

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Adm. Suit No. 05 of 2013**

**Plaintiff:** M/s Staple Foods (Pvt.) Ltd. Through Mr. Obaidur Rehman, Advocate.

**Defendants:** CMA CGM Wagner & Others Through Mr. Malik Ayaz Sharif, Advocate.

**Dates of hearing:** 11.09.2019

**Date of Order:** 11.09.2019

For hearing of CMA No. 37/2013

**ORDER**

**Muhammad Junaid Ghaffar J.** - This is a Suit under the Admiralty Jurisdiction of this Court conferred through the Admiralty Jurisdiction of High Courts Ordinance, 1980 (“**Ordinance**”). Through listed application (CMA No. 37/2013), the Plaintiff has sought arrest of Defendant No.1 and vide ad-interim order dated 08.05.2013 an order for arrest of the Vessel was passed by this Court and was permitted to sail against solvent surety in the sum of US\$ 100,000/- which has been furnished by the Defendants. It is the case of the Plaintiff that an amount of US\$ 152,075/- is to be recovered from the Defendants.

2. Learned Counsel for the Plaintiff submits that a shipment of 10 x 20’ containers was made to a consignee in Mauritania against 25% advance payment of US\$ 29,025/- and the balance of US\$ 87,075/- was to be paid on CAD (**Cash against Documents**) basis through the Bank as mentioned in the Bill of Lading; however, the balance amount was never paid to the Plaintiff notwithstanding the fact that several commitments were made and as soon as the Plaintiff got appropriate knowledge of some mischief at the Port of destination, on 28.01.2013, Defendant No. 3 was requested to change the notify party in the Bill of lading as the goods were then sold by the Plaintiff to another buyer. However, instead of acting upon the same, the goods were delivered / handed over to someone else, purportedly taking shelter under some Court orders which have no legal sanctity as the same have been placed on record in violation of Article 96 of the Qanoon-e-Shahadat

Order, 1984; hence cannot be taken into consideration. According to him, the Defendants even otherwise, have failed to bring on record as to what procedure was adopted to oppose the Court orders as admittedly, in absence of original Bill of lading, the Defendants were not authorized in law to hand over the delivery of the goods to anyone else. Per learned Counsel, no justifiable cause has been shown by the Defendants for dismissal of this application and therefore, the same may be allowed by confirming the ad-interim order dated 08.05.2013. In support of his contention he has relied upon ***SZE Hai Tong Bank Limited V. Rambler Cycle Co., Limited (P L D 1959 Privy Council 115)***, ***Messrs Bengal Friends & Co., Dacca V. Messrs Gour Benode Saha & Co., Calcutta and another (P L D 1965 SC 477)***, ***Castor Petroleum Ltd. V. Petroterminal De Panama, S.A. (2012 NY Slip Op 33533 (U))*** and ***Edwinton Commercial Corporation, Global Tradeways Limited V. Tsavlis Russ (Worldwide Salvage & Towage) Ltd (The "Sea Angel") (2007) EWCA Civ 547)***.

3. On the other hand, learned Counsel for the Defendants has referred to Article III (Rule 3 & 7) of the Rules of Bill of Lading under the Carriage of Goods by Sea at 1925 and submits that the Defendants could not be held liable in this case as the Plaintiff never acted diligently. He has also referred to Section 2 of the Bill of Lading Act 1856, and submits that no notice for stoppage in transit was ever issued, whereas, the Plaintiff apparently is an unpaid seller and therefore, proper recourse ought to have been adopted in terms of Sections 45, 46, 51 & 52 of the Sales of Goods Act, 1930 which the Plaintiff has failed to do so; hence, no case is made out and the application is liable to be dismissed. He has also referred to the Bill of Lading in question and submits that the date of issuance is 22.11.2012 whereas, the stamp of shipped on board is 22.12.2012. He has also argued that the Plaintiff was in knowledge of the Suit filed by the consignee at port of destination and ought to have contested the same.

