

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

ADMIRALTY SUIT No.23 / 2011

Date	Order with signature of Judge
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FOR HEARING OF CMA NO.15/2020

None is present for the Plaintiff though served.
Dr. Adeel Abid Advocate for the Defendants.

Date of hearing: **10.09.2020** .

Arshad Hussain Khan J.- Through this Application [CMA 15/2020] under Order XLVII Rule 1 Read with Sections 114 & 151 CPC the Defendants seek review in respect of the findings on Issue No.2 of the Judgment dated 07.02.2020, passed by me in the above matter.

It is stated in the application that the impugned judgment in determining issue No.2, which deals with the question of law of limitation applicable to the suit stands in stark contrast with the Statute and its interpretation as laid down in a number of judgments of the Honourable Supreme Court of Pakistan and the Honourable High Court of Sindh and thus appears to be an error apparent on the face of the record. It is stated that the claim for Maritime Lien is considered as a charge upon the maritime property, which continues until fully satisfied, as against all persons including a bona fide purchaser for value with or without notice, which is entirely distinct from the claim filed by the Plaintiff. The claim for Maritime Lien has been exhaustively defined by the Supreme Court in the case of M.V. Titisee reported as PLD 1993 SC 88. It is further stated that a Maritime Lien is privilege claim, which can only be enforced by an action *in rem*. And every claim relating to the ship cannot create Maritime Lien. It arises and attaches to the ship in cases of bottomry, damage done by a ship, salvage, seaman and master wages and Master disbursement. It is further stated that the Plaintiff's claim appears to be a simple claim for compensation and damages *in personam* for which the law of Carriage of Goods by Sea Act 1925 is applicable and the period of limitation provided is one year from the date of delivery of goods or from the date

when the goods should have been delivered. And in the alternate the Plaintiff's claim was a claim against a carrier for compensation for allegedly injuring goods or for delay in delivering goods for which Articles 30 or 31 of the Limitation Act, 1908, apply and the prescribed period of limitation for such claims against the carrier is again one year. It is further stated that a finding that the period of limitation is two instead of one year is a radical departure from the law, which has been laid down as precedents by the Honourable High Courts and the Honourable Supreme Court of Pakistan and thus the judgment dated 07.02.2020 suffers from errors apparent on the face of the record.

2. During the course of arguments learned counsel for the Defendants while reiterating the contents of his application has argued that the suit does not fall within the admiralty jurisdiction. It is also contended that the claim of the Plaintiff is a simple claim for compensation and damages for which law of Carriage of Goods by Sea Act 1925 is applicable and for filing an action under the said law the limitation period provided is one year from the date of delivery of goods or from the date when the goods should have been delivered. Learned counsel further contended that the present case is admittedly filed beyond the said period and as such the same is barred by limitation, therefore, it is prayed that the Application may be allowed as prayed. In support of his stance, he has relied upon the cases of *National Insurance Corporation v. Pakistan National Shipping Corporation* [1997 CLC 908], *Azhar Ahmad Khan v. M.V. Ashar and 3 others* [PLD 1985 Quetta 278], *Atlantic Steamer's Supply Company v. M.V. Titisee and others* [PLD 1993 SC 88], *Farook Omar Vs. National Security Insurance Co. Ltd, Karachi and another* [PLD 1965 Lah. 385], *M/s. Central Insurance Col. Ltd v. M/s. Koninklijke Nedlloyd N.V. and another* [1992 MLD 1766] and *S.S. Eagle Cape v. Hussain Can Company (Pvt.) Limited* [an unreported Judgment passed in Admiralty Appeal No.02/2006].

3. I have heard the learned counsel for the Defendants, perused the record and the case law cited at the bar.

Before going into further discussion, it would be appropriate to reproduce herein below Issue Nos.1 and 2, which are in a way interconnected with each other, together with my findings thereon:

- “1. Whether the suit is maintainable under Section 4 & 5 of the Admiralty Jurisdiction of the High Court’s Ordinance, 1980?
- 2. Whether the Suit is time barred?”

“ISSUE No.1: Admiralty law has distinctive features that distinguishes it from other fields of law. One of these characteristics originates from the commencement of litigation, where a claim can be initiated through two different routes. On the one hand, by the action in *personam*, where a claim is issued and served on the person/company liable for the damages suffered. On the other hand, the action in *rem* is a unique action only obtainable under the Admiralty Jurisdiction of the High Court and it is an action against the “res” , ship or ships of named or unnamed defendants.

