

BOMBAY HIGH COURT

Sahida Ismail

Vs.

Petko R. Salvejkov

Admiralty Suit No. 5 of 1971

(Kantawala, J.)

20.07.1971

ORDER

Kantawala, J.

1. The Plaintiff Mrs. Sahida Ismail has filed this suit in this Court in its Admiralty and Vice-admiralty Jurisdiction. In this suit, the steamship Petko R. Salvejkov is made defendant No. 1; the Indian Agents of the owners of the ship. Messrs. J. M. Baxi and Co. are made defendant No. 2 and the consignees of the cargo in Colombo are made defendant No. 3. Defendants Nos. 1 and 2 have taken out the present notice of motion for an order that the warrant for arrest issued by this Court on June 8, 1971 be superseded and set aside; that the guarantee executed by the second defendants in favour of the Admiralty Registrar on June 8, 1971 be cancelled and returned to the second defendants and that it may be held that this Court has no jurisdiction to entertain the suit in exercise of its admiralty and vice-admiralty jurisdiction.

2. The facts on the basis of which the notice of motion is argued are not at all in controversy. On December 17, 1970 the plaintiff consigned a cargo of 569 Metric Tonnes of Big Onions to the third Defendants and the said cargo was shipped on Board per. Defendant No. 1 ship from Bombay. Defendant No. 2 issued a bill of lading for the cargo on defendant No. 1 ship. The bill of lading and other documents were negotiated by the plaintiff through the Indian Overseas Bank with the People's Bank at Colombo. Under the bill of lading, the cargo was to be delivered against the documents which had been negotiated with the People's Bank at Colombo. It is the case of the plaintiff that the first defendant without production of the bill of lading, and without any authority from the plaintiff or from the People's Bank at Colombo delivered the cargo to the third defendants. The case of the plaintiff is that such delivery is in contravention of the terms and conditions of the Bill of lading and, she has suffered a loss to the extent of Rs. 2,34,997/- being the value of the cargo. The suit is filed to recover this amount of loss on the ground that the claim in the suit is a maritime claim against the first defendant for which the plaintiff has a

maritime lien over the first defendant. It is the contention of the plaintiff that she is entitled to have the first defendant-ship arrested for satisfaction of the claim in the suit. The plaintiff has also obtained leave under Clause 12 of the Letters Patent prior to the institution of the suit.

3. The plaint was presented to this Court on June 7, 1971, during the Summer Vacation. On that very day, Vaidya, J. after hearing the Counsel for the plaintiff and the Attorneys of defendant No. 1 ship issued a warrant for arrest of defendant No. 1-ship and directed that the said warrant should not be executed against defendant No. 1-ship in case the security as therein provided was furnished to the satisfaction of the Admiralty Registrar. The ship was arrested that very night. On the next day, on June 8, 1971 defendant No. 1 through its attorneys moved the Court by raising a preliminary objection regarding the jurisdiction of this Court. On that day, it appeared under protest. The Attorneys of defendants No. 1 and defendant No. 2 undertook to the Court that the guarantee in the sum of Rs. 2,45,000/- would be duly executed by partner of defendant No. 2 in the course of the day and/or latest by the next day. In view of the said undertaking, by consent of parties, this Court ordered that defendant No. 1-ship should be released forthwith. This order was passed by this Court without prejudice to the contention of defendant No. 1 that the Admiralty Court at Bombay had no jurisdiction to entertain the suit or arrest the ship during the pendency thereof.

