

## IN THE HIGH COURT OF SINDH, KARACHI

ADMIRALTY SUIT No.23 OF 2011

Before:

**Mr. Justice Arshad Hussain Khan***Abdul Wahid*

Vs.

*M/s. Mediterranean Shipping Company S.A, & another*

Plaintiff through: Syed Baqar Ali Naqvi, & Mr. Abdul Qadir,  
Advocates

Defendants through: Dr. Adeel Abid Advocate.

Date of hearing: 19.11. 2019

**JUDGMENT**

**Arshad Hussain Khan J.** The instant suit was filed on 23.4.2011 by the plaintiff against the defendants for Recovery of US\$ 1,54,549.16 under section 3(2)(G) read with section 4 (1) & 5 of the admiralty jurisdiction of the High Court Ordinance, 1980, with the following prayers:

- a) Judgment and Decree jointly and severally against the Defendants for US\$ 1,54,549.16 with markup/loss of profit/interest @ 15% per annum from the date of filing of the suit till its realization.
- b) Any other/additional/ further relieves which this Hon'ble Court deems fit and proper in the circumstances of this case, may also be granted.
- c) To grant cost of the suit."

2. Briefly the facts of the present case, as averred in the plaint, are that the plaintiff carries on the business of imports and exports of fresh fruits and vegetables under the name and style of his sole proprietary concern M/s. Chase International. The plaintiff in the course of business two consignments comprising of 'Pakistan Long Grain Rice IRRI 6' were entrusted to defendant No.2 [M/s. MSC Agency Pakistan (Pvt.) Ltd.] at Karachi for onward carriage to Zanzibar, Tanzania. Both the consignments in full and good order and condition were handed over to defendant No.2 at Port Muhammad Qasim, Karachi as an agent of Defendant No.1 [M/s. Mediterranean Shipping Company S.A.] who

had undertaken to carry the consignments on board their vessels above named for onward delivery to the consignee at Zanzibar, Tanzania in the same good order and condition. After loading the consignments, the vessels were sailed from Port Muhammad Bin Qasim, Karachi as per their schedule where after, the vessels in the normal course along with its cargo should have reached Zanzibar, Tanzania, within the normal transit time period of one month from the date of their sailing from Karachi. However, the defendants as carriers committed unreasonable deviation in discharging cargo, and reached at the destination nearly in three months. Due to the lengthy transit time of about three (3) months, both the consignments were found to be rotten when finally discharged and delivered to the consignee at Zanzibar, Tanzania. Consequently, the entire consignments were to be disposed of under the directions and supervision of the competent authority at Zanzibar, which caused losses. Thereafter, vide letter dated 20.06.2009, the plaintiff lodged claim in the sum of Rs.1,54,549.16 with defendant No.2. However, when the defendants did not respond to the said letter, the plaintiff sent legal notice dated 16.10.2009. The said notice though was replied by defendant No.2 yet the plaintiff being dissatisfied with the said reply filed the present case for redressal of his grievances.

3. The defendants, upon notice of the present case, filed written statement denying the allegations and claim of the plaintiff and sought dismissal of the suit. In the written statement, the defendants while taking preliminary legal objections regarding maintainability of the suit on several counts, has stated that the defendants received the consignments in FCL condition and had no opportunity to verify the cargo condition at the time of receiving the said containers. Similarly, the defendants had no opportunity to check the weight, quality, quantity and /or the condition of the consignments due to the containers being sealed. It has also been stated that the terms and condition of the contract of affreightment as provided in the relevant bills of lading are binding on the plaintiff and in terms thereof the vessel is not liable to give delivery by weight of sealed container as the said weight is to be deemed for the purpose of charging freight only and shall not constitute prima facie evidence against the defendants. It has been further stated that the carrier committed no deviation in discharge of the cargo. The

