the plaintiff. After obtaining the issue of a summons in rem, he may procure a warrant for the arrest of the ship which is then affixed by the Admiralty Marshal for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, being later replaced by a true copy. There is no alternative method. The person is the ship, and therefore it is essential that it should be so situated as to be within the lawful control of the State under the authority of which the court sits. In short, the court is competent to entertain the action if the ship lies within the territorial waters of England....."

22. This is also the basis on which chartered High Court exercise admiralty jurisdiction. Clause 32 of the Letters patent of the Bombay High Court defines its admiralty jurisdiction with reference to preceding letters patents which derive jurisdiction under the Colonial Court of Admiralty Act, 1891 and the Admiralty courts Act, 1861.

23. This Court had an occasion to deal with the question of jurisdiction with reference to foreign vessels and foreign owners of such vessels. In the case of British India Steam Navigation Co. Ltd. Vs. Shanmughavilas Cashew Industries & Ors. [(1990) 3 SCC 481] this Court examined the effective operation of the statutes of a country in relation to foreigners and foreign ships. This Court said (p.492): "In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to what effect is shown. A statute extends to all persons within the country if that intention is shown. The Indian

Parliament, therefore, has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus a foreign ship on the high seas, or her foreign owners or their agents in a foreign country, are not deprived of rights by our statutory enactment expressed in general terms unless it provides that a foreign ship entering an Indian port or territorial waters and thus coming without the territorial jurisdiction is to be covered..... Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction." It is this principle which is reflected in Section 2(2) of the Merchant Shipping Act, 1958.

24. Section 2 of the Merchant Shipping Act, 1958 deals with the application of the Act. It states that the provisions of the Merchant Shipping Act which apply to a vessel, will apply to those vessels which are specified in that section. Section 2 is as follows:-

"Section 2:

(1) Unless otherwise expressly provided, the provisions of this Act which apply to-

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c) as the case may be, of section 21 applies, shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India, including the territorial waters thereof."

In Section 2(1)(c), the reference to persons specified in clauses (a), (b) and (c) of Section 21 is to: "(a) a citizen of India; or (b) a company or a body established by or under Central or State Act which has its principal place of business in India; or(c) a co-operative society which satisfy the following requirements, namely; (i) the co-operative society is registered or deemed to be registered under the co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State; (ii) every individual who is a member of the co-operative society and where any other co-operative society is member thereof, every individual who is a member of such other co-operative society, is a citizen of Indian". Thus a vessel falling under Section 2(1)(c) is a vessel owned wholly by Indian citizens/Indian Companies/Indian Co-operative Societies.

25. Section 3(15) defines "High Court" in relation to a vessel. It is as follows:

"Section 3(15):

High Court, in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction-

(a) the port of registry of the vessel is situate; or

(b) the vessel is for the time being or;

(c) the cause of action wholly or in part arises;"

26. Both these sections apply to those provisions of the Act which apply to a vessel. Section 2 provides that those provisions of the Merchant Shipping Act which apply to vessels falling in Section 2(1), shall apply wherever such a vessel may be. Those provisions which apply to vessels falling in Section 2(2) i.e. foreign vessels, shall apply only while the vessel is in Indian territorial waters. There are several sections and/or parts of the Merchant Shipping Act which apply to vessels. e.g. Part V of the Merchant Shipping Act, 1958 (Section 20 to 74) deals with Registration of Indian ships. Part VIII deals with passenger ships and so on. In relation to litigation regarding vessels the High Court having jurisdiction is specified in Section 3(15).

27. The provisions regarding a limitation action have been reduced to a statutory form in Part XA of the Merchant Shipping Act, 1958. Part XA was introduced in the Merchant Shipping Act, 1958 by Amending Act 25 of 1970, in order to give effect to the Brussels International Convention of 1957 relating to the limitation of liability of the owners of sea-going ships, to which India is a signatory. Part XA consists of Sections 352, 352A to 352F. Under Section 352A the owner of a sea - going vessel may limit his liability in respect of any occurrence to his vessel resulting in loss of life or personal injury or loss of property or damage to cargo either in respect of persons or property carried on his vessel or on another vessel as also any liability in respect of damage to a vessel. The owner is entitled to limit his liability in respect of all such claims arising from one occurrence, in the manner provided in Section 352B provided that the occurrence giving rise to the claims did not result from the actual fault or privity of the owner. The Burden of proving that the occurrence which has given rise to a claim against the owner of a vessel did not result from his actual fault or privity, shall be on the owner. Thus Section 352A(1) and (2) provide as follows:

"Section 352 A:

(1) The owner of a sea-going vessel may limit his liability in accordance with the provisions of section 352B in respect of any claim arising from any of the following occurrence unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owners-