4. On July 8, 1971 defendants Nos. 1 and 2 have taken out this Notice of Motion for the reliefs set out above. It is, inter alia stated in the affidavit in support by Kishore Prabhakar Dalvi, that after the cargo of onions was put on board as defendant No. 1 ship, it was to proceed to Colombo via Bedi and Karachi. The contention in this affidavit in support is that the Court had no jurisdiction to entertain and try the suit that the jurisdiction exercisable by the Court in its admiralty jurisdiction in the same as was the jurisdiction exercised by the High Court of Admiralty in England either under any statute or otherwise in the year 1890; that in that year, the British Parliament passed the Colonial Courts of Admiralty Act, 1890 providing therein that the legislature in India may declare certain courts to be Colonial Courts of Admiralty; that the said Act further provided that the Courts so declared to be Courts of Admiralty - shall have the admiralty jurisdiction declared under the said Act; that in exercise of the powers conferred by the Colonial Courts of Admiralty Act, 1890 the Indian Legislature enacted, the Colonial Courts of Admiralty (India) Act (Act No. XVI of 1891) under which, inter alia the High Court of Judicature at Bombay was declared to be a Colonial Court of Admiralty and the Court was entrusted with such admiralty jurisdiction as was then exercised by the High Court of Admiralty in England under any statute or otherwise.

5. The contention of defendants Nos. 1 and 2 in this Notice of Motion is that this High Court in its admiralty jurisdiction can exercise only such admiralty jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise in the year 1890; that in the year 1890 the jurisdiction of the High Court of Admiralty in England for damage to cargo was that which was statutorily conferred by Section VI of the English Admiralty Court Act, 1861; that under this Section this Court in exercise of its admiralty jurisdiction can entertain an action

provided the goods were carried into any port in England or Wales in any ship; that as the goods in the present case were to be carried to Colombo, this Court had no jurisdiction to arrest the ship in exercise of its admiralty jurisdiction.

6. Before dealing with the matter in controversy in this proceeding, incidentally reference may be made to the question whether the proceeding by way of notice of motion, is an appropriate proceeding for the reliefs set out in the notice of motion. The plaintiff in her husband's affidavit in reply has contended that such an issue as to jurisdiction cannot be decided on a notice of motion; that the Defendants should be compelled to file the Written Statement and then approach this Court for deciding the issue of jurisdiction as framed by the Court.

7. The practice that prevails in England for raising such an objection is very well settled. If it is intended to object to the jurisdiction the usual practice is to enter an appearance under protest after which notice of motion to set aside the writ or to stay proceedings should be served before taking any further step in the action. See Encyclopedia of Court Forms and Precedents in Civil Proceedings, by Lord Atkin, Vol. I, dealing with Admiralty at P. 322. That this is the correct procedure is also borne out in Williams' and Brice's Admiralty Practice, 3rd Edition at page 277 it is stated that if it was intended to object to the jurisdiction of the Court, an appearance had to be entered under protest, within the ordinary time limited for appearance. Where an appearance had been given under protest, the solicitor for the Defendant under protest was bound, within twelve days from the entry of such an appearance, to file in the Registry what was called a petition on protest. At page 278 it is pointed out that the Defendant was in some cases permitted to state objections to the jurisdiction of the Court on motion, without filing any formal petition on protest. Indeed, it may be said to have been a common practice, especially where the validity of the objections to the jurisdiction did not depend upon the proof of controverted facts, to raise such objections on motion.

8. Such is a well-established practice is also borne out by the proceedings adopted in the Theta, 1894 PD 280 where such a notice of motion was taken out. Mr. Keshavdas has not pressed under the circumstances his objection to the notice of motion being an appropriate procedure for raising an objection to the jurisdiction of this Court.

9. The material question in this motion is, has the High Court in exercise of its admiralty jurisdiction, jurisdiction to entertain and try the present suit. The contention of Mr. Baptists on behalf of the Defendants Nos. 1 and 2 is that this Court is invested with the same admiralty jurisdiction as was invested in the Court of Admiralty in England in the year 1890; that subsequent extension of admiralty jurisdiction of the English Court by later Preliminary legislation is not available to this Court. Mr. Keshavdas on behalf of the Plaintiff on the other hand contended that this High Court in exercise of its admiralty jurisdiction is invested with the same jurisdiction which at present could be exercised by the Court of Admiralty in England.

10. Clause 32 of the Letters Patent, 1865 confers admiralty and vice-admiralty jurisdiction on this Court, That clause provided as under :-

"And we do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes, and other maritime questions arising in India as may now be exercised by the said High Court."