consignments discharged and reloaded being a transit ports. Moreover, in the bill of lading it has been specifically mentioned that the Carrier does not promise or undertake to load, carry or discharge the Goods on any particular date or time and advertised sailing and arrival are only estimated times, and such schedules may be advanced, delayed or cancelled without notice. Hence the Carrier, in no event is liable for any consequential damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyances used to transport the Goods by sea or otherwise. It has been further stated that the survey conducted at the Zanzibar Port, clearly reflects that the containers were all in sound conditions and the damage was due to inherent vice of the goods for which the defendants are not responsible at all. It has been stated that the defendants and their agents, servants and employees took all the reasonable care and precaution in respect of the goods in question and safely discharged the entire cargo at the Port of destination in accordance with the arrangement made by the Port Authorities for receiving the cargo. Moreover, as soon as the subject goods were discharged from the ship, the responsibility of carrier in respect of the said goods came to an end as per the law and defendants are not liable for the alleged damage due to insufficiency of packing, improper stowage in the containers and inherent vice of the cargo.

4. Out of the pleadings, on 13.05.2013 the court framed the following issues:-

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?
3. Whether the particulars as to weight, value, quality and quantity were inserted in the bill of lading on the basis of declaration made by the shippers?
4. Whether the terms and conditions/contents of the bill of lading are binding upon the parties concerned, if so, its effect?
5. Whether any loss occurred to the goods due to the negligence, fault and/or failure on the part of the defendants in performing their statutory and contractual obligations?
6. What is the quantum of loss suffered by the plaintiffs and to what relief they are entitled to?
7. What relief if any the plaintiff is entitled to?

8. Whether the defendants have not committed unreasonable deviation/delay for discharging the suit consignment/container at the port of discharge, at Zanzibar, Tanzania?
9. Whether the findings contained in the survey report dated 14.02.2009 (Annexure 'E' to the plaint) regarding cause of damage whereby it was concluded that the lengthy transit time could have contributed to the damage to the cargo, do not make defendants responsible for the damages caused to the plaintiff's suit consignment?
10. What should the decree be?

5. After settlement of issues, at the joint request, the commissioner for recording evidence was appointed, who after completing the commission submitted his report along with the record of the evidence.

6. Record reveals that the plaintiff in support of the case has examined himself as PW-1 and produced documents from Exh. P-1/1 to Exh.P-1/12, besides photocopies of documents Marked X-1 to X-6, to which the counsel for the defendants also raised objections. Conversely, the Defendants have examined Country General Manager of Defendant No.2, as DW-1, who produced documents from Exh. D-1 to D-3, besides attested copies as Marked 'Z and Z-1'. The witnesses were subsequently cross examined by the advocates for the respective parties. After conclusion of the evidence the matter has come up for arguments.

7. I have heard the learned counsel for the parties and with their able assistance have examined the evidence available on record and also perused the case law cited at the bar.

8. Learned counsel for the plaintiffs during the course of his arguments while reiterating the contents of the plaint has contended that the plaintiff in the month of November 2008 had handed over the subject consignments to defendant No.2 at Port Muhammad Bin Qaism, Karachi, in full and in good order and condition. Defendant No.2 as an agent of Defendant No.1, upon receiving the consignments and getting themselves satisfied in respect of quality, quantity and weight of the consignments and of course in consideration of the freight charged while issuing two bills of lading had undertaken to carry the consignments on board their vessels for onward delivery to the consignee at Zanzibar, Tanzania. The subject consignments were loaded on board the vessels on the dates mentioned in the bills of lading

