

UMBICHY LTD
v.
HEDE NAVIGATION (PTE) LTD
(OWNERS OF M. V. "SHANTHA ROHAN")

SUPREME COURT
FERNANDO, J. PERERA, J. AND
WIJETUNGA, J.
S. C. APPEAL No. 32/91A
C. A. No. 103/84
H. C. COLOMBO No. 18/83
19TH JULY, 1993.

Admiralty jurisdiction - Jurisdiction of the High Court of Colombo as on 31.8.1983 - Admiralty Ordinance, No. 2 of 1891 - Admiralty Rules of 1883 - The (U. K.) Administration of Justice Act of 1956 - Administration of Justice Law No. 44 of 1973 - Sections 3, 23 and 54 of the Law - Judicature Act No. 2 of 1978 - Sections 13 and 62 of the Act - Interpretation of statutes.

Prior to 1.1.1974 on which date the Administration of Justice Law, No. 44 of 1973 ("the AJL") was promulgated, admiralty jurisdiction was exercised by the Supreme Court as the "Colonial Court of Admiralty" under the Ceylon Admiralty Ordinance, No. 2 of 1891, having the same jurisdiction as the High Court of England and applying the Admiralty Rules made by Order-in-Council dated 23.8.1883. Thereafter, admiralty jurisdiction was defined by the (U. K.) Administration of Justice Act of 1956.

Section 3(1)(a) of the AJL repealed the Ceylon Courts of Admiralty Ordinance, but the Admiralty Rules were kept alive by section 3(2). Section 23(1) enabled admiralty jurisdiction to be vested in a High Court; and section 54 defined admiralty jurisdiction to mean "until otherwise provided for by written law, the admiralty jurisdiction of the High Court of England", and thereby kept in force the (U. K.) Administration of Justice Act of 1956.

Section 62 of the Judicature Act No. 2 of 1978 which came into operation on 2.7.1979 repealed Chapter I (which included sections 23 and 54 but not section 3) of the AJL. Section 13(1) vested admiralty jurisdiction in the High Court to be exercised by a Judge of the High Court sitting in the Judicial Zone of Colombo; and section 13(2) provided that admiralty

jurisdiction of the High Court "shall be as provided for by law for the time being in force". Consequently, the (U. K.) Administration of Justice Act of 1956 ceased to be applicable; and the question arose whether between 2.7.1979 (the effective date of the Judicature Act) and 31.10.1983 (the date immediately prior to the coming into force of the Admiralty Jurisdiction Act, No. 40 of 1983) the High Court had jurisdiction over admiralty claims. The long title of Act No. 40 of 1983 describes it inter alia, as "an Act to amend and consolidate the law relating to admiralty jurisdiction".

The particular issue between the parties before the High Court of Colombo was whether it had jurisdiction on 31.8.1983 to entertain and deal with the appellant's claims for the arrest of the respondent's vessel for damage to cargo and breach of the contract of carriage.

Held :

The High Court of Colombo did have jurisdiction on 31.8.1983 to entertain and deal with the appellant's claim.

Per Fernando, J.

"..... considering the history of admiralty jurisdiction, and the purpose of the Judicature Act, one cannot discover a legislative intent to take away a jurisdiction recognized for almost a century; and the fact that the Admiralty Rules were kept in force contradicts any such intention. The Judicature Act was intended to ensure or regulate the smooth working of the judicial system, and the alternative interpretation which will introduce uncertainty, friction or confusion into the working of the system must be rejected"

Cases referred to :

1. *Bawazir v. M. V. Aysha* (1986) 1 Sri L. R. 314
2. *Shannon Realties Ltd. v. Ville de St. Michel* (1924) A. C. 185.
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APPEAL from the judgement of the Court of Appeal reported in (1994) 2 Sri L. R. 54.

H. L. de Silva, P. C. with *Mano Devasagayam*, for the plaintiff - respondent - appellant.

Added defendant - appellant - respondent absent and unrepresented.

Cur. adv. vult.

July 27, 1993

FERNANDO, J.

The question that arises in this appeal is whether the High Court of Colombo had admiralty jurisdiction during the period 2.7.79 to 31.10.83.