(a) loss of life of or personal injury to, any person being carried in the vessel, or loss of, or damage to any on property board the vessel;

(b) loss of life of, or personal injury to, any other person (whether on land or on water), loss of or damage to any other property or infringement of any rights-

(i) which is caused by the act, neglect or default of any person on board the vessel for whose act, neglect or default the owner is responsible; or

(ii) which is caused by the act, neglect or default of any person on board the vessel for whose act, neglect or default the owner is responsible;

Provided that the owner shall be entitled to limit his liability in respect of any claim arising out of any act, neglect or default as is referred to in sub-clause (ii) only when the act neglect or default is one which occurs in the navigation or the management of the vessel or in the loading, carriage or discharge of cargo or in the embarkation, carriage or disembarkation of its passengers.

(2) The burden of proving that the occurrence giving rise to a claim against the owner of a vessel did not result from his actual fault or private shall be on the owner."

28. Under Section 352B, the limit of liability is fixed on the basis of the tonnage of the vessel.

29. Under Section 352C, sub-sections (1), (2) and (3) are as follows:-

"Section 352 C

(1) Where any liability is alleged to have been incurred by the owner of a vessel in respect of claims arising out of an occurrence and the aggregate of the claims exceeds or is likely to exceed the limits of liability of the owner under section 352B, then the owner may apply to the High Court for the setting up of a limitation Fund for the total sum representing such limits of liability.

(2) The High Court to which the application is made under sub-section (1) may determine the amount of the owner's liability and require him to deposit such amount with the High Court or furnish such security in respect of the amount as in the opinion of the High Court is satisfactory and the amount so deposited or secured shall constitute a Limitation Fund for the purposes of the claims referred to in sub-section (1) and shall be utilised only for the payment of such claims.

(3) After the Funds has been constituted, no person entitle to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the Fund, if that Fund is actually available for benefit of the claimant.

30. Under Section 352F, for the purpose of Part XA, the provisions relating to limitation of liability of an owner of a vessel shall apply also to a charterer, manager and operator of the vessel and to master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment. Section 352 F (1) is as follows :

"Section 352 F :

(1) Subject to the provisions of sub-section (2), the provisions of this part relating to limitation of liability of an owner of a vessel in respect of claims arising out of an occurrence shall apply to the charterers, manager and operator of the vessel and to the master, member of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment in the same manner as they apply in relation to the owner.

Provided that the total limits of liability of the owner and all other persons referred to in this sub-section in respect of personal claims arising on a distinct occasion shall not exceed the amounts determined in accordance with the provisions of section 352 B."

31. Part XA does not deal with or contain provisions relating to vessels. It deals with the personal right of an owner of the vessel to limit his liability in respect of claims against him arising out of an "occurrence" to his vessel. It is a right in personam that he seeks to enforce against the claimants. Therefore, sections 2 and (3) 15 of the Act do not apply to his action. Part XA which deals with

limitation actions also does not contain any express provision of the kind contemplated by Article 7 of the Brussels Convention, 1957.

32. A limitation action as in the present case, falls under the High Court's Admiralty jurisdiction. But a limitation action, though filed in Admiralty, is not against a vessel. It is a protective action against claims which may be filed by others against owner of the vessel in admiralty jurisdiction. Therefore, a plea of limitation can be taken as a defence by the owner in an action in admiralty filed against him by the claimant against him and his ship. Hence, the court having jurisdiction to entertain an admiralty action against the vessel of the owner has jurisdiction to set up a limitation fund for the owner. Similarly, if the owner initiates the "defensive" action in limitation, the court which has jurisdiction to entertain a liability claim will have jurisdiction to entertain the limitation action. If a liability claim is already filed, that court will have jurisdiction over limitation action also. But claims may be several, and they may be actually filed or may be apprehended. Any court where such a claim is filed or is likely to be filed will have jurisdiction to entertain a limitation action. The court of domicile of the owner and the ship is a court where such a claim is likely to be filed. Therefore, that court will also have jurisdiction. Out of these, the owner has the option to choose his court for filing a limitation action.

33. Is there any other court which will have jurisdiction? Learned counsel for SNP drew our attention to clause 12 of the Letters Patent, Section 20(2) of the Civil Procedure Code and Section 3 (15) of the Merchant Shipping Act and submitted that the Court within whose jurisdiction a part of the cause of action arises is a court having jurisdiction in a limitation action.

34. As earlier stated, Section (3) 15 has no application to a limitation action. Clause 12 of the Letters Patent also has no application because a limitation action is governed by Clause 32 of the Letters Patent and not Clause 12. For the same reason, Section 20 of the Civil Procedure Code will not govern the admiralty jurisdiction of a chartered High Court regulated by its letters patent. A limitation action in admiralty jurisdiction cannot be filed in a court where a part of the cause of action arises when all claimants who are defendant to the action are foreigners who reside outside India, who do not carry on business in India and who have not submitted to the jurisdiction of any court in India, and have not filed a liability action here and are not likely to do so.