From the pleadings, it appears that the present suit was filed by the plaintiff under section 3(2)(g) read with section 4 (1) & 5 of the admiralty jurisdiction of the High Court’s Ordinance 1980. Before going into any further discussion, it would be appropriate to reproduce the relevant provisions necessary for deciding the above issue as under:

3. Admiralty Jurisdiction of the High Court.—

(1) The Sindh High Court and the High Court of Balochistan shall have and exercise, within their respective territorial jurisdiction, Admiralty jurisdiction as is in this Ordinance provided and the Lahore High Court and the Peshawar High Court shall, within their respective territorial jurisdiction, have and exercise the said jurisdiction in cases in which any question or claim relating to aircraft is to be determined.

(2) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to bear and determine any of the following causes, questions or claims

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g) any claim for loss of or damage to goods carried in a ship;

(h) Any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

4. Mode of exercise of admiralty jurisdiction.

(1) Subject to the provisions of section 5, the Admiralty jurisdiction of the High Court may in all cases be invoked by an action in *personam*.

- (2)
- (3)

(4) In the case of any such claim as is mentioned in clauses (e) to (h) and (j) to (q) of subsection (2) of section 3 being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in *personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court may, whether the claim

gives rise to a maritime lien on the ship or not, be invoked by an action in rem against:

(a) that ship, if at the time when the action is brought it is beneficially owned as respects majority shares therein by that person ; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

(5).....

(6).....

5. Jurisdiction in personam of courts in collision and other similar cases.

(1) No Court shall entertain an action in personam to enforce a claim to which this section applies unless:

(a) the defendant has his ordinary residence or a place of business within Pakistan; or

(b) the cause of action arose within the internal or territorial waters of Pakistan ; or

(c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2).....

(3).....

(4).....

(5).....

(6) The claims to which this section applies are claims for damage, loss of life or personal injury caused by ships or arising out of collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or out of non-compliance, on the part of one or more of two or more, ships, with the regulations made under section 214 of the Merchant Shipping Act, 1923 (XXI of 1923).

6. Limitation of maritime lien.

No action shall be brought before the High Court to enforce a maritime lien for the damage sustained in consequence of collision whosoever occurring or any other maritime lien unless proceedings therein are commenced within two years from the date of the damage occurring or the maritime lien arising, subject to the discretion of the High Court to extend this period.”

Perusal of the aforesaid provisions reflects that Admiralty Jurisdiction has been conferred on this Court that is to say the jurisdiction to hear and determine the causes, questions or claims arising out of any agreement relating to the carriage of goods in a Ship or to the use or hire of the Ship and in respect of any claim for loss or damage to the goods carried in a Ship. The objection of the learned Counsel for Defendants that the case of the plaintiff is a claim in *personam* and not in *rem*, and therefore, it is not maintainable at least against the Master of the Vessel, is also devoid of any merits. Moreover, it is also by now settled that a claim in rem and personam is simultaneously maintainable under the Admiralty Jurisdiction of this Court. The learned Counsel for Defendants has vehemently argued that this is not a case, wherein, this Court could exercise its Admiralty Jurisdiction and has also placed reliance on certain documents as well as case law. In my view, and with respect, these decisions are not of any direct relevance in the circumstances of the present case. The issue in the present case is in respect of the contract of affreightment through a Bill of Lading, which is already a matter of admitted fact, with the carrier and defendant No.1 as its owner. As is obvious, the nature

of the question that requires resolution is different from that raised in the cited cases. Reliance may be placed on the case of C.V. "Lemon Bay" v. Sadriddin and others (2012 SCAM 1267); wherein inter alia it has been observed as under:-

"6. It, therefore, follows that the plaintiff was entitled to a decree against the defendants. At this juncture, it is important to bear in mind the provisions of section 3(2)(h) of the Admiralty Ordinance which provides that "the Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following causes, questions or claims ... (h) any claim arising out of any agreement relating to the carriage of goods in a ship . . ." When we examine section 4(4) of the Admiralty Ordinance along with the said statutory provision, it becomes clear that an action in personam can be founded on any agreement such as a bill of lading relating to the carriage of goods in a ship. In addition to the right to bring an action in personam, the admiralty jurisdiction of the Court can also be invoked for an action in rem for the arrest of a sister ship such as La Boheme in the case of Suit No.27 of 1999 and the vessel Swat in the case of Suit No.31 of 1999....."

Furthermore, in the present case there is no dispute in respect of issuance of Bills of Lading for carrying goods of the plaintiff, which is an acknowledgement of the receipt of the cargo mentioned therein. The Hague Rules say that a bill of lading is a prima facie evidence of the receipt by the carrier of the goods described therein. This is a conclusive evidence of shipment in the hands of the consignee or the endorsee, as the case may be, as against the Master or any other person signing the same. It is settled law that a holder of a Bill of Lading is always under an expectation that he is entitled to proceed against the ship or its owner in the event of loss or damage to his goods. And this is what the case of the plaintiff is; hence, it falls within section 3(2) (g) (h) of the Ordinance 1980, and this Court can competently exercise the Admiralty Jurisdiction. Accordingly, this issue is answered in affirmative.

