

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

Adm. Suit No.02 of 2018
Adm. Suit No.03 of 2018
Adm. Suit No.06 of 2018
Adm. Suit No.07 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of CMA No.06/2018 (Suit No.2/2018)

20-03-2018

Mr.Noman Jamali, Advocate for the Plaintiff in Adm.Suit No.02/2018.

Ms.Sahar Shah Bokhari, representative of Sudan Embassy is present in person.

Mr.Khurram Rashid, Advocate for the defendant Nos.1 and 2 in Adm. Suit No.02/2018.

Mr.Salman Talibuddin, Additional Attorney General for Pakistan.

Mr.Umer Zad Gul, Deputy Attorney General for Pakistan,

Mr.Noman Zahid Ali, Advocate for the Plaintiff in Adm.Suit No.07/2018

Mr.Irfan Bhutta holding brief for Mr.Kh.Naveed Ahmed, Advocate for the Plaintiff in Adm. Suit No.06/2018

Mr.Anees Ahmed, Advocate for the Plaintiff in Adm. Suit No.03/2018

Mr.Aga Zafar Ahmed, Advocate for KPT

Mr.Muhammad Muzaffar, Advocate for Defendant No.2 in Adm.Suit No.06/2018

Muhammad Sartaj Khan, Local Agent of Defendant No.1 (M.V. Miski), Mayo Thet, Master of defendant No.1, Charlie, 2nd Officer of Defendant No.1 are also present.

Muhammad Ali Mazhar, J: The plaintiff has filed this application (CMA No.06 of 2018) under Section 151 CPC in Adm. Suit No.02/2018 with the prayer that the cargo lying in vessel M.V. Miski may be released to the plaintiff so that the consignment may be shifted in the vessel arranged by the plaintiff for delivery of cargo to its original destination i.e. Port of Sudan.

2. The record reflects that vide order dated 3.1.2018, the learned Judge of this court ordered that the vessel M.V. Miski should be arrested and shifted to the outer anchorage of the port. It was further directed that order of arrest shall be subject to defendant's furnishing security in the sum of Pak Rupees equivalent to the US \$ 860,500.00 to the satisfaction of the Nazir of this court and if the subject security is furnished, the vessel may be allowed to sail. Simultaneously, the defendant No.1 was also directed to ensure that the cargo should be delivered at the Port of Sudan in accordance with the agreement.

3. Since three more lawsuits against the same vessel have been filed with different claims, so I would deem it appropriate to mention the gist of their claims also in this order as under:-

i. The Adm. Suit No.03/2018 has been filed by Glander International Bunkering DMCC for the recovery of amount against bunkers supply. In this case also, this court as an interim measure arrested the vessel unless they furnish solvent surety/bank guarantee in U.S. \$ 33,618.66 or equivalent amount in Pak Rupee.

ii. The Adm. Suit No.06/2018 has been brought by four crew members for the payment of their wages.

iii. The Adm. Suit No.07/2018 has been filed by Fair Sea International FZC for recovery of amount against the supply of necessities.

4. Since an emergent issue germane to the release of cargo is involved, therefore, I would like to take up first Adm. Suit No.02/2018. On 16.3.2018 Mr.Khurram Rashid, Advocate for the defendant Nos.1 and 2 requested for time to seek some instructions and at the same time he made much emphasis that US\$ 40,000/- are payable by the plaintiff to the crew members. Today, he has sought instructions but he submits that the wage bill of crew is approximately US\$ 80,000/- which is to be paid by the plaintiff but he could not point out the exact details in the inflation of wage bill amount. However he has conveyed his no objection to release the cargo to the plaintiff (Hays Trading & Shipping).

5. On the contrary, the learned counsel for the plaintiff argued that the plaintiff is not liable to pay any amount. He reiterated that the plaintiff never received any such amount from the defendant Nos.1 and 2 for onward payment to the crew members. However, without prejudice to the contention raised in the plaint, Mr.Noman Jamali, Advocate on instructions of the plaintiff agrees to furnish security in the sum of US\$ 60,000/- or equivalent in Pak Rupee with the Nazir of this court. On which Mr.Khurram Rashid, Advocate has no objection for the release of consignment but on other issues he reserves the right to argue on merits of the case including maintainability of lis.

6. Mr.Aga Zafar Ahmed, Advocate for KPT submits that at the time of releasing the consignment the plaintiff is liable to pay port charges and the expenses if any payable for the discharge of cargo. Mr.Noman Jamali, Advocate for the plaintiff accepts that this liability will be discharged by the plaintiff.

7. Ms.Sahar Shah Bokhari, authorized representative of Sudan Embassy submits that they have arranged alternate vessel for shifting the cargo from Karachi port to Sudan and the nominated vessel will arrive on or before 24.3.2018 at Karachi Port.

8. Mr.Salman Talibuddin, learned Additional Attorney General submits that responsible officer from Ministry of Maritime Affairs, Government of Pakistan shall also be deputed to monitor the safe and swift shifting of cargo from M.V. Miski to the nominated vessel of the plaintiff.

9. By consent the CMA No.06/2018 filed in Adm. Suit No.02/2018 is disposed of in the following terms:-

- (a) The plaintiff will arrange alternate vessel, which will reach at Karachi Port on or before 24.03.2018 in accordance with law.
- (b) The plaintiff will furnish tangible security in the sum of US\$ 60,000.00 or equivalent amount in Pak Rupee to the satisfaction of the Nazir of this court within 07 days. Unless the security is furnished the consignment shall not be discharged or released by the K.P.T. authorities to the plaintiff.
- (c) On furnishing security, the Nazir shall issue certificate to the K.P.T. The plaintiff shall also pay all K.P.T. dues for the release/discharge of cargo and for shifting it from M.V. Miski to the nominated vessel of the plaintiff.
- (d) The learned Additional Attorney General for Pakistan within three days will intimate the counsel for the plaintiff and counsel for the K.P.T. the name of authorized Officer of Ministry of Maritime Affairs, Government of Pakistan, who will ensure his presence for monitoring the safe shifting of cargo form M.V. Miski to the nominated vessel of the plaintiff.

- (e) The plaintiff will issue certificate to the K.P.T. that the consignment is not dangerous and the K.P.T. will ensure to take all safety measures at Karachi Port at the time of release and discharge of consignment to the plaintiff.
- (f) The Embassy of Republic of Sudan at Islamabad shall also depute their authorized representative. The name of representative shall be communicated in writing within three days to the Chairman KPT and Ministry of Maritime Affairs, Government of Pakistan. The said representative shall ensure his presence at Karachi Port at the time of transferring cargo from M.V.Miski to the nominated vessel of the plaintiff.
- (g) The learned Additional Attorney General for Pakistan has given clear statement that Pakistan Customs have no dues against this cargo, however, if any NOC is required from Pakistan Customs, the plaintiff shall be responsible to apply and arrange.
- (h) The representative of Embassy of Sudan shall be responsible to liaise with the plaintiff and the nominated vessel for handing over the consignment at its destination.

10. Office is directed to transmit copy of this order to learned Additional Attorney General for Pakistan, Director General, Ministry of Maritime Affairs, Government of Pakistan and the Chairman, KPT.

11. By consent other connected suits shall be heard on 30.3.2018 at 11:00 a.m. In the meanwhile, the M.V. Miski shall remain arrested as ordered earlier.

Office is directed to place copy of this order in all aforesaid Adm. Suits.

Judge