11. To determine the extent of maritime jurisdiction as was exercised by the High Court as the Court of Admiralty or Vice-Admiralty in the year 1865. the earliest Letters Patent to which reference is required to be made will be the Letters Patent issued under the Charter of 1823 under which the Supreme Court of Judicature at Bombay was established. The Court was then entrusted with four jurisdictions namely, civil, criminal, ecclesiastical and admiralty. Clause 48 of the Letters Patent provided as follows :-

"And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature at Bombay shall be a Court of Admiralty, in and for the said Town and Island, Bombay, and the limits thereof, and the Factories, subordinates thereto, and all the territories which now are or hereafter may be subject to. or dependent upon the said Government. and we do hereby commit and grant to the said Supreme Court of Judicature at Bombay full power and authority to take cognizance of, hear examine, try and determine all causes, civil and maritime, and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships, and all matters and contracts which, in any manner whatsoever, relate to freight or money due for ships hired and let out, transport money, maritime usury, bottomry or respondential, or to extortions, trespasses, injuries, complaints, demands, and matters, civil and maritime, whatsoever, between merchants, owners and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid or between others, contracted, done, had, or commenced in, upon, or by the high seas or public rivers, or ports, creeks, harbours and places overflown within the ebbing and flowing of the sea and high water mark, within, about the throughout the Town, Island and territories aforesaid, the cognizance whereof doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies, annexed and connexed causes whatsoever; and to proceed summarily therein, with all possible despatch, according to the course of our Admiralty of that Part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact and the equity of the case."

It will appear from this clause that though several matters are enumerated in respect of which the

Supreme Court of Judicature at Bombay had full power and authority to take cognizance of the jurisdiction of the Admiralty side of the Supreme Court was the same as was used and exercised in that part of Great Britain called England. In other words, the Supreme Court of Judicature at Bombay was invested with the same jurisdiction on its Admiralty side as the Jurisdiction which was exercised by the High Court of Admiralty in England.

12. The Jurisdiction so conferred by clause 48 of the Letters Patent issued under the Charter of 1823 was continued by clause 31 of the Letters Patent of 1862 and later on by clause 32 of the Letters Patent of 1865.

13. This jurisdiction was continued by Section 106 of the Government of India Act, 1915 and Section 223 of the Government of India Act, 1935 and lastly by Articles 225 and 372 of the Constitution of India.

14. There was some extension of this jurisdiction in England by the Colonial Courts of Admiralty Act, 1890. Under sub-section (1) of Section 2 thereof, every court of law in British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of admiralty, with the jurisdiction in this Act, mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, Sub-section (2) thereof provided that the jurisdiction of a Colonial Court of Admiralty shall, subject to the provision of the Act, be over the like places, persons, matters, and things as, the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations. Section 3 of that Act empowered that, the legislature of a British possession may by any Colonial law declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially or otherwise, the extent of such jurisdiction.

15. In exercise of the powers conferred by the Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act (Act No. 16 of 1891) was enacted. By Section 2 thereof High Court of Judicature at Bombay was inter alia declared to be the Colonial Court of Admiralty.

16. When Act No. 16 of 1891 was enacted, the admiralty jurisdiction of the High Court in England was exercised pursuant to the Admiralty Court Act, 1861 (24 Vict. c. 10) Sections IV to VIII of this Statute deal with the extent of jurisdiction. Section IV thereof confers jurisdiction on the High Court of Admiralty over any claim for the building, equipping or repairing of any ships. Section V thereof confers jurisdiction as to claims for necessaries. Section VI confers jurisdiction

as to claims for damage to cargo imported. Section VII confers jurisdiction as to damage done by any ship and Section VIII confers jurisdiction as to questions as to ownership, etc. of ships. Under S. XXXV of this Act, the jurisdiction conferred by the Act on the High Court of Admiralty was exercisable either by proceedings in rem or by proceedings in personam.

17. Section VI above referred to related to claims for damage to cargo imported and is as under :-

"VI. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damages done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales : Provided always, that if in any such cause the Plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried by the said Court."