ISSUE NO.2: Insofar as the period of limitation for filing an action under the admiralty jurisdiction is concerned, the same is two years from the date of the damage occurring or the maritime lien arising as provided under the provisions of the law viz. Section 6 of the Admiralty Jurisdiction of the High Courts Ordinance, 1980.

In the present case, the goods were loaded on board the vessel/ship at the port of loading (Muhammad Bin Qasim, Karachi Pakistan) through two Bill of Ladings; bearing No. MSCUK1028404 dated 16.11.2008 [**Marked as X-1**] and MSCUK1034519 dated 30.11.2008 [**Marked as X-3**] and it was discharged at the port of discharged on 14.02.2009. Thereafter, survey was conducted and claim was lodged on 20.06.2009 [**Exh. P/1-7**]. The plaintiff having not received any reply to the claim lodged by him sent legal notice dated 16.10.2009 [**Exh. P/1-11**] to the defendants, which was replied to by the defendants through reply legal notice dated 04.11.2009 [**Exh. P/1-12**] wherein the claim of the plaintiff was denied and thereafter the plaintiff filed the present suit within two years, that is, on 23.04.2011. Thus, the present suit appears to have been filed within time. Accordingly, this issue is answered in negative.

4. The defendants in the review application did not seek review of the findings on issue No.1, which in my opinion is the core issue and interconnected with issue No.2, and in absence thereof the relief sought in the application appears to be misconceived. Even otherwise the stance of learned counsel for the defendants in support of the application was similar and mere repetition of his earlier arguments he advanced at the time of final arguments of the case viz: that the claim of the Plaintiff is a simple claim for compensation and damages for which law of Carriage of Goods by Sea Act 1925 is applicable and for filing an action under the said law the limitation period provided is one year from the date of delivery of goods or from the date when the goods should have been delivered. These arguments / points, have already been dealt with and taken into consideration while deciding the Issues 1 & 2 in the judgment.

5. It is well-settled that where a court had applied its mind to a particular fact or law and then had come to a conclusion after conscious reasoning, it could never be contended that error was apparent on the face of the record and could be corrected by it. While dismissing the suit this Court considered and appreciated all the relevant facts and law and arrived at the resolute conclusion. Hence, a case cannot be reopened on merits on review as the scope of review is very limited and application for review cannot be maintainable on those points, which have been decided one way or the other. And any matter or dispute, which has already been resolved cannot be reviewed as the Review by its very nature is not an appeal or rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court. Reference can be made to the case of Syed Arif Shah v. Abdul Hakeem Qureshi [PLD 1991 Supreme Court 905], wherein the Honourable Supreme Court of Pakistan while dilating upon the scope of the review, has held that_

"The scope of a review is very limited. It cannot be used as a substitute for a regular appeal, which is competent on a question of fact and law. The mere fact that a trial Court has taken an erroneous view on the question of fact or on the question of law, would not attract the review jurisdiction, which grounds are eminently amenable in an appeal."

In another case Sh. Mehdi Hassan v. Province of Punjab through Member, Board of Revenue and 5 others [2007 SCMR 755] the Honourable Supreme Court of Pakistan, inter alia, has held under:-

"We having heard the learned counsel for the parties at length and perused the record with their assistance have found that the contentions raised by the learned counsel in support of this petition have been exhaustively dealt with in the judgment under review. This is settled law that the points already raised and considered before the Court, cannot be re-agitated in review jurisdiction which is confined to the event of patent error or a mistake floating on the face of record which if not corrected may perpetuate illegality and injustice. The mere fact that another view of the matter was possible or the conclusion drawn in the judgment was wrong, would not be a valid ground to review the judgment unless it is shown that the Court has failed to consider an important question of law. The learned counsel has not been able to point out any such error of law in the judgment or interference in the review jurisdiction."

6. In view of the above discussion, I have reached to a firm conclusion that the points raised by learned counsel have already been dealt with and taken into consideration while deciding Issues No.1 and 2. And no sufficient reason or justification is made out by the defendants to review the findings on issue No.2 in the judgment, which has been passed by this Court after detailed examination and appreciation of law, facts and evidence lead by the parties. Hence, the review application is dismissed.

JUDGE

Karachi
Dated: 30.11.2020

Jamil***