The first statute conferring admiralty jurisdiction on a Sri Lankan Court was the Ceylon Courts of Admiralty Ordinance, No. 2 of 1891, section 2 of which declared the Supreme Court to be a "Colonial Court of Admiralty" having the same jurisdiction as the admiralty jurisdiction of the High Court in England. Although section 22 of that Ordinance empowered the Judges of the Supreme Court to make rules, that power was never exercised; section 23 provided that rules made under the English Vice Admiralty Courts Act, 1863, shall have effect; accordingly, rules made by Order-in-Council dated 23.8.1883 ("the Admiralty, Rules") applied to the Supreme Court, as the Admiralty Court.

By virtue of section 2 of the Civil Law Ordinance, No. 2 of 1852, the law for the time being applicable in England was made applicable in Sri Lanka (unless and until other statutory provision was made) -

"..... in respect of all contracts or questions arising (in Sri Lanka) relating to ships and to the property therein, and to the owners thereof, the behaviour of the master and mariners, and their respective rights, duties, and liabilities, relating to the carriage of passengers and goods by ships and generally to all maritime matters."

Section 2 of the Ceylon Courts of Admiralty Ordinance also required the Supreme Court to have the same regard as the High Court in England "to international law and the comity of nations".

On 1.1.74, the Administration of Justice Law, No. 44 of 1973, was enacted. The Ceylon Courts of Admiralty Ordinance

was repealed by section 3(1)(a), but the Admiralty Rules were kept alive by section 3(2). Section 23(1) enabled admiralty jurisdiction to be vested in a High Court, and section 54 defined "admiralty jurisdiction" to mean, "until otherwise provided for by written law, the admiralty jurisdiction of the High Court of England".

There were various English statutes defining the admiralty jurisdiction of the High Court in England. The (U. K.) Administration of Justice Act of 1956, had defined that jurisdiction, and this was kept in force by Section 54.

By section 62 of the Judicature Act, No. 2 of 1978, which came into operation on 2.7.79, Chapter I (which included sections 23 and 54, but not section 3) of the Administration of Justice Law, No. 44 of 1973, was repealed. Section 13 provided :

"13(1) Admiralty jurisdiction is hereby vested in the High Court and shall ordinarily be exercised by a Judge of the High Court sitting in the judicial zone of Colombo..... .

(2) The admiralty jurisdiction vested in the High Court shall be as provided for by law for the time being in force."

In consequence of the repeal of section 54, the (U. K.) Administration of Justice Act, 1956, ceased to be applicable.

On 1.11.83 the Admiralty Jurisdiction Act, No. 40 of 1983, came into operation; its long title described it as "an Act to amend and consolidate the law relating to admiralty jurisdiction, legal proceedings in connection with ships and the arrest of ships and other property, and to provide for all matters connected therewith". Section 2 of that Act defined the admiralty jurisdiction of the High Court, "notwithstanding anything to the contrary in any other law". There is no doubt whatsoever that thereafter the High Court had admiralty jurisdiction. A question arose, however, whether the Admiralty

Rules were yet in force. The contention that they were not in force was rejected by the Court of Appeal in *Bawazir v. M. V. Ayesha*⁽¹⁾. It was held that those Rules had been kept alive by section 3(2) of the Administration of Justice Law, No. 44 of 1973, notwithstanding the repeal of the principal enactment.

On 31.8.83 the Appellant applied for a writ of summons and a warrant of arrest of the Respondent's vessel, in respect of a claim for damage to cargo and breach of the contract of carriage; the vessel was arrested on 1.9.83. The Respondent's submission that the High Court of Colombo had no admiralty jurisdiction under the Judicature Act, was rejected on 30.8.84 by the High Court, which held that it had the admiralty jurisdiction of the High Court of England as set out in the Administration of Justice Act, 1956. On appeal, the Court of Appeal reversed that order on 1.3.91, and this appeal is against that order.

When this appeal came up for hearing, two years later, Counsel appeared, instructed by a registered attorney-at-law who held the Respondent's proxy; he stated that neither he nor his instructing attorney-at-law had instructions from their client, that the Respondent had not taken steps to enable Counsel to be retained to appear at the hearing of the appeal, and that he was not making any application for a postponement. Thereupon another Counsel requested a postponement, asserting that the Respondent's attorney in Sri Lanka had sought to retain him to appear at the hearing of the appeal, but that pending clarification of certain matters he had not in fact been duly retained to appear; he did not suggest that the Respondent had taken, or had sought to take, any steps to revoke the proxy granted to the registered attorney-at-law on record. We indicated to Counsel that he had no status whatsoever to appear, or to make any application, on behalf of the Respondent. There was no excuse whatever for the Respondent's failure to take steps to retain Counsel, and we decided that there was no reason to postpone the hearing. It

is in those circumstances that the Respondent was absent and unrepresented at the hearing of the appeal.