35. Admiralty Suit No. 26 of 1995 is filed by SNP, a company registered in India, claiming to be the managers of the vessel Ya Mawlaya and hence falling within the definition of owner under Section 352 F. Others who are subsequently transposed as plaintiffs are foreign companies or foreigners. The claimants are some of the defendant. They are all foreigners. Other defendants are other owners, all of whom are foreigners or foreign companies. None of the claimants in respect of whose claims a limitation fund is sought to be set up, is within the jurisdiction of the Bombay High Court : nor do they carry on business within the jurisdiction of the Bombay High Court, nor have they filed claims before it in respect of the occurrence in question or have submitted to the jurisdiction of the court. Some claims in respect of Ya Mawlaya have been lodged, no doubt, in the Bombay High Court by SNP. Itself, and by some crew members of Ya Mawlaya and others. But these claims do not fall within Section 352 A and are not capable of being limited. There is also no likelihood of any claim being filed there since all claims are already filed before the courts in the U.S.A. The Bombay High Court has, therefore, no jurisdiction in respect of Admiralty Suit No. 26 of 1995. There is also misjoinder of causes of action in the suit looking to the prayers in the suit. But we need not examine this aspect since in any event, the Bombay High Court has no jurisdiction to entertain the limitation action. Of course, in theory, if in future any liability action is at all filed there which is capable of limitation, SNP would be entitled to set up limitation as a defence or file

an independent limitation action. But the present suit is without jurisdiction.

36. SNP has claimed that the Bombay High Court has jurisdiction because a part of the cause of action has arisen within its jurisdiction. SNP, under its management agreement with Kara Mara, claims to have recruited the crew of the vessel Ya Mawlaya in Bombay. Since the owner is required to establish "no fault or privity" on his part in respect of the "occurrence", one of the relevant factors for this purpose is recruitment by the owner of a competent crew. Since recruitment was in Bombay, SNP claims that a part of the cause of action has arisen in Bombay. Therefore, SNP contends that the Bombay High Court has jurisdiction. However, in view of what we have held above, this does not confer jurisdiction on the High Court in an admiralty action of the present type.

37. In the present case the collision which given rise to the owner's liability has occurred on the high-seas off the coast of Portugal. Neither of the vessels involved in the collision is an Indian vessel. The owners of both these vessels are also foreigners. The charterers and sub-managers are also foreign companies. Only one out of several managers/sub-managers of Ya Mawlaya is an Indian company. And the only act of management in Bombay is said to be the recruitment of the crew. For reasons already stated, this factor alone will not confer jurisdiction.

38. Moreover, when the right to set up a limitation fund is a right which is common to all persons coming within the category of "owner" under Section 352 F and a common limitation fund has to be set up, an act of management only by one of the "owners" when all the other Owners are outside the jurisdiction of the Bombay High Court and all their acts are outside the jurisdiction of the Bombay High Court, will not be sufficient to confer jurisdiction. It is difficult to consider the Bombay High Court as the domiciliary court of the owners of Ya Mawlaya when the persons/companies to whom the vessel belongs are domiciled outside India and out of the entire body of persons/companies falling within the term "owner" under Section 352 F, only one manager is an Indian Company, and the vessel is registered in a foreign country.

39. The entire course of conduct appears to be a deliberate attempt on the part of the plaintiffs to bring the limitation action in Bombay with a view to obtain anti-suit injunctions against all the claimants who have filed proceedings against the owners and Ya Mawlaya in the courts of the United States prior to the filing of the admiralty suit here. The Bombay High Court, therefore, ought not to have entertained Admiralty Suit No. 26 of 1995 brought by SNP and others.

40. Admiralty Suit No. 28 of 1996 is filed by Kara Mara for the purpose of setting up a limitation fund and to obtain an anti-suit injunction in respect of all pending litigations against it in foreign courts. In the case of Kara Mara which is a foreign company registered in Cyprus, no part of the cause of action has arisen within the jurisdiction of the Bombay High Court. The vessel which met with the collision given rise to liability is a foreign vessel. The collision took place in the high seas off the port of Portugal. All the claims against Kara Mara have been filed in foreign courts and the claims which have now been filed before the Bombay High Court are not the claims which can be subjected to limitation.

