

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.882 OF 2002

BEFORE:

Mr. Justice Arshad Hussain Khan

Nazeer Ahmed & another

Vs.

Karachi Port Trust & others

Plaintiff through: Mr. Khalid Daudpota, Advocate.

Defendants through: Mr. Abdul Razzak, Advocate.

Date of hearing: 20.8.2018

JUDGMENT

Arshad Hussain Khan J. The present suit was filed on 23.8.2002 by the plaintiffs against the defendants for declaration, permanent injunction and damages of Rs.1,93,31,000/- with the following prayers:

- “1. Declaration to the effect that the plaintiffs are the lawful owner of the sunken vessel and are entitled to salvage/cutting/break and dismantle the remaining portion of the wrecked vessel known as M.V. Naran grounded at Baba Bhit Pool between Kamari and Manora.
2. Declare that the defendant No.1 and 2 illegally, unlawfully and without any justification and with malafide intention did not grant permission for further breaking and removing the scrapes to the plaintiffs.
3. Declare that the defendant No.1 and 2 sold out the sunken vessel M.V. Naran on Peanut Price with malafide intention to cause the losses to the plaintiffs. The alleged proceeding tender shall be declared as null and void.
4. Permanent injunction restraining the defendants jointly and severally their employees, servant/servants, workers, labours, agents, authorities and person/persons from entering in sunken vessel M.V. Naran grounded at Baba Bhit Pool for salvaging/breaking/cutting and removing the scrapes from the site.
5. Grant decree sum of Rs.1,93,31,000/- towards the damages as per the market price of the sunken vessel.
6. Cost of the suit.

2. Briefly the facts of the present case, as averred in the plaint, are that plaintiffs are owners of the wrecked vessel namely M.V. NARAN (subject Vessel) and, inter alia, engaged in the business of ship breaking and salvaging. It is also averred that M.V. KASHMIR Vessel known as M.V. NARAN was the subject matter of Suit No.387/1988 filed before this court wherein the subject vessel, sunken and grounded at Baba Bhit Manora, was auctioned and purchased by M/s. Iqbal Trading Company against the consideration of Rs.35,00,000/- and the possession of the subject Vessel was handed over to M/s. Iqbal Trading Company by virtue of bill of sale and the court order. The said auction purchaser (M/s. Iqbal Trading Company) signed and executed special power of attorney in favour of plaintiffs empowering them to deal the matter with the KPT. It is also averred that in the year 1996 the auction purchaser/ executants of power of attorney sold out the subject vessel to the plaintiffs for consideration. The plaintiffs after having purchased the subject vessel paid additional duties and wharfage to KPT besides custom duties and other taxes. Further averred that the plaintiffs, being the attorney of the auction purchaser of subject vessel, when approached to defendants-KPT for grant of permission to salvage /break/dismantle and remove the scrap of the subject vessel from the port area to the market upon payment of dues and taxes, the KPT granted said permission vide its letter dated 12.7.1995 and 3.10.1995 and in pursuance thereof the plaintiffs had continued the wreckage work and the salvage quantity was being transported by the plaintiffs under the proper custom escort upon payment of custom duties, wharfages and other charges to the KPT. It is also averred that, under the agreed terms and conditions, the plaintiffs paid sum of Rs.2,00,000/- as a security deposit to the KPT. It is also averred that for the purposes of dismantling/breaking of the sunken subject vessel, the plaintiffs installed machineries, which machineries are laying at the site and the plaintiffs have been denied access to the same by KPT. Furthermore, the said machineries are now being utilized by defendant No.3 (new auction purchaser of the subject vessel), illegally and without any justification, at the instructions of defendants-KPT and as such causing losses to the plaintiffs. Since the plaintiffs have been denied access to the machineries lying at site, therefore, actual losses