The only question for decision is whether the High Court of Colombo had jurisdiction to entertain the Appellant's action on 31.8.83 and to proceed to deal with it thereafter. Learned PC for the Appellant submitted that the undoubted intention of Parliament, in enacting section 13 of the Judicature Act, was to confer admiralty jurisdiction on the High Court; the fact that the Admiralty Rules were kept in force confirmed that intention; those Rules sufficiently indicated the nature of the powers of the Court, and how they should be exercised, and thus demarcated the scope of the admiralty jurisdiction of the High Court. In interpreting a statute which purports to confer jurisdiction, the maxim *ut res magis valeat quam pereat* was applicable (Maxwell, 12th ed., p. 45); even if there was an ambiguity, that interpretation should be preferred which gives effect to the statute rather than that which would create a *lacuna* in the law, or reduce the legislation to futility. He further submitted that rules defining jurisdiction were procedural, rather than substantive; that the presumption against retrospective operation does not apply to procedural rules; and that, in any event, upon the enactment of the Admiralty Jurisdiction Act, No. 40 of 1983, the High Court must be deemed to have had admiralty jurisdiction as from 31.8.83.

I entertain grave doubts as to the last submission; no principle or precedent was cited in support of the proposition that an action instituted in a court which lacked jurisdiction - which action ought therefore to have been immediately rejected on that ground - would nevertheless become valid and proper if jurisdiction was later conferred on that court. I prefer to rest my decision on other grounds.

Section 13(1) vested "admiralty jurisdiction" in the High Court. That section, taken as a whole, is capable of two constructions. The first view is that "admiralty jurisdiction"

is exhaustively defined by sub-section (2), i. e. as being such jurisdiction, and only such jurisdiction, as is provided for by law for the time being in force; there being no such law in force on 31.8.83, the High Court had no jurisdiction. However, section 13(2) seems somewhat wider than the usual (exhaustive) definition clause, which would have provided that admiralty jurisdiction in section 13(1) "means such jurisdiction as is conferred (or provided for) by the law for the time being in force". Had there been a statute which provided for admiralty jurisdiction, such statute would have applied, even if section 13(2) had been omitted; to that extent section 13(2) is superfluous. In any event, even if it be regarded as a definition clause, it is more in the nature of an inclusive, rather than an exhaustive, definition.

The second interpretation is that "admiralty jurisdiction" in section 13(1) did have a meaning, independently of sub-section (2); namely, the ordinary meaning of the phrase considered in the context of the preceding one hundred years; the special characteristic of admiralty jurisdiction, as commonly understood, was that it recognised an action *in rem* wherein a vessel could be arrested, or seized as security for the satisfaction of the claim if successful; and the nature and extent of that jurisdiction could also be ascertained by a consideration of the powers conferred or recognised by the Admiralty Rules. That interpretation, however, renders section 13(2) superfluous, as even without it Parliament could later have amended or added to the admiralty jurisdiction of the High Court.

I have therefore to choose between an interpretation which renders section 13(1) a futility, and another which renders section 13(2) superfluous. Considered in isolation, the first interpretation seems more logical. But considering the history of admiralty jurisdiction, and the purpose of the Judicature Act, one cannot discover a legislative intent to take away a jurisdiction recognised for almost a century; and the fact that the Admiralty Rules were kept in force contradicts

any such intention. The Judicature Act was intended to ensure or regulate the smooth working of the judicial system, and the alternative interpretation which will introduce uncertainty, friction or confusion into the working of the system must be rejected (*Shannon Realities Ltd. v. Ville de St. Michel*,⁽²⁾ Had section 13(1) stood alone, "admiralty jurisdiction" would have had to be given a meaning, and there is no doubt that it would have included a claim for loss of or damage to goods carried in a ship or a claim arising out of any agreement relating to the carriage of goods in a ship.

I therefore hold that the High Court of Colombo did have jurisdiction on 31.8.83, to entertain and deal with the Appellant's claim. The appeal is allowed, and the order of the Court of Appeal is set aside. I make no order as to costs. The High Court of Colombo is directed to hear and determine the action as expeditiously as possible.

PERERA, J. - I agree.

WIJETUNGA, J. - I agree.

Appeal allowed.