41. Kara Mara, however, claims jurisdiction on the ground that its vessel Ya Mawlaya was in the Bombay harbour at the time when it filed its suit for limitation. Reliance is placed on Section 2(2) of the Merchant Shipping Act for this purpose. Section 2(2), however, has no application to a limitation action per se, as stated earlier. A limitation action is not directed against the ship nor can the action be instituted by the arrest of the foreign vessel present in the territorial waters of the courts where the action is instituted. It is an action by the owner acting personally against his

claimant who are seeking damages in respect of the loss or injury caused by the owner's vessel. Therefore, the presence of a foreign vessel in the territorial water will not give the court jurisdiction to entertain a limitation action by its owner. Unless the presence of the foreign vessel has given rise to an admiralty action by a claimant in that court, which claim is subject to limitation, or the presence of the vessel has created a likelihood of such action being taken there, or the court is a domiciliary court of the owner attracting such claims there. That is not the case here. In fact, at the time when Kara Mara filed the suit all claims were already filed against it in the foreign court at New Orleans, U.S.A. No doubt Kara Mara had challenged the jurisdiction of that court and had succeeded in the first round. But that was by no means a final adjudication. Nor can one legitimately conclude from this the likelihood of claims being filed in Bombay. In the present case, the Bombay High Court is not the domiciliary court of Kara Mara or its vessel. Nor is any claim for liability which can be limited, filed against Kara Mara in the Bombay High Court. None of the defendant to the suit is within the jurisdiction of the Bombay High Court. The fortuitous presence of the ship in the Bombay harbor will not entitle the owner to file a limitation action in the Bombay High Court in the absence of any claims being made or apprehended against him or the vessel in that court.

42. Therefore, bringing the ship to the Bombay Port, in order to confer jurisdiction on the Bombay High Court, has the character of forum shopping, rather than anything else.

43. The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the court, it is not possible to hold that the court will have jurisdiction against a foreign defendant. See in this connection *R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid* (1963) 3 SCR p. 22 at p.51) and *Raj Rajendra Sardar Maloji Marsingh Rao Shitole Vs. Sri Shankar Saran & Ors.* ((1963) 2 SCR p. 577 at pp. 587-588). This factor also, therefore, is against the respondents in the present appeals.

44. The Bombay High Court, therefore, should not have entertained the two admiralty suits.

45. C.A. Nos. 8535 and 853 of 1997 pertain to contempt proceedings taken against the appellant in the Bombay High Court. The respondents have strongly contended that an order passed by a High Court even though it may be without jurisdiction must be obeyed. If such an order is disobeyed it amounts to contempt of court and proceedings can be taken in that connection against the contemnor. The respondents cite in support, the decision of this Court in *Tayabhai M. Bagasarwalla & Anr. Vs. Hind Rubber Industries Pvt. Ltd. & Ors.* ((1997) 3 SCC 443). There is no doubt that the conduct of the appellant in the various proceedings which have taken place before the Bombay High Court leaves much to be desired. Had the appellant initially filed appearance under protest to contest jurisdiction, all these problems would not have arisen. The Bombay High Court itself, however, in its order dated 20/21-8-1997, after severely commenting on the conduct of the appellant, has allowed the appellant to defend the proceedings on condition that the appellant would, in future, obey the order of the Bombay High Court. We, therefore, do not find it necessary to examine the questionable conduct of the appellant in the proceedings before the Bombay High Court. In view of our finding that the High Court has no jurisdiction to entertain the two admiralty suits, the future conduct of the appellant in these proceedings now becomes irrelevant.

46. The impugned order of 21st of November, 1997 which is the subject-matter of Civil Appeal No. 8536 of 1997 is also for the purpose of securing the compliance by the appellant of the orders of the High Court which may be made against the appellant. The Division Bench had a justified

apprehension about the appellant not complying with the orders of the High Court in view of the past conduct of the appellant. The Division Bench, therefore, felt that the best way of securing compliance of its orders by the appellant in future would be to direct the appellant to bring into the court the money which it has received from New Castle, the insurers of Kara Mara. As the question of the appellant's obeying any further orders of the court will not now arise, the order of 21-12-1997 also now becomes purposeless.

47. We, therefore, allow Civil Appeal Nos. 8535 of 1997 and 8536 of 1997 to the extent of setting aside the impugned order of 21.11.1997. The order dated 20/21-8-1997 has now become infructuous and hence no further orders are necessary in that connection. We, however, make it clear that if the respondents or nay of them have any right to proceed against New Castle or the appellant in respect of the said sum of US \$ 15 Millions paid by New Castle to the appellant and held in escrow as sated earlier, the respondents or any of them shall be free to adopt appropriate proceedings in that connection in accordance with law.

48. In view of the above, the appeals arising form S.L.P. (C) Nos. 3 and 4 of 1998 are also allowed and the impugned order of 4th of December, 1997 in both the admiralty suits is set aside. All the appeals are accordingly allowed. Looking to the conduct of the appellant and the totality or circumstances, there will, however, be no order as to costs.