could not be ascertained. However, the defendants are jointly and severally liable to pay a sum of Rs.38,15,000/- to the plaintiffs being the cost of the machineries lying at the site. It is also averred that first permission, granted to the plaintiffs, was valid up to 31.3.1996 and during that period the plaintiffs had been breaking and salvaging the subject vessel and the scrapes were being removed against the payments to the KPT on the basis of weight of the scrape material, however, after the expiry of first permission, the defendants-KPT, instead of extending the time in writing, verbally allowed the plaintiffs to carryout breaking, salvaging and removal the scrap material without any objection of whatsoever nature. After expiry of the period, the plaintiffs was allowed to mobilize the labour and equipment to commence the salvaging, breaking and removal of the scrape up to 22.3.1999. Thereafter, the defendants-KPT did not allow the plaintiffs to continue the salvage of the remaining vessel, even they seized the scrape material which not only caused monetary losses but also caused the mental distress, discomfort to the plaintiffs. The plaintiffs on account of the non-cooperative attitude of defendant No.2 continued to make request for grant of permission in writing to further salvage the remaining portion of the subject vessel, however, instead of granting permission, the defendants-KPT chooses to delay the matter on one pretext or the other. It is also averred that the Defendants-KPT without any justification and lawful excuse got a notice published in daily Dawn dated 20.10.2001 whereby bids were invited for removal of the subject vessel, whereas ownership whereof was vested with plaintiffs. The plaintiffs upon having knowledge of the said public notice, lodged a written protest with the defendants-KPT wherein the plaintiffs also assured that they will clear all payments of KPT and clear the site as well. In pursuance thereof, the KPT authorities though called upon the plaintiffs and obtained undertaking in the month of June, 2002, however, despite assurance and commitment, they did not issue the permission to start the salvaging of remaining portion of the subject vessel. It is also averred that defendants-KPT without any justification and lawful excuse sold out the plaintiffs subject vessel to defendant No.3 against the meager amount of Rs.1.1 million knowingly that the value of the remaining un-salvaged vessel weighing 1293 MT, was of Rs.1,55,16,000/- at the rate of Rs.12,000/- per MT. The above said fact

came into the knowledge of the plaintiffs on 2.8.2002, where upon the plaintiffs immediately approached to the defendants-KPT and raised protest, however, failed to get any positive response. Consequently, 06.08.2002, the plaintiffs served legal notice upon the defendants which was never replied by the defendants. The plaintiffs, thereafter, having no other option filed present suit.

3. Upon notice of the present case defendants No.1 and 2 (KPT) filed their joint written statement whereas the defendant No.3 failed to file any written statement consequently on 4.3.2003 the defendant No.3 was debarred from filing written statement.

4. Defendants-KPT in their written statement while raising preliminary objections regarding maintainability of the suit, has denied the claim and allegations leveled in the plaint. It has also been stated that the plaintiffs were only acting as the attorney of the auction purchaser namely M/s. Iqbal Trading Company. The plaintiffs being attorney of the auction purchaser on 13.09.1995 had executed a bond of undertaking, whereby it was, inter alia, undertaken by the plaintiffs that they will complete the dismantling/salvaging work of the subject vessel in all respect and clear wreck (breaking site) by 31.03.1996. However, the plaintiffs failed to fulfill their obligations as per the said undertaking and further despite repeated requests they also failed to pay the dues as per the port tariff which was accumulated to the extent of Rs.481,780.08 up to 31.1.2001. Consequently, the defendants had to auction the subject vessel which was subsequently purchased by defendant No.3. It has also been denied that defendants have brought any machinery at the site. Further the plaintiffs never submitted list of equipment/machineries with the Engineering Department of KPT. Further stated that the present suit has been filed with malafide intention and the plaintiffs are not entitled to any of the relieves claimed in the suit.

5. Out of the pleadings following issues were framed by the court on 24.8.2003:-

1. Whether the suit is not maintainable in view of the non-service of notice under Section 87 of the KPT Act?

2. Whether the defendants were justified in calling for fresh bid of auction in the year 1998?
3. Whether the suit is time barred?
4. Whether there was any breach of contract by the plaintiff?
5. Whether the plaintiff is entitled to any damages?
6. To what relief the plaintiff is entitled to?
7. What should the decree be?

