

## IN THE HIGH COURT OF SINDH, KARACHI

### Admiralty Suit No.1030 of 1991

[ABU DHABI FLOUR & ANIMAL FEED FACTORY VS. M. V 'BOUDAA-1' AND OTHERS]

**Date of hearing** : **10.04.2017**  
**Plaintiff** : **Abu Dhabi Flour & Animal Feed Factory,**  
**through Mr. Shaiq Usmani, Advocate**  
**Karachi Port Trust:** **Through Mr. Abdul Razzak, Advocate**

### **ORDER**

**Muhammad Faisal Kamal Alam, J:** Application (C.M.A.No.26 of 2016) has been moved by the Applicants M/s. Usmani & Iqbal, Advocates, seeking *inter alia* that their professional fee of US\$ 15,000/- (US Fifteen Thousand Dollars) be paid by the Official Assignee of this Court from the sale proceeds of subject vessel, as despite best efforts, the above named Advocates are neither in contact with their Client, that is, Plaintiff, nor the latter (said Plaintiff) is responding to any of the correspondence(s) addressed to it by Mr. Shaiq Usmani, the learned counsel. With one of the correspondences, a T.C.S. receipt dated 27.01.2016 is also enclosed. Learned counsel has cited reported judgments from foreign jurisdiction in support of his claim that an Advocate, who diligently pursues a matter of his client, which even culminated successfully in favour of his client, is also entitled to his profession fee and in non-payment thereof, an Attorney / Advocate has a lien over the property which is recoverable or is preserved in a Court proceeding. The reported cases are; (i) a Division Bench judgment handed down in a case of Kuttikrishna Menon v. Cochin Mercantiles Ltd., (ii) AIR 1979 Rajasthan 137 (*Union of India Vs. Radhey Shyam and*

*others*) and (iii) In re Metter Cabs, Limited of Chancery Division [United Kingdom].

The gist of above case law is that in common law a Solicitor, in the instant case an Advocate has a lien over the property of his client, which includes the fruits of a Judgment. In the second reported case of learned Rajasthan High Court, in which as a cross reference reported decisions of Division Benches of High Courts of India have been referred to and relied upon, it was held that even Court can refuse leave to a client to engage a new Counsel / Advocate, if the professional fee and charges of an Advocate, whose services sought to be dispensed with, has not been paid. In my considered view and in addition to what has been discussed hereinabove, Section 171 of the Contract Act, 1872 also provides a safeguard to the legitimate professional interest of an Advocate who has diligently conducted and pursued a matter on behalf of his client. Even otherwise, a person / litigant cannot be granted unfettered discretion to change his Advocate / Counsel without settling his fees and charges. This has been termed by the learned Rajasthan High Court as a 'subterfuge act'.

In these circumstances, this application (C.M.A.No.26 of 2016) is allowed but subject to paragraph-24 of the Judgment passed in instant suit.

Another application being C.M.A.No.56 of 2016 has been preferred by Karachi Port Trust ("**KPT**"), under Section 152 of C.P.C., seeking correction in para-23 of the Judgment. As per Mr. Abdul Razak, learned counsel for KPT, in paragraph-23 of the Judgment a word "with accrued profit" may also be included along with "KPT dues". He has relied upon a reported Judgment handed down by learned Division

Bench of this Court and reported in P L D 2016 Sindh 124 (*Bourbon Maritime (Pvt) Ltd. v. M. V. Salaj & 3 others*). According to learned counsel for KPT, the latter (KPT) is entitled to the accruals also as the sale proceeds of subject vessel was invested by the Official Assignee in Term Deposit with Habib Bank Limited.

While dictating the order, I have come across an order dated 15.05.2016 passed by learned Division Bench of this Court in Admiralty Appeal No. 02 of 2016, which has been preferred by KPT. Since the learned Division Bench is seized of the matter, it would be just and proper if this issue is left to be decided by the learned Division Bench in the above appeal.

In view of above, application (C.M.A.No.56 of 2016) is deferred sine die.

**Judge**

Dated: \_\_\_\_\_.