and sailed from the port as per their schedule. Further contended that the vessels in the normal course should have reached at port of destination (Zanzibar), with normal transit time period of one month from the date of their sailing, however, the defendants as carriers committed unreasonable deviation and the vessels went to South Africa where the cargo was discharged and again reloaded into another vessels to Dar es Salaam where the cargo was again discharged and reloaded to another vessels for Zanzibar and finally reached at the port of destination after delay of nearly three months. Per learned counsel such deviation is clear breach of terms and conditions of contract of affreightment and due to lengthy transit time the subject consignments were rotten and declared unfit for human consumption by the competent authority, resultantly entire consignments were to be disposed of. The cause of rotting off the subject consignments due to lengthy transit is also supported by the survey report. Further contended that due the failure on the part of defendants to perform their part of contractual obligations and acted contrary to the contract the plaintiff has suffered losses/damages of US\$1,54,549.16/-. And, thus the defendants are jointly and severally liable to compensate the plaintiff. As regards the maintainability of the present suit, learned counsel while referring section 3(2) (G), section 4(1), 5 and 6 of the Admiralty jurisdiction of this High Court Ordinance 1980, submits that the suit is maintainable as the same has been filed as action in personam which could be brought, inter alia, in respect of damages. It is also contended that for filing an action in personam the limitation period is provided under the law is two years from the date of occurrence and the suit filed within time and as such the plaintiff is entitled to reliefs as prayed. Learned counsel in support of his arguments has relied upon the case of PROCEEDING IN REM AGAINST THE VESSEL M. T. PORTOFINO and another v. M.T. PORTOFINO [2003 CLD 1655]

9. Conversely, learned counsel for the defendants while re-iterating the contents of the written statement, has contended that the suit as framed is not maintainable as the instant suit does not fall within the admiralty jurisdiction. It is also contended that the claim of the plaintiff in the present case 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. Further contended that the present case is admittedly filed beyond the said period and as such the same is barred by limitation and is liable to be dismissed with compensatory cost. He further contended that the consignments were handed over to the defendants in FCL condition and as such the defendants had no opportunity either to check the condition or to check the weight, quality, quantity and/or the condition of the consignments due the containers being sealed. Further contended that the terms and conditions of the bills of lading, issued in respect of the subject consignment, form the contract of affreightment between the parties and as such the same are binding on the plaintiff as well. Further contended that as per the terms of the contract (bills of lading) vessel is not liable to give delivery on the same weight and condition if the vessel receives the consignment in sealed container. As regards the delay in arrival at the port of destination, learned counsel while referring to clause 8 of the bill of lading has contended that the date and time for sailings and arrival of the vessel were only estimated and such schedule could be delayed or cancelled without notice. Since the carrier does not promise or undertake to load, carry or discharge the goods on any particular date and time therefore, the carrier cannot be held liable for any such delay in scheduled departure, arrival and/or discharge of goods. It is also contended that the scope of voyage was contracted by the plaintiff and as such he was fully aware of the terms of bills of lading. Thus, claim of any alleged losses/damages due to delay in arrival is not sustainable in law and further the carrier is by no means contractually bound to compensate for any such losses. Lastly, contended that the suit is liable to be dismissed with compensatory cost. Learned counsel for the defendants in support of his arguments has relied upon the following cases of HOLLAND BENGAL BURMAH LINE v. DAWOOD CORPORATION LTD [PLD 1961 Dacca 39], NEWZEALAND INSURANCE Co. LTD., CHITTAGONG v. M. A. ROUF and others [PLD 1962 Dacca 31], FAROOK OMAR v. NATIONAL SECURITY INSURANCE CO. LTD., KARACHI and another [PLD 1974 Karachi 321], DEUTSCHE