From the perusal of the above issues, it appears that due to some typographical error the year of auction has been written as 1998 instead of 2002. Therefore, the issue No.2 may read as follows:

“2. Whether the defendants were justified in calling for fresh bid of auction in the year 2002?”

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

7. Record reveals that the plaintiffs in support of their case have examined two witnesses PW-1 namely Mehboob Ali as Ex.1 and PW-2 Muhammad Zafer Nazir as Ex.14, whereas the defendants examined witness DW-1 namely Muhammad Azam Khan, Assistant KPT.

8. The plaintiffs filed affidavit in evidence of PW-1 Mehboob Ali as Ex—2, who produced following documents:-

1.	Agreement of Sale dated 9.6.1996	Ex.3
2.	Tax payment dated 18.3.1996	Ex.4
3.	Letter dated 21.8.1995	Ex.5
4.	Letter dated 15.11.2001	Ex.6
5.	Letter dated 19.11.2001	Ex.7
6.	Letter dated 4.12.2001	Ex.8
7.	Letter dated 11.12.2001	Ex.9
8.	Publication dated 30.10.2001	Ex.10
9.	Publication dated 7.5.2002	Ex.11
10.	Letter dated 6.11.2001	Ex.12
11.	Legal Notice dated 6.8.2002	Ex.13
12.	TCS receipt	Ex.14

9. The said witness was subsequently cross examined by the advocate for defendants which for the sake ready reference is reproduced as under:-

“I am plaintiff No.2 in the present suit. The plaintiff No.1 will be examined if necessary. It is correct that the plaintiff has not

given any notice prior to the filing of the present suit, to the KPT under section 87 of the KPT Act. I see para 4 of my affidavit in evidence and say that I am the owner of Wrecked vessel vide agreement Ex.3. I had informed the KPT and country about the purchase of the vessel. I rely on my letter dated 21.8.95 Ex.5 and letter dated 6.11.2001 Ex.12. It is correct that the plaintiff had executed an indemnity bond on 13.9.95 with KPT. I was witness to this bond. Mr. Nazeer Ahmed, the plaintiff No.1 has signed this bond as attorney of M/s. Iqbal Trading, who purchased the subject vessel from High Court in auction. It is correct that on 13.9.1995, the plaintiff No.1 signed the bond as attorney of M/s. Iqbal Trading as at that time the plaintiff was not the owner of the vessel.

It is correct that the plaintiff has not informed the KPT and customs about the ownership of the vessel between 21.8.95 to 6.11.2001. It is correct that the letter dated 6.11.2001 Ex.12 was written by the plaintiff after the publication of tender of the vessel dated 30.10.2001 Ex.10. It is not correct to suggest that the KPT published the tender when the attorney and the owner of the vessel failed to pay the dues of KPT. It is incorrect to suggest that there was KPT dues against the owner of the vessel. We purchased the vessel at Rs.55 lac vide agreement Ex.5. When the plaintiff purchased the vessel, there was not cutting of work and it was 100%. The payment of the sale price was made in cash. The cash amount was lying with the plaintiff and not drawn from any bank. We are doing the business of import export and general trade. We also pay the Income tax. It is correct that the plaintiff have not filed the copy of the income tax return to show that the plaintiff had the money at that time to pay the same to the seller. It is correct to suggest that M/s. Iqbal Trading Company is not a party to this suit. It is not correct to suggest that the agreement Ex.5 is a fictitious document. It is not correct to suggest that the plaintiff No.1 as attorney of M/s. Iqbal Trading has not complied with the term and condition of the bond. I see para 13 of my affidavit in evidence and say that the amount of Rs.2 lacs was deposited by me as plaintiff No.2. At present I cannot produce the receipt of payment of Rs.2 lacs. It is correct that only Rs.1 lac was deposited by the plaintiff No.1 as attorney for M/s. Iqbal Trading Company.