The Section precisely states the claim for the exercise of jurisdiction by persons by whom, the High Court of Admiralty can be made and the circumstances under which such jurisdiction can be invoked. Such jurisdiction can be invoked by making a claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship. The claim can be made either for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the Part of the owner, master or crew of the ship.

18. Before considering the extent of jurisdiction conferred by Section VI, it is necessary to consider the argument that was founded upon the provisions of Section 2 (2) of the Colonial Courts of Admiralty Act, 1890. Under that section, the jurisdiction of a Colonial Court of Admiralty shall subject to the provisions of the Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise. The argument of Mr. Keshavdas is that the word "existing" in this section should be construed as existing at the time when the action is brought in a Court of law. Reliance was placed upon the passage in Halsbury, Vol. I (3rd Edn.) on Admiralty, para. 125 (p. 63) dealing with extent of jurisdiction. It states that the High Court has by statute Admiralty jurisdiction, which may be exercised in rem or in personam, over all claims arising out of any agreement for the use or hire of a ship, or relating to the carriage of goods in a ship, and over any claim in tort with respect to goods carried in a ship. This statutory jurisdiction extends over all ships, save that it cannot be exercised if it is proved to the satisfaction of the Court that at the time of the institution of the suit the owner or a part-owner of the ship is domiciled in England. The Court of Admiralty in England at present exercised such jurisdiction in view of the provisions of Section 22 (1) (a) (xii) of the Supreme Court of Judicature (Consolidation) Act,

1925 (15 and 16 Geo 5 Chapter 49). This jurisdiction was invoked by Mr. Keshavdas as the words in Section 2 (2) of the Act of 1890 contained the words "Whether existing by virtue of any statute or otherwise." According to Mr. Keshavdas, these words can only be understood as applying to conditions which are to come into being upon and after the passing of the Act. His submission in brief was that the word "Existing" should be interpreted to mean as "existing from time to time." Mr. Baptista on the other hand on behalf of Defendants Nos. 1 and 2 contended that the jurisdiction defined by Section 2 (2) is sufficiently and indeed unmistakably described as the jurisdiction of the High Court in Admiralty existing at the point of time when the Colonial Courts of Admiralty Act, 1890 became law.

19. The question as to the correct interpretation of the words "whether existing by virtue of any statute or otherwise" is concluded by the decisions in England as well as in India. Para. 346 of Hals. Laws of England Vol. I (page 139) deals with jurisdiction of Colonial Courts of Admiralty and is as under :-

"2 Within the limitations, if any, laid down by the Colonial Legislatures, or the orders conferring jurisdiction, the Colonial Courts of Admiralty have the same jurisdiction and powers as were exercised in Admiralty by the High Court in England at the passing of the Colonial Courts of Admiralty Act, 1890.

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20. The foot note (b) at page 140 shows that the jurisdiction of Colonial Courts of Admiralty is stabilized as it existed at the time of the passing of the Act, and the extension of the Admiralty jurisdiction of the High Court in England by the Administration of Justice Act, 1920 (10 and 11 Geo. 5 Chapter 81), re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925 (15 and 16 Geo 5 Chapter 49). Section 22 is not shared by Colonial Courts of Admiralty.

21. This view is founded upon the decision of their Lordships of the Privy Council in the *Yuri Maru v. Crown. The Woron¹*. In that case a contention similar to the one urged by Mr. Keshavdas on behalf of the plaintiff was rejected by their Lordships. At page 915 their Lordships pointed out : "A construction of the statute of 1890 which would have the singular effect of introducing by an automatic process unasked changes in the jurisdiction and procedure of the Courts of self governing dominions, with possible power in the local legislature by a cumbrous process to revoke an extension of jurisdiction in rem, but no power to undo an unwelcome abatement, manifestly could not be adopted unless the words of the statute should be found to leave no alternative. Neither the early history of the overseas Courts, the course of Modern legislation. continuity of policy, nor practical convenience appears to their Lordships to require that the jurisdiction defined in the Act shall be declared to be that "from time to time existing" in the High Court in England.

