

IN THE HIGH COURT OF SINDH AT KARACHI

Admiralty Suit No. 17 of 2003

M/s. Jawad & Sons v. MV "TOLMI" and Another

Plaintiff : M/s. Jawad & Sons through Mr. Fasih-uz-Zaman Abbasi, Advocate.

Defendants : M.V. Tolmi and another
Zaheer Uddin Ahmed, Representative /
Attorney of Defendant No.2

Date of Hearings : 02.05.2023, 03.05.2023, 05.05.2023,
09.05.2023

Date of Decision : 07.08.2023

J U D G M E N T

Jawad Akbar Sarwana, J.: In 2003, Plaintiff, a sole proprietorship concern doing business of ship chandling/supplier of necessaries, filed an admiralty suit under the Admiralty Jurisdiction of the High Courts Ordinance ("Admiralty Ordinance"), 1980, against the motor vessel ("M.V.") "TOLMI" ("Defendant No.1") and its local shipping agent, a private limited liability company incorporated and doing business in Pakistan ("Defendant No.2") for recovery of Pakistan Rupees Two Hundred Eighty-eight Thousand Three Hundred Sixty-two (Rs.288,362) arising out of ship chandling services and necessaries provided by Plaintiff to the vessel named M.V. "DIAS". Plaintiff claimed that the two vessels were related and sought the arrest of MV "TOLMI" and recovery of his claim from MV "TOLMI" on account of the services rendered to MV "DIAS".

2. On 26.06.2003, the Court passed the following order on Plaintiff's application seeking the arrest of MV "TOLMI", i.e. CMA No.1412/2003 (under Rule 731 of the SCCR (OS)):

"Notice. In the meantime, the amount of guarantee furnished by Defendant No.2 on behalf of Defendant No.1 with Customs or/and with KPT to the extent of Rs.288,362 is attached. The attachment would be ineffective as soon as the amount is deposited by the defendants with Nazir of this Court."

3. It is unclear from the Orders whether the vessel was ever arrested. It appears that Defendant No.2 deposited the claim amount of PKRs.288,362 with the Nazir, and CMA No.1412/2003 was dismissed as per the following Order of 01.07.2003:

“Learned Counsel for the Plaintiff submits that said amount being claimed by the plaintiff through this suit has been deposited by the defendant with the Nazir of this Court, he does not wish to press this application. The application is accordingly dismissed as not pressed.”

4. By way of background, it transpires that on 22.04.2001, Defendant No.2 requested Plaintiff board the ship M.V. “DIAS” to supply provision/deck/engine stores, etc., to M.V. “DIAS”. Accordingly, sometime in May 2001, Plaintiff carried out the services on board the said vessel and delivered the items to the said vessel. At the time, Plaintiff issued five (5) invoices: four (4) invoices were dated 24.04.2001 (Ex. Nos.”4/3”, “4/4”, “4/6”, and “4/7”) and one (1) of the invoice was dated 26.04.2001 (Ex. No.”4/5”. The master of the vessel of M.V. “DIAS” endorsed all of the five invoices (Ex. Nos.”4/3” to “4/7”). After that, according to Plaintiff, sometime in the third week of May 2001, the vessel, M.V. “DIAS”, sailed away. Plaintiff claims that he expected the vessel's local agent, Defendant No.2, to settle the invoice, which he did not. When the vessel, M.V. “TOLMI”, arrived at Karachi Port and Defendant No.2 was acting as its agent, Plaintiff filed the admiralty suit against the said vessel claiming that the two vessels had registration at the same port and that the vessel was the same, having changed its name (Paragraphs 4 and 5 of the Plaintiff's Affidavit in Evidence). No evidence was produced in relation to the two ship's registration numbers. Plaintiff alleged that Defendant's vessel arrived at Karachi with a different name in disguise to defraud her creditors (Paragraph 11 of Plaintiff's Affidavit in Evidence). The agent of the ship was also the same. It is pertinent to mention here that Plaintiff impleaded neither the vessel's previous owners, M.V. “DIAS” nor the current owners of M.V. “TOLMI” in the admiralty suit. The vessel M.V. “TOLMI” alone is impleaded in the admiralty suit. Plaintiff admitted and acknowledged that the vessel had changed name from MV “DIAS” to MV “TOLMI”, but Plaintiff brought no evidence on record in this regard. During Plaintiff's cross-examination, Plaintiff's witness stated that, “[t]his is an admiralty suit and the vessel is a necessary party. It is incorrect that this is a different ship.” Plaintiff claims that this admiralty suit is maintainable against the vessel M.V. “TOLMI” under Section 3(2) (L) and (M) of the Admiralty Ordinance, 1980.