I see para 14 of my affidavit in evidence and say that it is correct that the plaintiff have not provided the list of machineries to the customs and KPT. The plaintiff had the verbal permission only from KPT for bringing the machineries by the plaintiff at KPT site. The verbal permission was given to the plaintiff by Deputy Conservator KPT. The name of D.C in 1996 may be Mr. Hassan. The machineries were brought to the KPT site periodically. It is not correct to suggest that the machineries were not brought to KPT site.

I see para 15 of my affidavit in evidence and say that it is incorrect to suggest that the plaintiff has not paid to the KPT the dues in respect of wrecks.

I see para 17 of my affidavit in evidence and say it is not correct to suggest that the KPT had not given the verbal permission for taking the wrecked from the KPT site.

I see para 18 of my affidavit in evidence and say that my statement in respect of KPT dues is correct. It is not correct to suggest that my earlier statement that there was no KPT dues in not correct. Voluntarily states that the plaintiff had the security deposit amounts with the KPT. It is not correct to suggest that there is only Rs. One lac as security deposit with KPT. The plaintiff had deposited from time to time with to time with KPT and at present these amounts might be about Rs.7 lacs. I have not filed any documents of deposit of above amounts with KPT.

I see para 19 of my affidavit in evidence and say that the plaintiffs have not participated in the bids.

I see para 21 of my affidavit in evidence and say that it is not correct that my statement in this para is false.

It is incorrect to suggest that the plaintiff have filed the false suit and are not entitled to the prayers made in the suit.”

[Emphasis supplied]

10. The second witness (PW-2) has also filed his affidavit in evidence as Ex-15 and he was cross examined by learned advocate for the defendants KPT, which for the sake of ready reference is reproduced as under:-

“ I am giving evidence at the request of Mr. Nazeer Ahmed and Mehmood the plaintiff No.1 & 2. The plaintiff is not related to me. The plaintiff No.1 is related to me. I am doing my work of contract at different places. At present I am working a Gaddani Beach. I am doing my own business.

I see para 3 of my affidavit in evidence and say that there is typing mistake, the word plaintiff, may be read as defendant and the defendant as plaintiff. I was engaged to supervise the breaking of the vessel by the plaintiff. It is not necessary to obtain the pass to go at the site of KPT.

It is not within my knowledge as to whether the plaintiff had given any list of person to KPT who were working at site. There were several other persons working on the vessel besides me. I had not given any list to KPT of persons working with me at site directly. I was engaged by the plaintiff on contract basis. The contract was oral. It is incorrect to suggest that I had no contract with the plaintiff No.1 nor I was present at site.

I see para 4 of my affidavit in evidence and say that I was informed by the plaintiff that the machineries at site belongs to them. I was not informed by any other person about the ownership of the machineries.

I see para 5 & 6 of my affidavit in evidence and say that the facts stated in this para was informed to me by the plaintiff.

I see para 7 of my affidavit in evidence and say that in the beginning the plaintiff had the written permission from KPT which I had also seen, but subsequently I did not see any written permission with the plaintiff. It is incorrect to suggest that the plaintiff had no written permission in the beginning. I was informed by the plaintiff that there are KPT dues against them. I see para 8 to 13 and say that the facts statement in these paras were informed by the plaintiff to me.

It is not correct to suggest that I have no personal knowledge and whatever stated by me in my affidavit in evidence is at the instance of plaintiff.

I see para 10 of my affidavit in evidence and say that since I have taken the contract of breaking from the plaintiff, therefore, I had the knowledge of the figures mentioned in this para. I have mention the rate previously at that time. It is correct that I have not filed the document to show the previous rates.

I have no knowledge as to what has been stated by the plaintiff No.2 in para 21 of his affidavit in evidence. It is not correct to suggest that my affidavit in evidence in repetition of affidavit in evidence filed by the plaintiff No.2. I have no knowledge about the execution of bond by plaintiff with KPT. I have no knowledge as to whether the plaintiff had supplied the list of machineries to KPT. I have no knowledge about the total dues of KPT against the plaintiff.”

