

A SHIP IS A DEAD VESSEL, ON FILING OF BILL OF ENTRY FOR DEMOLITION

SHIP ARREST IN INDIA

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Ms. Vidya Rajan, with Indian law firm BRUS CHAMBERS, keeping in mind the growing number of ship arrests in India, studies the legal impact when a ship is sold for scrap, the effect of arresting a ship under admiralty jurisdiction when a bill of entry is filed with the Customs for demolition, at what point of time is a ship no longer a ship and gets converted to 'goods' and the applicability of a maritime lien to such 'goods'.



According to the dead vessel doctrine, a vessel that is permanently withdrawn from use for navigational purposes is not considered a vessel, in terms of admiralty jurisdiction. A vessel is not a "dead vessel" merely because it is not actively engaged in trade or commerce, where arrangements have been made to alter it to fit it for an intended maritime service. Additionally, a ship can be a "live vessel" and not a dead vessel when it is in dry dock. A dead vessel is basically any vessel that is permanently retired from navigation. The word "vessel" is defined to include "any ship or boat, or any other description of vessel used in navigation," whilst "ship" includes any description of vessel used in navigation not propelled by oars. "Navigation" is the nautical art or science of conducting a ship from one place to another. The navigator must be able to determine the ship's position and to determine the future course or courses to be steered to reach the intended destination. The word "navigation" is also used to describe the action of navigating or ordered movement of ships on water. The phrase "used in navigation" conveys the concept of transporting persons or property by water to an intended

destination. Navigation is not synonymous with movement on water. It denotes a planned or ordered movement of the ship from one place to another. Under the dead vessel doctrine, a vessel loses its status as a vessel subject to admiralty jurisdiction when its function is so changed that it has no further navigation function. The court observed that a dead vessel which is not defined by a statute is described as one withdrawn from navigation. However, such withdrawal must be a permanent one.

Alang is situated in the district of Bhavnagar in the State of Gujarat and its beaches are a major worldwide centre for ship breaking. It is also Asia's largest ship breaking yard. Almost all the ships make their final voyage to Alang for demolition or breaking. The yards are located on the Gulf of Khambhat, 50 kilometres southeast of Bhavnagar. Large super tankers, car ferries, container ships, and a dwindling number of ocean liners are beached during high tide, and as the tide recedes, hundreds of manual labourers dismantle each ship, salvaging what they can and reducing the rest into scrap. In practice, it so happens that when a

vessel is purchased for the purpose of demolition, a Bill of Entry is to be filed with the concerned Customs Authority by the person so purchasing it. Once a Bill of Entry is filed for the demolition of a vessel, the vessel is converted to “goods” and is no longer considered as a vessel and therefore admiralty action cannot be initiated. On filing of the Bill of Entry, the nature and category of the res (in the present instance, the ship) is entirely altered. In such a case, the court is without jurisdiction as there is no *res*. The vessel has literally ceased to exist from the standpoint of definition of a vessel. An action in rem cannot be maintained in such situation. “Beaching” is the process in which a ship or boat is laid ashore, or grounded deliberately in shallow waters. Ships scheduled for break-up are intentionally beached to make the procedure easier.

Keeping this in mind, it is also to be noted that a “dead vessel” does not attract a maritime lien or a maritime claim. As seen above, it also falls outside the purview of the Court’s admiralty jurisdiction. These contentions have been clearly elucidated in the dismissal of an appeal by the Bombay High Court and a recent Gujarat High Court Judgment. In the case of the Bombay High Court, the plaintiff had filed a suit for the arrest of the vessel (MV P Express) in the admiralty and vice admiralty jurisdiction of the Bombay High Court in order to recover an amount of Rs. 42,60,000/- from the owner of the vessel, which was granted by a single judge by an ex-parte order. However, one of the respondents, M/s Hatimi Steels (the company) took out a Notice of Motion for vacating the arrest as the vessel was purchased by the company for breaking and was brought in India for the same purpose. Consequently, the vessel had been beached in order to break it. Since, as on the date of the order of arrest, the vessel had already been beached, it was not capable to be arrested under the admiralty jurisdiction of the Court. It was held by a single judge that since the ship was being brought into India for demolition and the importer had paid custom duty on the vessel, it became goods which were imported into India. Therefore, when the vessel was brought into India for demolition and was beached for the same purpose, it ceased to be a vessel and it was incapable of being arrested within the admiralty jurisdiction of the Court. This order of the single judge was upheld in the appeal filed by the plaintiffs by a Division Bench of the Bombay High Court.

In the case by Sri Lanka Telecom PLC, a vessel (MV ACX Hibiscus) was anchored in Colombo in April, 2012 near the submarine cables owned by the company. The vessel, on its journey, damaged these submarine cables. Aggrieved by this, the Company moved the Gujarat High Court in May, 2012 seeking that the vessel should not be dismantled without the furnishing of the security of the amount of USD 2.2 million. Subsequently, the Gujarat High Court granted for the arrest of MV ACX Hibiscus. The ship breaker, that is, Bhuval Industries filed an Intervener’s Application stating that the ship had been purchased for an amount of USD 3.87 million and had already been beached prior to the order of Arrest from the Gujarat High Court. Therefore, such a suit under the Admiralty Jurisdiction was not maintainable against such a ship as it had already become a “dead

vessel”. During the course of the proceedings, reliance was placed on various landmark judgements. Placing reliance on of M.V Elisabeth-v- Harwan Investment & Trading Pvt Ltd. Goa and Destel Marine Limited v. M V Star 7, the Court came to a finding that “Admiralty jurisdiction can only be invoked to enforce an action in rem against a vessel and only when the vessel is in the coastal/ territorial waters of India” and “once the ship is beached and it would no more be in the territorial waters and consequently no admiralty jurisdiction could be invoked. Additionally, once a ship is beached and it is on the land mass, the jurisdiction would be of the Civil Court as per the local laws and no admiralty jurisdiction could be invoked.” This judgment of the Gujarat High Court leads us to the following propositions:

- i. The navigability of a vessel may be categorised into two kinds: a) mechanical navigability and b) legal navigability.
- ii. The navigability of the vessel does not merely depend upon the presence of navigation instruments being present on the vessel. A vessel is not considered to be legally navigable if the intention of the owner is no longer to deploy the vessel.
- iii. If a vessel is not legally navigable, all maritime liens on the vessel stand extinguished.
- iv. A ship breaker can never be subject to an order of arrest when the ship breaker pays custom duty for the import of the vessel.
- v. A “dead vessel” does not attract maritime claims or maritime liens.
- vi. A “dead vessel” is outside the admiralty jurisdiction of the Court.
- vii. If a claimant wishes to arrest a ship for a maritime lien, then he must obtain the order before the ship breaker files the necessary documents (viz. Bill of entry) with the respective authorities for importing the ship for demolition.

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