5. In the Written Statement filed by Defendants and during evidence, of Defendant No.1 witness, in his cross-examination, the witness produced the certified copy of the auction of the vessel M.V. “DIAS” from the Court of the Republic of Togo in support of his submission that the

vessel M.V. "DIAS" had changed hands through Court Auction and acquired by its present owners, M/s Altis Investment (Ex. No."5/3"). The Court dismissed the Plaintiff's objections to the production of Ex. No."5/3" because it had already been exhibited in evidence by then. The Court also rejected the production of an Equasis Ship Search obtained online. Defendant No.2 contended that the alleged supplies of the goods and repair services were made before the vessel auction. Defendant No.2 also denied that, as the vessel's agent, they were liable for expenses incurred by the vessel to provide any services to Defendant No.1 vessel.

6. Initially, the issues proposed by Plaintiff dated 18.11.2003 were adopted as Court issues. Thereafter under Orders of the Court on 25.02.2009, another issue was framed. Eventually, the issues settled by the Court were as follows:

- (i.) Whether the Plaintiff supplied necessaries amounting to Rs.288,362?
- (ii.) Whether the suit is maintainable under admiralty Jurisdiction of High Court?
- (iii.) What should the judgment & decree be?

7. After reading the Parties' pleadings, Issue No. (i) framed by the Court appears to need to be clarified. The issue does not explicitly name the vessel to whom the Plaintiff rendered services. The Plaintiff's case is that he rendered services to MV "DIAS", but MV "DIAS" is not impleaded as a Defendant. MV "TOLMI" is impleaded as Defendant No.1. In their joint Written Statement, Defendant Nos.1 and 2 have denied Plaintiff's assertions in the pleadings. As Plaintiff has impleaded MV "TOLMI" as Defendant No.1, therefore to bring clarity to the issue, Issue (i) is reframed as follows:

- "(i) Whether Plaintiff supplied necessaries and equipment to Defendant No.1, MV "TOLMI" amounting to Rs.288,362? (underlining added)"

Accordingly, the Court will now decide the following Issues with the First Issue amended as above.

- (i.) Whether Plaintiff supplied necessaries and equipment to Defendant No.1, MV "TOLMI", amounting to Rs.288,362?
- (ii.) Whether the suit is maintainable under Admiralty Jurisdiction of High Court?
- (iii.) What should the judgment & decree be?

8. On behalf of Plaintiff, the sole proprietor of the business, Syed Jawad Hassan Naqvi, testified as PW-1. Whereas on behalf of Defendant No.1, Syed Mohammad Zia-ul-Hasan, who claimed to be the Attorney of Altis Investment Inc., the owner of MV "TOLMI" and an employee of M/s James Finlay Limited, Karachi Office, testified on behalf of Defendant No.1 on several dates and cross-examination of Defendant No.1 was partially completed. By this time, the Court of the Republic of Togo Auction Order (Ex. No."5/3") had already been brought on record vide this Court's Order dated 25.02.2009. On 18.10.2016, the High Court brought on record the Report of the Commissioner for Recording Evidence dated 14.03.2015. In the Report, the Commissioner recorded that despite several opportunities afforded to the Defendant's Counsel to produce the witness for further cross-examination, the witness was unavailable. The Defendant's Counsel had indicated that he would seek permission from the Court to produce another witness, but no such permission was obtained. On 18.06.2016, the Court proceeded to fix the matter for final arguments. No one entered the witness box on behalf of Defendant No.2.

9. Findings on the above issues are as follows:

- (i.) Negative.
- (ii.) Negative.
- (iii.) Suit is decreed.

REASONS

Issue No. (i)

10. Plaintiff's witness produced Ex. Nos."4/3" to "4/7", which contains a narrative of the supplies/equipment/provisions provided by Plaintiff to the vessel MV "DIAS" but not MV "TOLMI". No evidence regarding the date of provision of the supplies/necessaries/equipment to MV "DIAS" was submitted by Plaintiff's witness. Further, Plaintiff's invoices were raised in United States Dollars. In contrast, Plaintiff claimed in Pakistan Rupees, yet no evidence was provided to prove the exchange rate applied in establishing Plaintiff's claim. There was/is no cross-examination either on this point. Thus, the quantum of claim in United States Dollars claimed in Pakistan Rupees has gone unrebutted.