4. I have heard both the learned Counsel and perused the record. The facts have been briefly discussed hereinabove and it appears that admittedly Plaintiff had shipped 10 x 20 feet containers of Rice to its consignee namely Establishment Mohamed Yeslim Yahifdhou (EM2Y) Nouakchott, Mauritania, on the basis of 25% advance payment and remaining payment on CAD basis. Plaintiff was issued original Bill of

lading which is still in possession of the Plaintiff and has not been surrendered as apparently the original consignee failed to honor its commitment. It is not in dispute that the Bill of Lading was issued to the Order of Standard Chartered Bank Limited, Main Branch, Karachi, and resultantly the cargo could not have ordinarily been delivered to the consignee until the original Bill of Lading is surrendered. It further appears that Defendants informed the Plaintiff through some correspondence on 23.01.2013 that some dispute has been raised by the consignee in local Court at port of destination regarding release of the shipment without presentation of original bill of lading wherein, it was claimed that he has paid the supplier; but documents have not been received, and subsequently, as contended by following the orders of that Court, the Defendants have released the cargo or for that matter it has been given on the directions of the Court through Bailiff of the Court. The case of the Plaintiff is that consignee had claimed that payment was made by him to someone in Dubai on the purported directions received by him on email from the Plaintiff, and as per the case of the Plaintiff that was due to some hacking of the email account of the Plaintiff. However, this is not a matter of dispute presently for the purposes of this application. It is not in dispute that the goods were delivered by Defendants without surrender of the original Bill of lading. While confronted, the Counsel submitted that they were not delivered but were taken away by the bailiff of the Court at the Port of destination. However, from perusal of the written statement, it appears that only two documents have been annexed of which proper translation has also not been placed on record as contended by the Plaintiff's Counsel in terms of Article 96 of the Qanoon-e-Shahadat Order, 1984. It further appears that even the entire pleadings of the local Court at Port of destination are also missing from the record. Insofar as the objection regarding unpaid seller and issuance of notice as required under the Sales of Goods Act is concerned, it may be observed that for the present purposes it is not relevant as it is only an application under Rule 731 of the Sindh Chief Court Rules (Original Side) which is to be decided. The defense taken on behalf of the Defendants cannot be appreciated fully at this stage of the proceedings and it is a matter of trial that whether the Defendants were justified in releasing the goods or for that matter by acting on the directions of the Court bailiff instead of properly opposing the directions of the local Court and or ought to have taken

recourse to an appeal or challenge to such orders. From copies of purported Court orders of Mauritania annexed with the written statement it is not clear as to whether the Plaintiff was ever made a party to those proceedings and whether it was served properly or not. This burden was on the Defendants to discharge once such a pleas has been taken. Moreover, perhaps it appears that at least the Defendants were joined as a party to those proceedings or at least had information about the Suit filed by the consignees; however, nothing has been placed on record as to what recourse was adopted to inform the Plaintiff of these proceedings. These intricate questions and their righteousness is an issue which can only be decided at the trial of the Suit, and merely on the assertions of the Defendants, the Plaintiff cannot be non-suited who has otherwise made out a case of indulgence under the Ordinance.

5. Insofar as the question of exercising jurisdiction in the given facts of this Case are concerned, the same is supported by the famous case of **'Lamon Bay'** which was a Suit filed by an exporter against the shipping company and its agent, whereby, the goods were delivered at destination without obtaining valid guarantees and without surrender of the original bill of lading and subsequently, it transpired that the Bank Guarantees furnished by the consignee at port of destination were forged and fabricated and the Bank of the Plaintiff had returned all original documents without any payment. The Suit of the Plaintiff was decreed against which an appeal was preferred which was dismissed and is reported as ***C. V. 'Lamon Bay' and others V. Sadruddin and others (2005 C L D 133)***. It was further challenged by the Ship-owner before the Hon'ble Supreme Court; however, the same was also dismissed through the case reported as ***C. V. 'Lamon Bay' and others V. Sadruddin and others (2012 S C M R 1267)***. Therefore, at least for the purposes of exercising jurisdiction under the Ordinance read with Rule 731 *ibid*, a case is otherwise made out.

6. In view of hereinabove facts and circumstances of this case, the listed application merits consideration and therefore, by means of a short order in the earlier part of the day, the application was allowed by confirming the ad-interim order, whereby, the Vessel in question was ordered to be arrested and permitted to sail upon furnishing

solvent surety of US\$ 100,000/- passed on 08.05.2013 and these are the reasons thereof.

**J U D G E**

ARSHAD/