DAMPCHIFFFAHARTS-GESHLLSCHAFT and another v. CENTRAL INSURANCE Co. LTD., Karachi [PLD 1975 Karachi 819], Messrs NATIONAL INSURANCE CORPORATIO v. Messrs PAKISTAN NATIONAL SHIPPING CORPORATION [1986 MLD 1885], M/s. CENTRAL INSURANCE Co. LTD., v. M/s. KONINKLUKE NEDLLOYD N.V., and another [1992 MLD 1766], NATIONAL INSURANCE CORPORATION v. PAKISTAN NATIONAL SHIPPING CORPORATION [1997 CLC 908], Messrs CRESCENT SUGAR MILLS AND DISTILLERY LTD., v. Messrs AMERICAN EXPORT ISBRANDT SEN INC. and 2 others [PLD 1983 Karachi 29], EASTERN FEDERAL UNION INSURANCE COMPANY LIMITED v. AMERICAN PRESIDENT LINES LIMITED and another [PLD 1992 SC 291], BANGLADESH SHIPPING CORPORATION v. M.V. 'NEDON' and another [PLD 1981 Karachi 246], ATLANTIC STEAMER'S SUPPLY COMPANY v. M.V. TITISEE and other [PLD 1993 SC 88], Messrs V.N. LAKHANI & COMPANY v. m.v. LAKATOI EXPRESS and 2 others [PLD 1994 SC 894], PROCEEDING IN REM AGAINST THE VESSEL M.T. PORTOFINO and another v. M.T.PORTOFINO [2003 CLD 1655], PAKISTAN SHIPPING LINES LTD. v. TRUSTEES OF THE PORT OF KARACHI and 2 others [1981 CLC 1451], CENTRAL INSURANCE Co. LTD. v. CHITTAGONG STEAMSHIP CORPORATION LTD. and another [PLD 1968 Karachi 252], DAEWOO HEAVY INDUSTRIES LTD. and another v. KLIPRIVER SHIPPING LTD. and another [2003 EWCA Civ. 451] and PARSONS CORPORATION and others v. C.V. SCHEEPVAARTONDERNEMING 'HAPPY RANGER' [2002 EWCA Civ 694].

10. I have given due consideration to the arguments advanced by the learned counsel for the parities, minutely perused the material/evidence available on record, the applicable laws and the case law on the subject. My findings on the issues are as under:

11. **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. Sadniddin 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.

12. **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.

13. **ISSUE NO. 3:** In the present case, it is an admitted fact that the consignments were handed over to the defendants in FCL (Full Container Load) and STC (Said to Contain) condition. The term STC describes that the goods loaded onboard a sea-going vessel in sealed containers. It is also an admitted fact that the goods were stuffed by the plaintiff/shipper at his container yard and Carrier/defendants were not associated with stuffing and further there is nothing available on the record, which could show that the plaintiff at the time of handing over consignments have got any inspection of the said consignments by the defendants. In the circumstances, prime facie, it appears that the particulars as to weight, value, quality and quantity of the goods were inserted in the bill of lading on the basis of declaration made by the plaintiff/shipper. Accordingly, this issue is answered in affirmative.

14. **ISSUE NO.4:** The bill of lading is a document that provides the carrier and shipper with all the necessary details to accurately process a shipment. It has three main functions. First, it is a document of title to the goods described in the bill of lading. Secondly, it is a receipt for the shipped products. Finally, the bill of lading represents the agreed terms and conditions for the transportation of the

goods. Learned Division Bench of this Court in the case of CGM (COMPAGNIE GENERAL MARITIME) v. HUSSAIN AKBAR [2002 CLD 1528] has held that the 'Bill of Lading is a contract between Shipper and Carrier, which is binding on both the parties'. This issue is answered accordingly.

15. **ISSUES 5 & 8:** Since these issues are common, therefore, the same are taken up together. The plea of the plaintiff is that he had handed over his consignments to the defendants at port Muhammad Bin Qasim, Karachi, in full and in good order and condition for onward delivery to the consignee at Zanzibar, Tanzania. It is also the stance of the plaintiff that the defendants had undertaken to carry the consignments on their vessels and to deliver the same to the consignee at Zanzibar, Tanzania, in the same good order and condition as it was handed over to them. It is also the claim of the plaintiff that the consignments were loaded on the vessels and the vessels were sailed from Karachi as per their schedule where after the vessels in normal course along with its cargo should have reached Zanzibar within the normal transit time period of one month from the date of their sailing from Karachi. However, the defendants as carriers committed unreasonable deviation in voyage and discharged the cargo in three months' time at the port of destination, which constitute clear breach of term and conditions of contract of affreightment. And due to such lengthy transit period, the entire cargo got rotten and were declared unfit for human consumption by the ministry of health, Zanzibar. Consequently, the plaintiff was constrained to dispose of the entire cargo under the direction and supervision of the competent authority at Zanzibar. On the contrary, the plea of the defendants is that the consignments were handed over to the defendants in FCL and STC condition and as such the defendants had no opportunity either to check the condition or to check the weight, quality, quantity and/or the condition of the consignments due to the containers being sealed. It is also the stance of the defendants that the terms and conditions of the bills of lading, issued in respect of the subject consignments, form the contract of affreightment between the parties and as such the same are binding on the plaintiff as well. And as per the terms of the contract (bills of lading) vessel is not liable to give delivery on the same weight