11. Further on the matter regarding all the five (5) invoices being certified by the master of MV "DIAS", Plaintiff's witness submitted as follows:

“The procedure is that we are contacted by the agent who provides us the permission to go to the ship and we provide price list to the Captain. The Captain gives us the approval of the list, then we contact the agent who faxes the list of articles for seeking approval of the owner and after the approval is accorded by the owner through agent we again approach the Captain and supply articles for approval of owner. On receipt of such articles, the Captain signs the invoice. I produce Exh.4/3. . .It is incorrect that I have not supplied the articles mentioned in Ex.4/3 and it is also incorrect that I have lodged a false claim. Whatever I have stated in the plaint is correct. . .It is incorrect that I have fabricated the documents Exh.4/3 to 4/7. I have produced the duplicate documents. The original are with the agent. I personally went to the ship with goods which I have supplied. I have customs licence with me.”

12. The master of the vessel, MV “DIAS”, acknowledged all five (5) invoices as above by endorsing the vessel's seal along with his initials within the seal. In Abdus Samad Khan v. MV “AL-AIDA and Two Others, 1989 CLC 2168, this Court confirmed that a certificate given by the master is always accepted as a valid proof of payment as the master is an agent of the owner of the vessel and also the agent of necessity. He is an authorised and competent person to issue such a certificate. On the same principle, the seal of the vessel and the master's signature/initials within the seal constitutes irrefutable proof of acknowledgement of service by the master of the vessel. Therefore, the endorsement of MV “DIAS” and initials within such certification by the master of the vessel on all five (5) invoices evidences that Plaintiff rendered the services described in the said certificate to MV “DIAS”.

13. In cross-examination, the Defendant's Witness admitted that Ex. Nos.“4/3” to “4/7” had the initial of the master, but he submitted that he could not say that it bears the seal of the ship. It is apparent from Ex. No.“4/3” that there is a seal of the vessel, and the initials of the master are within the seal on the invoices. Therefore, it is not understood how Defendant No.1 witness denied the seal but not the initials. If at all, the initials of the master could only have been known to the witness if he was familiar with them or compared them with some other available initials. This he did not do. It appears that the Defendant witness denied the seal because the issue framed by the Court at the time did not specify the name of the vessel to whom Plaintiff provided services regarding the life rafts and fire fighting appliance amounting to Rs.288,632. Defendant Witness deposed in support of his defence that Plaintiff provided services to MV “DIAS” and not

MV "TOLMI"; hence he denied the seal certificate because it mentions the name of the vessel MV "DIAS", and it is not the seal of Defendant No.1, MV "TOLMI".

14. The seal and initial are on behalf of the master of MV "DIAS" on Ex. No."4/3" and not MV "TOLMI". In the circumstances when the master of the vessel has embossed the seal of MV "DIAS" as proof of rendition of services of Plaintiff in respect of the life rafts and fire fighting appliance amounting to Rs.288,632, the authentication cannot operate as an acknowledgement of Plaintiff rendering services to MV "TOLMI". Therefore, this issue (now reframed) is decided in the negative. Yet, Plaintiff's assertion that the acknowledgement by the master of MV "DIAS" operates against MV "TOLMI" may still hold true as a matter of law, as the same depends on the determination of Issue No. 2, which is a legal issue.

Issue No. (ii)

15. Under the Admiralty Ordinance 1980, only specific claims under defined statutory parameters are enforceable against a vessel. The suit has been filed against the vessel, MV "TOLMI", invoking admiralty jurisdiction under Sections 3(2)(L) and (M) of Admiralty Ordinance, 1980, which read as follows:

"Section 3(2)(L) any claim in respect of necessities supplied to a ship;"

and

"3(2)(M) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;"

16. The claim in the suit concerns the supply of necessities and equipment to the MV "DIAS". Therefore, it is apparent that the claim against MV "DIAS" falls within sections 3(2)(L) and (M) of the Admiralty Ordinance, 1980. Section 4 of the Admiralty Ordinance outlines the mode of exercising admiralty jurisdiction. It is a well-understood proposition of law and confirmed by several judgments of the superior courts of Pakistan that an action in rem is maintainable against a vessel where the claim falls under Section 4(2) of the Admiralty Ordinance, 1980, which states as follows:

"The Admiralty jurisdiction of the High Court may in the cases mentioned in clauses (a) to (d), (i) and (r) of subsection (2) of section 3 be invoked by an action in rem against the ship or property in question."