On the whole, the true intent of the Act appears to their Lordships to have been to define as a maximum of Jurisdictional authority for the Court to be set up thereunder, the Admiralty jurisdiction of the High Court in England as it existed as the time when the Act was passed. What

shall from time to time be added or excluded is left for independent legislative determination."

22. Same is the view taken by Shah, J. in *Kamlakar v. Scindia Steam Navigation Co*², at p. 1001, the learned Judge points out that the High Court of Judicature at Bombay, in Particular being one of the Colonial Courts of Admiralty under Act XVI of 1891 today exercises the same Admiralty Jurisdiction as was exercised by the High Court of Admiralty in England in 1890 when the Colonial Courts of Admiralty Act was passed by the British Parliament. After referring to the English Act of the year 1925, at page 1012 the learned Judge states :

"We need not, however, go to the Act of 1925 at all, because by the Act of 1890 entitled "the Colonial Courts of Admiralty Act of 1890", the legislature of British India, as already observed, was empowered to declare certain Courts to be Colonial Courts of Admiralty and the Courts so declared were given the same Admiralty jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise. It was under this Act that in 1891 the High Court of Bombay was declared as a Colonial Court, and, therefore, ever since that date the High Court of Bombay on its Admiralty Side had the same jurisdiction as was exercised by the High Court of Admiralty in England at that date. We have seen that the High Court of Admiralty in England as constituted under the Judicature Act of 1873 had the exclusive jurisdiction in regard to certain matters under the Act of 1861. Consequently, the Colonial Court at Bombay, that is to say, the High Court of Bombay, had a similar jurisdiction from and after 1891. It has

¹1927 AC 906

²62 Bom LR 995

already been observed that this legislation has been continued under Article 372 of the Constitution of India."

23. In this decision, Shah, J. has exhaustively reviewed the extent of the Admiralty and Vice-Admiralty jurisdiction of this Court while coming to this conclusion.

24. Thus there is no doubt that by virtue of Act No. XVI of 1891 the High Court of Judicature at Bombay as a Colonial Court of Admiralty had the same jurisdiction as was then exercised by the High Court of England in its admiralty jurisdiction. Such jurisdiction was exercised in England in view of the provisions of the Admiralty Court Act, 1861.

25. The question in the present notice of motion relates to a claim for damage to cargo. Question arises whether in view of the provisions of S. VI of the Admiralty Court Act, 1861, the High Court of England in its admiralty jurisdiction would have exercised jurisdiction for a claim for damages, when the goods were exported from England to a foreign country. Under Section VI, as already observed, a claim could be made by the owner or consignee or assignee of any Bill of Lading of any goods carried into any port in England or Wales in any ship. In view of the provisions of proviso (a) of sub-section (3) of Section 2 of the Colonial Courts of Admiralty Act, 1890, the word "India" has to be substituted for the words "England or Wales" in this

section. The argument of Mr. Baptista for defendants Nos. 1 and 2 is that as the cargo of onions was loaded on board defendant No. 1 ship for consignment to Colombo, the jurisdiction under Section VI of the Act of 1861 cannot be invoked. His submission is that that section merely restricted admiralty jurisdiction in a case where the goods were imported into India and it can have no jurisdiction when the goods were exported out of India. The words "carried into in any part of England or Wales in any ship" in Section VI of the Act of 1861 have been liberally construed.

26. In the case of the *Cap Blanco*, 1913 PD 130, the Plaintiffs, as owners of certain cases containing German gold coin, sued the defendants for damages for breach of duty or of contract in respect of non-delivery at Monte Video or Buncos Aires of one of such cases and its contents, which were shipped on the *Cap Blanco* under a Bill of Lading. The vessel proceeded on a voyage and called at Southampton. She subsequently went to Monte Video, where all the cases except one were delivered. The vessel then proceeded on a return voyage to Hamburg. On her way she called again at Southampton and was arrested on the suit of the Plaintiffs. The question before the Court was whether the goods were carried into the port of Southampton within the meaning of Section VI of the Admiralty Court Act, 1861. Sir Samuel Evans, the President had no difficulty in coming to the conclusion that the Court had such jurisdiction. It was argued in that case that there was no breach of duty or of contract before the cases were carried into Southampton. His Lordship observed :- "It does not appear where the breach of duty took place; for aught I know it may have been in Southampton itself. No case has decided that the breach of duty or of contract must take place, and the cause of action must have arisen, before the goods were carried into a port in England, and to say that that must be so would be to place a limitation upon the jurisdiction which the Authorities and the section do not justify and introduce into the section words which are not to be there found."