and condition if the vessel receive the consignment in sealed container. As regards the delay in arrival at the port of destination/discharge, the defendants have relied on clause 8 of bill of lading, which states that date and time for sailings and arrival of the vessel were only estimated and such schedule could be delayed or cancelled without notice. It is also the stance of the defendants that since the carrier does not promise or undertake to load, carry or discharge the goods on any particular date and time, therefore, the carrier cannot be held responsible and liable for any such delay in scheduled departure, arrival and/or discharge of goods. It was argued by the counsel for the defendants that the scope of voyage was contracted by the plaintiff and as such he was fully aware of the terms of bills of lading. Thus, claim of alleged losses/damages due to delay in discharge of the consignments is not sustainable in law and further the carrier is by no means contractually bound to compensate for any such losses.

From the perusal of Bills of Lading [Marked as X-1 and X-3] it appears that firstly; there is nothing mentioned in respect of expected voyage period and or date of discharge of consignments at the port of destination and secondly; it is clearly mentioned that the consignments were in FCL (Full Container Load) and STC (Said to Contain) condition. Moreover, the plaintiff has also failed to produce any evidence in respect any undertaking and or commitment made by the defendants to deliver the consignment in certain period at the port of destination. Whereas clause-8 and 9 of the terms and condition of contract of carriage [Exh.D-3] printed on the reverse of the subject bills of ladings [X-1 and X-3] are self-explanatory which read as under:

**“8. SCOPE OF VOYAGE, DELAY, CONSEQUENTIAL DAMAGES.**

The scope of voyage herein contracted for may or may not include usual or customary or advertised ports of call whether named in this Bill of Lading contract or not and may include transport of the Goods to or from any facilities used by the Carrier as part of the carriage, including but not limited to off-dock storage. The Carrier does not promise or undertake to load, carry or discharge the Goods on or by any particular Vessel, date or time. Advertised sailings and arrivals are only estimated times, and such schedules may be advanced, delayed or cancelled without notice. In no event shall the Carrier be liable for consequential damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyance used to transport the Goods by sea or otherwise. If the Carrier should nevertheless be held legally liable for any such direct or indirect or

consequential loss or damage caused by such alleged delay, such liability shall in no event exceed the freight paid for the carriage.

## **9. METHODS AND ROUTES OF CARRIAGE.**

9.1 The Carrier may at any time and without notice to the Merchant:

(a) use any means of transport or storage whatsoever;

(b) transfer the Goods from one conveyance to another including transshipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof by any other means of transport whatsoever, even though transshipment or forwarding of the Goods by such means may not have been completed or provided for herein;

(c) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advertised route at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often;

(d) Load and unload the Goods at any place or port (whether or not any such port is named on the front hereof as the Port of Loading or Port of Discharge) and store the Goods at any such port or place, including but not limited to the use of off-dock storage at any port;

(e) Comply with any orders or recommendations given by any government or authority or any person or body purporting to act as or on behalf of such government or authority or having under the terms of the insurance on any conveyance employed by the carrier the right to give orders or directions.

9.2 The liberties set out in clause 9.1 may be invoked by the carrier for any purpose whatsoever whether or not connected with the carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any person(s), undergoing repairs and/or dry-docking, towing or being towed, assisting other vessels, making trial trips and adjusting instruments. Anything done or not done in accordance with clause 9.1 or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.”

[Emphasis supplied]

From the perusal of the above terms and conditions of clause 8 & 9, it clearly transpires that the carrier neither promised nor undertook to load, carry or discharge the consignments/cargo on or by any particular Vessel, date or time. Moreover, any schedule of voyage advertised was only estimated times, and such schedule may be advanced, delayed or cancelled without notice. It also states that in no event the carrier shall be liable for consequential damages or for any delay in scheduled departures or arrivals of any vessel or other conveyance used to transport the consignments by sea or otherwise. In the circumstances, no liability can be attributed towards the defendants in the event of any delay in discharging the goods at the port of destination.