17. Plaintiff's claim meets the requirement of Section 4(2) of the Admiralty Ordinance, 1980. Therefore, prima facie the issue of whether the suit is maintainable may favour Plaintiff. However, there is another aspect to the matter. The second issue, like the first issue, needs more clarity. The point is not whether the suit is maintainable under the Admiralty Ordinance but more so whether the case as framed against MV "TOLMI" is maintainable under the Admiralty Ordinance, 1980. This is because whether a claim for Sections 3(2) (L) and (M) against one vessel is recoverable against another (different) vessel depends upon whether or not such a claim is recoverable under Sections 4(3) and 4(4) of the Admiralty Ordinance, 1980. The said sections read as follows:

"4. Mode of exercise of Admiralty jurisdiction. - (1) . . .

(2) . . .

(3) In any case in which there is a maritime lien or other charge on any, ship, aircraft or other property of the amount claimed, the Admiralty jurisdiction of the High Court may be invoked by an action in rem against that ship, aircraft or property.

(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. . . ."

18. Under Section 4(3) of the Admiralty Ordinance, 1980, an action in rem can be instituted against the ship or property on which the plaintiff claims a maritime lien. Whereas Section 4(4) enables recovery of those claims which fall within clauses (e) to (h) and (j) to (q) of subsection (2) of Section 3 subject to the condition that the owner against whom a cause of action arose in personam (in the past) is also the beneficial owner of that ship when the action is brought against the (current) ship. In the case at hand, Plaintiff's claims under Sections 3(2)(L) and (M) are/were in

connection with the vessel MV "DIAS". At the time of the commencement of the action by Plaintiff against MV "TOLMI", Plaintiff knew that the ownership of MV "DIAS" and MV "TOLMI" had changed hands. Yet, Plaintiff neither pleaded nor deposed any evidence that MV "TOLMI" was beneficially owned as respect to majority shares therein [conditions (a) or (b) of Section 4(4)] by the same owner against whom action in personam was filed. In their defence, Defendant No.1 produced an attested copy of the Auction Order of the Court of the Republic of Togo dated 25.01.2002 (Ex."5/3") to show that MV "DIAS" had been sold through a court auction to Altis Investments Inc. This meant that Altis Investment Inc., a company having its registered office in the Mashall Islands, acquired a clean title of ownership from the Court of the Republic of Togo. Altis Investment Inc., who acquired title through Court Auction in January 2002, could not be said to be the beneficial owner of MV "DIAS" when the cause of action arose against MV "DIAS" in March/April 2001.

19. In Atlantic Steamers Supply Company v. M.V. TITISEE, PLD 1993 SC 88, the Supreme Court of Pakistan observed in paragraph 18 as follows regarding claims under Section 3(2) (L) and (M) and applicability of Section 4(4) of the Admiralty Ordinance, 1980:

"18. At this stage, it may be pertinent to point out that the appellants claim falls within the above-quoted clauses (L) and (M) of subsection (2) of section 3 of the Ordinance, namely, "any claim in respect of necessaries supplied to a ship" and "any claim in respect of the construction, repair or equipment of a ship or dock charges or dues," respectively. None of the above two clauses has been mentioned in subsections (2), (3), (6) and (7) of section 4. However, they are covered by subsection (4) of section 4 but in order to press into service above subsection (4), it is incumbent to show that the vessel in question at the time of the commencement of the action was beneficially owned as respects majority shares therein by the persons against whom action in personam could have been maintained. In the instant case, it is an admitted position that at the time of filing of the present suit, the vessel was not owned by respondent No.2, who had received the supplies and got the repairs carried out, but respondent No.5 was the owner. In this view of the matter, above subsection (4) is not applicable. It will not be out of context to point out that section 4 of the Ordinance is based on section 3 of the Administration of Justice Act, 1956, which is in force in England. It may

be observed that above clause (a) of subsection (4) of section 4 of the Ordinance has been improved upon in as much as in place of the words, "it is beneficially owned as respects all shares", the words "it is beneficially owned as respects majority shares" have been employed. In other words, subsection (4) of section 4 of the Ordinance can be pressed into service even when the person who would be liable on the claim in an action in personam owned majority shares in the ship and not all the shares, which is the requirement of subsection (4) of section (3) of the English Act.