[Emphasis supplied]

11. After completion of the evidence of the plaintiffs’ side, the defendants KPT filed affidavit in evidence of its witness (DW.1) namely Muhammad Azam Khan as Ex-D and he produced following documents:-

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| 1. | Bond of undertaking dated 13.9.1995 | Ex.D/1 |
| 2. | Permission Letter by KPT to Plaintiff dated 3.10.1995. | Ex.D/2 |
| 3. | Letter addressed by plaintiffs as attorney of M/s. Iqbal Trading Company to KPT dated 30.3.1996. | Ex.D/3 |
| 4. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed dated 3.6.1996. | Ex.D/4 |
| 5. | Letter to Deputy Conservator By Chief Accounts Officer dated 13.6.1997. | Ex.D/5 |
| 6. | Memorandum issued by ABL showing reasons of dishonor of the cheque of the plaintiff dated 10.6.1997. | Ex.D/5-A |
| 7. | Dishonoured cheque of Rs.50,000/-. | Ex.D/5-B |
| 8. | Letter addressed by Deputy Conservator | |

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| | KPT to Nazeer Ahmed along with delivery receipt dated 24.12.1997. | Ex.D/6 |
| 9. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed along with delivery receipt dated 22.1.1998 | Ex.D/7 |
| 10. | Letter addressed by Mahboob Impex to Deputy Conservator dated 16.2.1998 | Ex.D/8 |
| 11. | Letter addressed by Mehboob Impex to Deputy Conservator dated 16.2.1998. | Ex.D/9 |
| 12. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed dated 23.2.1998 | Ex.D/10 |
| 13. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed along with delivery receipt dated 26.3.1998. | Ex.D/11 |
| 14. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed along with delivery receipt dated 29.8.1998 | Ex.D/12 |
| 15. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed along with delivery receipt dated 26.9.1998. | Ex.D/13 |
| 16. | Letter addressed by Chief Accounts Officer KPT to Deputy Conservator KPT dated 4.9.1998. | Ex.D/14 |
| 17. | Letter addressed by Enquiry Officer to Traffic Manager KPT dated 10.8.2000. | Ex.D/14-A |
| 18. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed dated 11.8.2000 A/w Delivery slip. | Ex.D/15 |
| 19. | Letter addressed by Deputy Conservator KPT to Nazeer Ahmed dated 26.8.2000. | Ex.D/16 |
| 20. | Letter addressed by Enquiry Officer to Deputy Conservator dated 22.8.2000. | Ex.D/16-A |
| 21. | Letter addressed by Deputy Conservator KPT to Mehboob Impex dated 12.10.2000. | Ex.D/17 |
| 22. | Letter addressed by Deputy Conservator KPT to Mehboob Impex dated 12.10.2000. | Ex.D/17-A |
| 23. | Letter addressed by Deputy Conservator KPT to Mehboob Impex dated 6.11.2000. | Ex.D/18 |
| 24. | Letter addressed by Deputy Conservator KPT to Mehboob Impex dated 17.1.2001 | Ex.D/19 |
| 25. | Letter addressed by Chief Accounts Officer to Deputy Conservator KPT dated 17.2.2001. | Ex.D/20 |

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| 26. | Letter addressed by Deputy Conservator KPT to Mehboob Ali dated 4.12.2001. | Ex.D/21 |
| 27. | Extract from the minutes of the proceedings of the meeting of the Board of Trustees of the Port of Karachi held on 11.7.2002. | Ex.D/22 |
| 28. | Public notice of KPT for inviting removal of sunken wreck published in Daily DAWN dated 7.5.2002. | Ex.D/23 |
| 29. | Authority letter in favour of Muhammad Azam Khan, Assistant Deputy Conservator's Department of KPT to appear and give evidence on behalf of KPT. | Ex.D/24 |

12. The said witness (DW.1) was subsequently cross examined by the advocate for plaintiff which for the sake of ready reference is reproduced as under:-