The plaintiff in his evidence in a way admitted the stance of the defendant. For the sake of ready reference relevant excerpts of the plaintiff's deposition are reproduced as under:

".....It is correct to suggest that the Bill of Lading is contract of affreightment between Plaintiff and Defendant. It is correct to suggest that we filed suit on the basis of Bill of Lading and admit the contents therein. It is correct to suggest that it is mentioned in the Bill of Lading that "said to contained, shipper`s load, stow, count" meaning thereby that it is the duty of the shipper to load, stow and count the consignment into the container. It is also mentioned therein that "the particulars furnished by the shipper`s not checked by the carriers – Carrier not responsible". It is correct to suggest that I have not produced back copy of Bill of Lading where the terms & conditions are mentioned. It is incorrect to suggest that I have intentionally not produced the terms & conditions of the bill in order to conceal the facts of the case from this Hon`ble Court. It is correct to suggest that we had only contract with defendant to carry the consignment from port of loading to port of the discharge vol: says as per schedule provided by defendant No.2." It is correct to suggest that we paid the freight for caring the consignment. It is correct to suggest that we had no any further contract with defendant after discharging the consignment to its destination. The suit consignment was discharged as per tracking report as mark X-5 on 27.01.2009. It is correct to suggest that at the time of loading for the suit consignment the plaintiff had not given any special declaration regarding valuation. It is not in my knowledge that whether any Vessel goes directly to Tanzania. It is correct to suggest that it is the normal practice in shipping to tranship the consignment from our Vessel to another. It is not in my knowledge whether there was any contract between Plaintiff and Defendant regarding to carry the consignment without any transshipment. It is correct to suggest that as per clause 8 of Bill of Lading, day and time of discharge of consignment is/was not guaranteed. It is correct to suggest that after discharging of consignment from the Vessel the consignee received the consignment from port authority."

".....It is correct to suggest that as per survey report at page 3 there is no sign of leakage in any container. The packing of suit consignment has been done by our staff`s in our premises. It is incorrect to suggest that suit consignment was damaged due to our insufficiency of packing stowage and inherent vice of the cargo. I put to you that Defendant never wrote any letter to the plaintiff for settlement of the suit consignment.

Answer, I do not know. I do not know whether the consignee has actual right to file the caption suit. I do not know the salvage value of the destructed suit consignment. Voluntarily says that we have to pay extra amount for destroying the destructed consignments. It is correct to suggest that I have not produced any receipt in respect of my above statement."

[Emphasis supplied]

In the instant case, it is also an admitted position that the plaintiff had handed over the consignments/cargo in sealed containers (STC condition) to the defendants for carrying and discharging the same at the port of destination, that is, Zanzibar, Tanzania. Record also

transpires that the defendants discharged the consignments at the port of destination. The bill of lading is though prima facie evidence that the goods were received by the defendant in good order and condition. But in the present case the plaintiff cannot call to his aid the Bills of Lading as it carries the notation FCL and STC. And further he has not called any evidence to prove that the cargo was in 'good order and condition' at the time of shipment. There is no dispute between the parties with regard to the count and weight of the cargo at the time of discharge of cargo at the port of destination. The Hon'ble Supreme Court of Pakistan in the case of **EASTERN FEDERAL UNION INSURANCE COMPANY LIMITED v. AMERICAN PRESIDENT LINES LIMITED** and another [PLD 1992 Supreme Court 291] while dealing with issue of Containerized and Said to Contain [STC] cargo has held that as under:

“21. A bill of lading with notations like CY/CY, CFS or SLC is a prima facie evidence as provided by law but its rebuttal by the carrier becomes easier and the burden becomes much lighter than in other cases. Such or similar notations on the bill of lading have gained currency and their meaning is well understood in shipping, commercial and banking circles to mean that the carrier was not associated with the stuffing of the container which was exclusively done by the shipper. In the face of such bill of lading the carrier need not prove these facts unless rebutted. It has only to establish that such sealed container was properly and carefully loaded, handled, stowed, carried, kept, cared for and discharged. The burden will then shift to the shipper to prove that the number of packages or goods as shown in the bill of lading were stuffed in it. Without such proof the claim for loss or damage cannot succeed. Where the bill of lading is in respect of a container without describing the goods contained in it, the words 'apparent order and condition' will refer to the apparent condition of the container.

