

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 819 / 2018

Plaintiff: Wiltrans Cargo Service through Mr. Shaiq Usmani along with Syeda Ayesha Advocates.

Defendant: Port Qasim Authority through Mr. Ali T. Ebrahim Advocate.
No. 1.

Mr. Umar Zad Gul Kakar DAG.
Mr. Riazuddin Assistant Manager, Cargo Department, Port Qasim Authority.

- 1) For orders on CMA No. 12863/2018.**
- 2) For orders on CMA No. 6119/2018.**
- 3) For orders on CMA No. 6120/2018.**

Date of hearing: 12.10.2018.

Date of order: 12.10.2018.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Recovery and Damages, whereas, through CMA No.6120/2018 the Plaintiff seeks release of 4000 Metric Tons i.e. the balance consignment of Coal discharged from Vessel "MV CALIMERO".

Learned Counsel for the Plaintiff submits that earlier, "MV SEA PACE" arrived at Port Qasim Authority containing 40,000 Metric Tons of Indonesian Coal on account of Defendant No.3 on or about 17.01.2016 and out of that the Defendant No. 3 / consignee took delivery of 38,300 Metric Tons, whereas, 2000 Metric Tons ("1st Cargo") was abandoned by the said consignee. He further submits that in respect of 1st Cargo, Defendant No.1 raised demand for storage charges and in the meantime, the Plaintiff paid Rs. 2,257,025/- against storage charges up to February 2017 and further requested that Plaintiff in law is not liable to pay any storage charges and the goods are required to be auctioned by the Customs as per Section 82 of the Customs, Act, 1969. Per

learned Counsel in the meantime, Vessel "MV CALIMERO" called at Port Qasim on 14.04.2017 containing 40,000 Metric Tons of Coal on account of Defendant No. 4, out of which 30,000 Metric Tons was directly delivered to Defendant No.4, and remaining 10,000 Metric Tons was stored with Plaintiff in its yard allotted by Defendant No.1, as Defendant No.4 was short of finance and could not pay the Customs duty on this cargo. He submits that thereafter, Defendant No.4 paid Customs duty of this balance cargo out of which 6000 Metric Tons was released by Defendant No.1, leaving behind 4000 Metric Tons ("2nd Cargo") which is still detained by them on the ground that storage charges against 1st Cargo are to be paid. According to him even in this respect exorbitant rates are being demanded; hence, the Plaintiff has invoked jurisdiction of this Court. Per learned Counsel in law it is not permitted that cargo of another consignee could be detained for any outstanding dues in respect of cargo of another consignee, merely because of a common cargo handling agent; however, notwithstanding this, Plaintiff is willing to furnish a Bank Guarantee of Rs. 5.0 million pending final adjudication of this Suit.

On the other hand, learned Counsel for Port Qasim Authority has contended that the relationship between the Plaintiff and Defendant No.1 is governed by an agreement and therefore, the matter be referred for arbitration. He has read out various clauses of the agreement in question including Clause 13 and submits that since the Plaintiff who is a cargo handling agent has failed to lift the 1st cargo and has also defaulted in making regular payments of the storage charges; hence, Defendant No.1 is justified in withholding the 2nd cargo for recovery of its amount. Per learned Counsel the charges are increasing day by day and therefore, the entire amount is to be paid.

I have heard both the learned Counsel and perused the record. At the very outset, I may observe that despite best possible efforts by this Court, Defendant No.1 has shown defiance and reluctance in resolving this dispute and to come up with any appreciable reasoning in demanding the huge amount of storage charges for an interim relief being claimed by the Plaintiff. Time and again indulgence was granted to come with a reasonable solution as regards their claim, but despite best efforts, no positive response was received. Such conduct on the part of a Government department is not appreciated. Nonetheless, in these circumstances application is being decided on merits.

Though the Counsel for the Defendant No.1 has vehemently relied upon the agreement in question, but could not refer to any clause in the said agreement which entitles Defendant No.1 to detain a cargo imported subsequently and consigned to another party for claiming the arrears of storage charges in respect thereof. Learned Counsel for Defendant No.1 was also directed to assist the Court as to whether there is any provision in the Port Qasim Authority Act, 1973, to justify their stance, but he could not refer to any such provision in the said Act. This Court is unable to understand as to how Port Qasim Authority which is a Government Owned Organization can act in such a reckless manner without any lawful excuse. The 1st cargo in question was though handled by the Plaintiff Company, but was consigned to Defendant No.3, who has taken away delivery of the major portion, leaving behind 2000 Metric Tons as abandoned cargo. Subsequently, Defendant No.4 has imported its own consignment which again has been handled by Plaintiff Company and out of which 30,000 Metric Tons were delivered directly and 10,000 Tons was stored in the yard of Plaintiff allotted by Defendant No. 1. Out of this 10,000 Tons even 6000

Tons was released subsequently, without any objection and thereafter, 2nd cargo has been detained. The conduct of Defendant No.1 amounts to blowing hot and cold at the same time. If their stance, was and is, that charges against 1st cargo are to be paid before any further cargo is handled and delivered to the Plaintiff, then how did firstly 30,000 Tons was released, and thereafter, even 6000 Tons was also released. If that is the case, then at the very outset, no cargo should have been released to the Plaintiff from the entire second shipment. From this only once inference can be drawn, and that is, that Defendant No.1 is acting on its own, whimsically, without any lawful excuse and justification.

In view of hereinabove facts and circumstances of this case, I am of the view that Plaintiff has made out a case for an injunctive relief, whereas, the balance of convenience also lies in its favour and irreparable loss would be caused if the cargo is not released as the same is detained at port for no fault on the part of the consignee and it is a fit case to order for release of the same against surety. Accordingly, by means of a short order dated 12.10.2018 the listed application was allowed in the following terms and these are the reasons thereof.

“3. This is an application seeking release of 4000 M/T of remaining cargo of coal discharged by Vessel MV CALIMERO. Counsel for plaintiff has offered that in respect of the alleged dues of defendants, plaintiff is willing to furnish a bank guarantee of Rs.5 Million. For the reasons to be recorded later on, this application is allowed. Plaintiff shall furnish a bank guarantee of Rs.5 Million to the satisfaction of the Nazir of this Court and on furnishing of such bank guarantee, the consignment covered by this application, shall be released by the defendants’ authority.

1-2. Adjourned to 09.11.2018.”