“ I say that the suit is not maintainable as advised by my advocate. I do not know personally the period of lifting but it is mentioned in the agreement. The period is mentioned in para 10 of the Bond Ex.D/1. It is correct that the plaintiff did not clear the wreck up to 31.3.1996. The period after 31.3.1996 was not extended by the defendants. It is correct that even after 31.3.96 the plaintiff continued the breaking of the ship and removed the wrecks. It is correct that the plaintiff was not served with notice of cancellation by the defendant after 31.3.96. Voluntarily states that the plaintiff used to request verbally for extension and the defendant used to allowed them to lift the wrecks. It is correct that the ship M.V. Narain was purchased by M/s. Iqbal Trading Co., Karachi from court auction. According to our record Mr. Nazir Ahmed was their attorney. The bond is signed by Mr. Nazir Ahmed. The defendants used to correspond with M/s. Nazir Ahmed C/O Mehboob Impex. The KPT had received the cheque from Nazir Ahmed. I see letter dated 16.2.1998 Ex.D/9 and say that this letter was received by the KPT.

Q. It is correct that after the property is sold by the KPT it does not remain their property?

A. It depends upon the terms and condition of sale.

It is correct that after sale, so long as the ship remains in the KPT area, the KPT is entitled to charge the rent. The defendant vide its letter dated 17.1.2001 Ex.D/19 and Ex.D/20 Ex.D/21 informed the plaintiff the amounts of rent due for the period the ship remained in the KPT area. It is correct that the defendant vide Ex.D/19 informed the plaintiff the amount of Rs.4,67,964/- due against the plaintiff up to 31.12.2000. I cannot say as to what was the amount lying with KPT as security deposit of the plaintiff. I cannot say as to whether the plaintiff had deposited Rs. 2 lacs with KPT or not as mentioned in Ex.D/1. I see Ex.D/23 and say that there is no

mention in this publication that the sale is being made on account of default of payment made by the plaintiff. It is correct that when the wrecks are shifted from KPT-area, they are liable to pay the customs duty and wharfage. The ship, after the publication for auction was sold out to M/s. Mehran Associates. It is correct that in the publication no details are mentioned. Voluntarily states that it was sold "as is where is" basis. I see the letter dated 22.5.2002 at page 24 of Ex.D/22 and say that the Mehran Associates had mentioned the list of machineries for lifting the wrecks. It is correct that when any machines is brought to the port area or removed from gate, an entry is made in our record. It is not within my knowledge the details of machines brought by the plaintiff. I have no knowledge as to whether the plaintiff has removed his machines or not. I see para 14 & 15 of the written statement and say that the statement made therein is correct.

It is not within my knowledge as to whether the new purchaser has lifted the entire wreck of the ship or not. It is correct that some wreck are still at site. It is correct that during the "monsson" season it is difficult to make the underwater cutting of the wreck. The ship was sold at Rs.11,00000/- vide Ex.D/22 page (20). According to my knowledge the purchaser has paid the entire purchase money. According to my information the new purchaser has been declared as defaulter. It is correct that the remaining part of the wreck has not yet been sold at any person. Voluntarily states that there are several wrecks in the harbor and the KPT is planning to auction all at a time the wrecks. The sale has not yet been finalized. It is correct that the KPT did not call upon the plaintiff to receive back his security deposits as the plaintiff did not make any application for the withdrawal of the same. Since the plaintiff has been declared as a defaulter, his entire security deposits were forfeited and there is no question of calling upon the plaintiff to receive any amount.

Q. Have you allowed the new purchaser to lift the machines brought at site?

A. It is not within my knowledge.

It is not within my knowledge as to whether the Mehran Associates have made the payment of wharfage charges in the name of the plaintiff. I have no knowledge in whose name the gate passes were issued as the same are concerned to Traffic Department and watch and ward department. It is not within my knowledge as to whether the machine brought at site by the plaintiff are still lying there. It is correct that whatever is brought to the KPT area, the KPT charge the rent according to SRO. The KPT had given the notice to the plaintiff with details vide Ex.D/13 and D/14 and its annexure. The fact mentioned in para 2 of the letter dated 12.10.2000 Ex.D/17 is correct. It is correct that the ship M.V. Narain was on the sea water and is still in the same position.