22. In the present case admittedly the bill of lading was marked with notations CY/CY, STC, which prima facie established that the containers were stuffed exclusively by the shipper. The respondents have proved by cogent evidence that the containers were discharged at Karachi with seals intact. They have further, by evidence in rebuttal, proved that they have discharged their duties as carriers properly. The appellant has not produced any evidence in rebuttal to prove the number and condition of bales stuffed in the containers. Therefore, for somewhat different reasons the appeal is dismissed.”

The plaintiff has also failed to produce any evidence in respect of his stances in the case regarding unreasonable delay on the part of defendants in discharging the cargo at the port of destination. In the circumstances, the plaintiff has failed to establish any negligence, fault and/or failure on the part of defendants to perform their contractual



obligations under the subject Bills of Ladings, therefore, loss occurred to plaintiff's goods/cargo cannot be attributed towards the defendant. Accordingly, these issues are answered in negative.

16. **ISSUE NO. 9:** Insofar as the survey report dated 14.02.2009 [Exh. P-1/5] is concerned, the defendants in their written statement as well as affidavit in evidence have denied the said survey report and the certificate of analysis annexed therewith being spurious and manipulated having no legal consequence and further if any survey was conducted that was done without any notice to the defendants and as such the same is not binding on the defendant. From the perusal of the evidence available on record, it appears that neither the plaintiff in his affidavit-in-evidence rebutted such stance of the defendants taken in their written statement nor the testimony of the defendants' witness under the affidavit-in-evidence [Exh. D-1] on the said statement has been subjected to cross-examination, hence, the same shall be deemed to have been admitted. It is by now a settled principle of law that any deposition made in the examination-in-chief, if not subjected to cross-examination, shall be deemed to have been admitted. Reliance can be placed in the case of M/s. AKBAR BROTHERS v. M KHALIL DAR [PLD 2007 Lahore 385].

Besides above, a perusal of survey report does not reflect that either any notice was issued to the defendants or the defendants were present at the time of survey. Thus, survey report [Exh.P/5] which was prepared without notice to the defendants is not binding on them. Moreover, the plaintiff has also failed to duly prove the said document by examining the witnesses and the author of said report specially, in view of the denial of the said Report [Exh.P/5]. Mere exhibition of a document without proving the contents by examining the witnesses and author has no evidentiary value. It is a settled law that the documents placed on the record or exhibited without objection of the opposite party, if not duly proved cannot be considered as admissible piece of evidence. Reliance in this regard can be placed on the cases of Khan MUHAMMAD YUSUF KHAN KHATTAK v. S. M. AYUB and 2 others [PLD 1973 SC 160] And FAZAL and 2 others v. THE STATE [2010 P Cr. LJ 360].

In the circumstances, I am of the view that survey report [Exh.P/5], for the reasons mentioned above, having no evidentiary value, is untenable in law, therefore, the finding contained therein cannot be taken into consideration. Thus, this issue is answered accordingly.

17. **ISSUE NO. 7:** In view of the above discussion, I am of the considered opinion that the plaintiff through the evidence produced in the case could not substantiate his claim in the case, therefore, he is not entitled to any relief claimed in the present suit and as such this issue is answered accordingly.

18. **ISSUE NO.10:** In the circumstances, and in terms of the findings on issues 3 to 9, I am of the considered view that in the instant matter the plaintiff has failed to establish his claim. Accordingly, the suit of the plaintiff is dismissed with no order as to cost.

JUDGE

Karachi  
Dated: 07.2.2020