In light of the above observations, Plaintiff's claim under Sections 3(2)(L) and (M) against Defendant No.1, MV "TOLMI", is not maintainable against Defendants under Section 4(4) of the Admiralty Ordinance, 1980. The said claim fall outside Section 4(4) and is not recoverable under the said Section of the Admiralty Ordinance, 1980.

20. It now has to be seen whether the plaintiff has a maritime lien under Section 4(3), which section refers to a maritime lien, and if Pakistan Courts have held that claims such as one pleaded by the Plaintiff for necessaries and equipment supplies to the vessel are in the nature of maritime claims.

21. A maritime lien is a privileged claim that a claimant exercises over the res regarding which it arises and can be enforced by legal process. In THE TOLTEN (1946) p.135 Scott, J. characterised it as "one of the first principles of the law of the Sea". Although the principles of maritime lien have applied to maritime jurisprudence since long ago, Sir John Jervis first introduced this phrase in his judgment in THE BOLD BUCCLEUGH (1851) 7 Moo. P.C. 267. In this judgment, the maritime lien has been defined as:

" to mean a claim or privilege upon a thing to be carried into effect by legal process ...that process to be. a proceeding in remThis claim or privilege travels with the thing into whatsoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding in rein, relates back to the period when it first attached."

22. In The Two Ellens (1872) L.R. 4 PC 161 it was defined as follows:

"A maritime lien must be something which adheres to the ship from the time that the fact

happens which gave the maritime lien, and then continues binding the ship until it is discharged, either by being satisfied or from- the laches of the Owner, or in any other way by which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end."

23. A maritime lien accrues when the cause of action arises and attaches to the property to which the cause has accrued. It travels with the property secretly and unconditionally and can be enforced by an action in rem. The maritime property means the ship, cargo and freight irrespective of nationality. Once attached to the res, the Maritime lien is not defeated by its transfer to any other person. It remains connected with the res invisibly and, as held in *THE BOLD BUCCLEUGH* "travels with the thing into whosoever's possession it may come". A purchaser, therefore, acquires the res subject to the maritime lien and cannot be relieved of it because he had no notice of this claim. Reference may be made to the Division Bench Judgment of this Court in *Messrs Abdoun Oil Company SA v. "M/T ABDOUN DISCOVERY" and Another*, 2004 CLD 286 and in the *Abdus Samad Khan* case (supra).

24. In the *M.V. TITISEE* case (supra), the Supreme Court of Pakistan held as follows in paragraphs 20 and 21 with regard to maritime claims:

"20. We may observe that Mr. Akbar Mirza, learned counsel for the appellants, is unable to point out that at any point in time in Indo-Pak Sub Continent, the High Courts have treated the items covered by above clauses (1) P and (M) as the items entitling a supplier to claim a maritime lien to press into service the proviso to subsection (2) of section 3. . .

21. In the case of *Bankers Trust International Ltd. v. Todd Shipyards Corporation* (supra), Lord Diplock in his opinion pointed out that during the period that the English Court of Admiralty regarded itself as applying general law of sea, four classes of claims were treated as giving rise to maritime lien on ships, namely - -

- (i) Salvage;
- (ii) Collision, damage;
- (iii) Seaman's wages; and
- (iv) Bottamry."

Accordingly, the claims recognised as giving rise to a maritime lien are seamen wages and disbursements (including master's wages), damage done by a ship, salvage and respondentia. Plaintiff's claim under

Section 3(2) (L) and (M) under the Admiralty Ordinance, 1980, therefore, is not a maritime claim.

25. As claims under 3(2) (L) and (M) of the Admiralty Ordinance, 1980 for necessities, etc., are not maritime claims under section 3(4) of the said Ordinance, therefore the action in rem against the vessel, "MV DIAS" could only have been brought in rem against the same vessel, i.e. MV "DIAS" and not MV "TOLMI".