Q. It is correct that the KPT has not charged any rent from the ship F.T East bill 707 as mentioned in Ex.D/17?

A. Since the matter of F.T 707 was in court and the KPT acted according the orders of the Court.

I cannot say as to whether the plaintiff had paid the entire wharfage charges to KPT or not.

It is not correct that the KPT has deliberately prevented the plaintiff from lifting wreck or that the plaintiff are entitled to the damages and costs claimed in the suit. It is not correct that the plaintiff is the owner of the remaining wracks at site. At present the KPT is the owner of the remaining wrecks. I cannot say that the present value of the wrecks, and machines are about Rs.1,93,31,000/-.

I see Ex.13, legal notice and say that this was not received by the KPT. The plaintiff used to come to KPT area and meet the officer but I have no knowledge of their meetings. The deputy conservative is dealing with the transaction and finally it is determined by the Board of Directors. It is not correct that the re-auction of the wreck by the KPT is against the law. It is not correct to suggest that the remaining wrecks does not belongs to KPT. It is not correct to suggest that the re-auction of the wreck was in collusion with Mehran Associates. It is correct that at the time of re-auction, part of the ship was still above the sea water. I have no knowledge about the present position of the wreck. It is not within my knowledge as to which part of ship, the Mehran Associates has taken as wrecks.

[Emphasis supplied]

13. I have heard learned counsel for the parties, perused their submissions in writing filed by them and with their assistance also examined the evidence.

14. The learned counsel for the plaintiffs during the course of his arguments while reiterating the contents of the plaint has contended that the subject vessel was initially purchased by M/s. Iqbal Trading through an open auction pursuant to court proceedings, however, subsequently the said Iqbal trading company sold out the subject vessel to the plaintiffs through a sale agreement and executed a power of attorney in favour of the plaintiffs to deal with the KPT as proprietor of the said vessel. The plaintiffs after stepping into the shoes of auction purchaser had started the process of breaking/salvaging the subject vessel for which the subject vessel was purchased in the auction proceedings. The plaintiffs on the strength of above said power of attorney had also started dealing with defendants-KPT and in this regard the plaintiffs paid various amount to the KPT towards duties, taxes and charges in respect subject vessel. It is also argued that after acquiring ownership of the subject vessel from auction purchaser till filing of the instant suit the plaintiffs were dealing with KPT in respect

of the subject vessel without any objections. Further argued that till 1998 the plaintiffs salvaged the subject vessel and removed the material about 748.820 MT out of 2041.93 MT leaving behind 1293.11 MT which required to be salvaged having market value of Rs.1551600 @ of Rs.12000 per metric ton. The KPT thereafter did not allow the plaintiffs to further salvage and dismantle the subject vessel and subsequently sold the subject vessel to defendant No.3. It is also argued that the KPT was well aware of the fact that the plaintiffs are owners of the subject vessel. Furthermore, once the defendant KPT has already received entire sale consideration in respect of subject vessel, it had no right and interest over the subject vessel, it could at best can claim rentals for the wreck where the subject vessel (sunken ship) is anchored. However, the defendant KPT in flagrant violation of law and to disadvantage the plaintiffs sold out the subject vessel to defendant No.3, in re-auction. It is also argued that the said sale having no bearing in law is liable to be set at naught. Learned counsel in support of his arguments also referred to evidence of the defendant, which according to the learned counsel corroborates the stance of the plaintiffs in the present case. In support of the plaintiff's stance, learned counsel also relied upon the following case law:-

- a) 2018 YLR 1172 (Karachi Port Trust Vs. National Insurance Corporation).
- b) Copy of Judgment in Suit No.517/2001 (Nama Lika Silk Industries Vs. M/s. Ultimate Driving Machine & others).

