

1988 September 9

(PIKIS, J.)

HAISAN VAHLAWAN,

Plaintiff,

v.

THE MOTOR YACHT «SAUD» NOW LYING AT LARNACA MARINA,

Defendant.

(Admiralty Action No. 29/88)

Admiralty — Arrest of ship — The Admiralty Jurisdiction Order, 1893, Rule 50 — The application may be made at or at any time after the issue of the writ — It may be made after judgment in an action in rem.

Admiralty — Action in rem — Execution of — No order for sale of defendant ship can be made, unless she is under arrest.

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Admiralty — Arrest of ship — Whether possible to arrest a ship already under arrest in another action.

The applicant is the judgment creditor in an admiralty action in rem against the defendant vessel. He tried to obtain an order for the sale of the ship in execution of the judgment. When he realised that that was not possible, unless the ship was under arrest* he applied for her arrest.

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It must be noted that the ship in question is under arrest in another pending admiralty action.

Held, (1) In the light of Rule 50 the application for the arrest of the vessel cannot be faulted as untimely. Failure to have the vessel arrested before judgment, does not give rise to any waiver on the part of the judgment-creditor to have the property arrested thereafter for the satisfaction of the judgment debt.

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(2) A ship may be arrested a second time if it is not anticipated that judgment in the first proceeding will be entered sooner than

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* See *British Shipping Laws, Vol, 1 (1964)*

judgment in the second action. The res does not merge in a judgment in rem in a way precluding a subsequent arrest.

- 5 (3) The right to have a ship arrested for purposes of execution of an in rem judgment, is only forfeited if the vessel is bailed out after an initial arrest.

Order for arrest of defendant ship.

Cases referred to:

- Baring Shipping Company v. Ship EUROTRADER* (1978) 1 C.L.R. 93;
- 10 *Commercial Bank v. Ship «PEGASOS III»* (1978) 1 C.L.R. 1;
- The «DESPINA G.K.»* [1982] 2 L.L.R. 525;
- The Point Breeze* [1928] P. 135;
- The Alletta* [1974] 1 L.L.R. 401.

Application.

- 15 Application by plaintiff for the arrest of the defendant yacht.
- A. *Georghadjis*, for the plaintiff.

Cur. adv. vult.

- 20 PIKIS J. read the following judgment. The applicant is the judgment-creditor in an admiralty action in rem for an amount of U.S. \$31,450.-- or its equivalent in Cyprus Pounds. The action was undefended. Judgment was given on the evidence of the plaintiff establishing his claim to arrears of wages and other benefits deriving from the contract of his employment aboard the defendant vessel. The judgment remained unsatisfied. On 29.8.88
- 25 an application was made for the sale of the vessel in the process of execution of the judgment. When the application came up for hearing, counsel realised that his application could not be proceeded with and no sale of the ship could be ordered unless she was first arrested; and as it was not, he filed a second application
- 30 for arrest of the vessel, the subject matter of the present proceedings. The res cannot be sold unless under arrest, as explained in the Admiralty Practice.*

It appears to be settled that a ship cannot be seized and be sold for the satisfaction of a judgment debt unless the vessel is under

* (*British Shipping Laws, Vol. 1 (1964)*).

arrest. This is an incident, it seems to me, of the implications of an action in rem and the nexus between the judgment and the res itself. *Williams & Bruce** explain that if an admiralty action in rem is defended by the owner and the plaintiff voluntarily proceeds without resorting to the arrest of the vessel, execution may levy against the owner in the same way as judgment in personam can be executed. Even in that situation there may be recourse to the res for satisfaction of the judgment debt if the debt remains unsatisfied after exhausting the remedies available in actions in personam.

It emerges that omission or failure to resort to the arrest of the vessel for security in an in rem action, does not disentitle the pursuer from having the vessel arrested for purposes of making the res available for satisfaction of the judgment debt. This was the course followed by A. Loizou, J., as he then was, in *Baring Shipping Company v. Ship «EUROTRADER»*** . The Admiralty Rules do not in terms limit the time at which a ship may be arrested. R. 50 of the Cyprus Admiralty Rules provides that application for the arrest of the ship may be made at the time of the issue of the writ of summons or «..... at any time after the issue of the writ of summons.....» . Therefore, the application for the arrest of the vessel cannot be faulted as untimely. Failure to have the vessel arrested before judgment, does not give rise to any waiver on the part of the judgment-creditor to have the property arrested thereafter for the satisfaction of the judgment debt. However, the amenity of the judgment-creditor to have the property arrested in an in rem admiralty action after judgment, is not the only issue to be resolved. We are also required to determine whether it is possible to have the ship arrested when already under arrest at the instance of another suer.

The vessel that applicant seeks to have arrested is already under arrest at the instance of the judgment-creditor in Admiralty Action No. 215/87. The present application was necessitated, as explained in the affidavit in support of the application, by the fact that the owner of the vessel has made application in the above case for stay of execution of the judgment of the aforementioned action. Seemingly that application precipitated the present

* *(Jurisdiction and Practice of the English Courts in Admiralty Actions and Appeals, 3rd ed., p.310.*

** (1978) 1 C.L.R. 93.

proceedings. In *Commercial Bank v. Ship «Pegasos III»*,* A. Loizou, J., subscribed to the view that a ship may be arrested a second time if it is not anticipated that judgment in the first proceeding will be entered sooner than judgment in the second
 5 action. Otherwise, Ord. 65 of the Admiralty Rules providing for the entry of a caveat affords a compendious method of protection of the interests of the second pursuer. *Christopher Hill*, in his work *Arrest of Ships in England and Wales*, takes a similar view mostly founded on the decision of *Sheen, J.*, in *The «DESPINA G.K.»***.
 10 The above decision supports the proposition, as the learned author explains, that the res does not merge in a judgment in rem in a way precluding a subsequent arrest.

The right to have a ship arrested for purposes of execution of an in rem judgment, is only forfeited if the vessel is bailed out after an
 15 initial arrest. A body of caselaw establishes that bail takes the place of the res, is a substitute for it, and plaintiff cannot thereafter look to the vessel either for security or for the satisfaction of judgment***.

In view of the above there do not appear to be legal obstacles to entertaining the ex parte application of the applicant. An order for
 20 the arrest of the vessel is consequently made. Notice of the order must be served upon the vessel and every other party known to have an interest in the fate of the vessel.

The case will come up before me on Friday, 16.9.88, at 9 a.m. The party to whom notice shall be given shall be free to move the
 25 Court on that day to have the order discharged, amended or modified. Further, directions will be given on that date whether security should be given for Marshal's expenses for the arrest and keeping of the vessel.

Order accordingly.

* (1988) 1 C.L.R. 1.

** [1982] 2 Ll. L.R. 525.

*** (*The Point Breeze* [1928] P. 135; and *The Alletta* [1974] 1 Ll.L.R. p. 40).