26. The ground of "fraud" appears to be Plaintiff's attempt to sustain his claims, which are otherwise unmaintainable for the reasons discussed above. The plea of "fraud" in admiralty is the only argument to sidestep the statutory requirements of Sections 4(3) and (4)(4) in rem for claims under Sections 3(2) (L) and (M) of the Admiralty Ordinance, 1980 where a vessel for arrest has changed hands. Accordingly, Plaintiff claimed that the change in ownership of the vessel and change of name of the vessel from MV "DIAS" to MV "TOLMI" was purposeful to enable Defendant's vessel to arrive in Karachi with a different name in disguise to defraud its creditors. However, Plaintiff did not bring any evidence to substantiate his claim for fraud. A Division Bench of this Court observed in M/s Khadija Edible Oil Refinery (Pvt.) Ltd. v. M.T. Galaxy and 4 Others, 2011 CLD 1329, that fraud in admiralty must be specifically pleaded. Yet in the case in hand, Plaintiff has not provided any specific details of the fraud or deceit. Therefore, Plaintiff's claim under 3(2) (L) and (M) of Admiralty Jurisdiction of the High Courts Ordinance, 1980, and to pierce the corporate veil of ownership fails on this score too.

27. Given the above discussion, Issue (ii) is decided in the negative and against Plaintiff.

Issue No. (iii)

28. Ordinarily, with issues (i) and (ii) decided in the negative, no case is made out by the Plaintiff. However, there was another development during the course of the hearing. On perusal of the file, it transpired that the guarantee/security deposited with Nazir was furnished by Defendant No.2 on behalf of Defendant No.1. It is an admitted position that Defendant No.2 was the agent of the vessel MV "DIAS" and MV "TOLMI". As the vessel's agent, Defendant No.2 had to ensure that MV "TOLMI" was not unnecessarily detained in Pakistan for any reason. Therefore, Defendant No.2 promptly put up security with Nazir even before the Court passed an

order for the arrest of Defendant No.1, MV "TOLMI." This aspect became relevant during the course of arguments when the representative of Defendant No.2, supported by a board resolution of Defendant No.2 submitted an affidavit of No Objection that the amount lying with the Nazir along with profit thereon may be paid to the Plaintiff and suit be decreed accordingly.

29. Courts must pass orders/judgments in accordance with the law. In the present case, no claim in rem is made out against Defendant No.1. However, the Attorney of Defendant No.1 has not denied that Defendant No.2 was acting as an agent of MV "DIAS" and that Plaintiff supplied both equipment and services to MV "DIAS". Moreover, it is not denied that equipment and services were requested by Defendant No.2 from Plaintiff on behalf of MV "DIAS". One Vakalatnama was filed on behalf of both the Defendants, signed by one Zaheer Abro / Zaheer Uddin Ahmed. Despite the issue of Court Notices to the Counsel for Defendants, none appeared on behalf of Defendants Nos.1 and 2 except for Zaheer Abro / Zaheer Uddin Ahmed, who appeared in person in the capacity of a Representative on behalf of Defendant No.2, a company incorporated under the laws of Pakistan. Only Syed Muhammad Zia-ul-Hussan stepped into the witness box alone on behalf of Defendant No.1. Defendant No.2 did not depose. No case is made out against the Defendants in rem, and the Representative of Defendant No.2 has acknowledged his liability in personam. Defendant No.2 also furnished surety to Nazir on behalf of Defendant No.1. In the circumstances, based on Defendant No.2's Affidavit of No Objection that the amount deposited by Defendant No.2 on behalf of Defendant No.1 may be disbursed with profit to Plaintiff, this Court is inclined to accept the request of Defendant No.2.

30. According to Nazir's Report dated 11.10.2021, the deposit made by Defendant No.2 on behalf of Defendant No.1 on 06.08.2003 was in the form of Special Savings Certificates and is presently invested with the National Bank of Pakistan in Term Deposit Receipt ("TDR"). The investment in TDR with profit thereon as of 27.09.2021 was Rs.1,232,082.

31. In view of the above, the suit of Plaintiff is decreed against the Defendants jointly and severally in the sum of Rs.288,362, together with profit accrued thereon until the date of encashment of the National Bank of Pakistan Term Deposit Receipt by the Nazir.

32. Both parties will bear their own costs.

Suit decreed.

Karachi;
Dated: 07.08.2023

J U D G E