27. In this case it is pointed out that Section VI was intentionally framed in large and general terms and ought to be construed with as great latitude as possible within the fair meaning of the words on the ground that the statute being remedial of grievance, by amplifying the jurisdiction of English Court of Admiralty, ought, according to the general rule applicable to such statutes, to be construed liberally so as to afford the utmost relief which the fair meaning of its language will allow. It is also pointed out that it is wholly unnecessary in order to found the jurisdiction under the statute that the goods should be carried into an English port for the purpose of delivery or in pursuance of the contract.

28. A similar view was also taken by the Judicial Committee of the Privy Council as early as in the year 1874, in the case of the *Pieve Superiore*, (1874) 30 LT 887. It was held in that case that when a foreign ship carrying cargo acting in pursuance of the contract of affreightment, which gives the option of several ports of call. English and foreign, puts into an English Port of call for orders, she carries her cargo into the English port within the meaning of the Admiralty Court Act, 1861, Section VI and though she be ordered to a foreign port, and there discharge her cargo, the

Court of Admiralty has jurisdiction to entertain against her a suit by the Assignees of the bills of lading of the cargo, for damage to cargo, and to arrest her on her return after discharging to this country.

29. The principle in the case of *Cap Blanco*, 1913 PD 130 has been followed by the Calcutta High Court in *Rungta v. Owners etc., in S. S. Edison*³, After reviewing the English Cases, the High Court has taken the view that in order to attract the jurisdiction of the Admiralty Court it is not necessary that the goods should be imported into India or that their carriage should be for delivery in India. It is sufficient if the goods are carried into an Indian port and there is a breach of duty or contract on the part of the master in respect of the goods so carried.

30. Thus even though this Court in exercise of its admiralty jurisdiction is invested with the same jurisdiction that was vested in the High Court in England, in exercise of its admiralty jurisdiction as in the year 1890, the claim in the present case can be regarded as one covered by the provisions of Section VI of the Admiralty Court Act, 1861. The cargo of onions was loaded on board the ship in Bombay; its destination was Colombo, but before going to Colombo defendant No. 1 ship was to sail to Bedi, a port in Saurashtra in Gujarat State and then to Karachi. It is immaterial to invoke the jurisdiction conferred by S. VI of the Admiralty Court Act, 1861 that the goods are carried into the port in India from another port in India. The principle laid down in the case of *Cap Blanco*, 1913 PD 130 will equally be attracted in this case. This Court will, therefore, have jurisdiction to entertain the suit in exercise of its admiralty jurisdiction in view of the provisions of S. VI of the Admiralty Act, 1861.

31. Having regard to the view that, I have taken, it is unnecessary to consider the further contention of Mr. Keshavdas that this Court has jurisdiction to entertain the suit in exercise of its admiralty jurisdiction as the Plaintiff had a maritime lien because defendant No. 1 ship has delivered the goods to defendant No. 3 without production of the Bill of Lading and without the orders of the People's Bank. Colombo and in fact in contravention of the provisions of the bill of lading.

³(1961-62) 66 Cal WN 1083

32. The only question that has to be considered at present stage is whether in exercise of its admiralty jurisdiction such suit can be entertained. This issue has to be answered, in my opinion, in the affirmative.

33. In the result, the Notice of Motion is dismissed with costs. As the hearing of this Notice of Motion went on for nearly two days, costs of this Notice of Motion are quantified at Rs. 750/-. Written Statement to be filed on or before 1st November, 1971. Parties will make their respective affidavits of documents within two weeks thereafter. Inspection shall be given forthwith thereafter. Liberty to the parties to make an application to the Court for fixing the date of the hearing of the suit after inspection is over.

Order accordingly.