15. In rebuttal, learned counsel for the Defendant besides reiterating contents of the written statement and affidavit-in-evidence filed on behalf of the Defendant-KPT has argued that the plaintiffs have failed to prove its case in the evidence. He further argued that the subject vessel actually was purchased by M/s. Iqbal Trading Company through court auction. Subsequently, said M/s. Iqbal Trading Company had authorized the plaintiffs through special powers of attorney dated 8.10.1995 and 26.11.1995 to deal with Defendants-KPT and other concerned authorities in respect of salvaging/cutting and removal of the scrap etc. of the wreck of the subject vessel. The defendants-KPT on the basis of said special power of attorney had accorded the permission to the plaintiffs to salvage the subject vessel and in pursuance thereof

the plaintiffs had started salvaging/cutting of the wreck of the subject vessel, however, failed to complete the work within stipulated time, however, the KPT taking a lenient view did not stop the plaintiff till the year 1999. Nevertheless, the plaintiffs subsequently stopped the salvaging of the subject vessel and as the plaintiffs have also failed to pay the dues of the KPT upon which through several letters the plaintiffs were called upon to pay the dues and vacate the site and when the plaintiffs failed to pay the outstanding dues and vacate the site which at that time accumulated more than 5 lacs, the defendants-KPT was constrained to re-auction the subject vessel to recover the its dues. It is also argued that there is nothing on record of the KPT that the Plaintiffs are the owners of the subject vessel nor the auction purchaser (M/s. Iqbal Trading company) had ever intimated such fact and/or addressed any letter to the KPT in respect thereof. It is also argued that the plaintiffs have failed to substantiate their claim through evidence in respect of their heavy machines at the site of KPT and or they suffered heavy loss due to the act of KPT. Lastly, argued that the suit is liable to be dismissed. Learned counsel in support of the defendants stance has relied upon the following case law:

- a) PLD 1996 SC 737 (Sufi Muhammad Ishaque Vs. The Metropolitan Corporation, Lahore through Mayor).
- b) 2007 CLD 1092 (United Marine Agencies (Pvt.) Ltd. and others Vs. Trustees of the Port of Karachi and others).
- c) 2006 MLD 1397 (Messers Creative Information Services (Pvt.) Ltd. through Principal Officer vs. Karachi Port Trust through Chairman and another).
- d) 1988 CLC 2119 (Abdul Rahim Khan Vs. The Trustees of the Port of Karachi).
- e) PLD 1996 Lahore 367 (Abdul Khaliq Vs. Muhammad Asghar Khan and 2 others).
- f) 2008 CLD 85 (Echo West International (Pvt.) Ltd. Vs. Pakland Cement Ltd.).
- g) 1981 CLC 1055 (Abdul Karim Vs. Mst. Kohi Noor Begum and another)

16. I have given due consideration to the arguments advanced by the learned counsel for the parties, minutely perused the material/evidence available on record, the applicable laws and the case law cited at the bar. My findings on the issues framed by this court are as under:

17. **ISSUES NO.1& 3.** These issue has been framed on the objections taken by the Defendants-KPT in the written statement in respect of maintainability of the suit, therefore, both the issues have taken up together. Learned counsel for the KPT in support of these issue has contended that the suit is not maintainable as notice under section 87 of KPT Act, which is mandatory in nature, has not been given by the plaintiffs before filing the present case. It is also argued that the plaintiffs have neither challenged nor disputed such fact. On the contrary witness of the plaintiffs has himself admitted in his cross-examination that the plaintiffs have not given any notice to KPT under Section 87 of KPT Act prior to the filing of the present Suit. It is also argued that non-giving the necessary notice under section 87 of the KPT is fatal and the present suit is liable to be dismissed on this ground alone. In this regard learned counsel has also relied upon *PLD 1976 Karachi 425 and 1988 CLC 2119* wherein it has been held that the suit filed by- passing the mandatory provision of Section 87 of KPT Act is not maintainable.

Conversely, learned counsel for the plaintiff on these issues has contended that notice as required under section 87 of KPT Act is not mandatory and further no hard and fast rule can be laid down in connection with the accrual of the cause of action against the Port Authorities as it depends upon the facts of each case. Further contended that from the evidence it has been cleared that the plaintiffs have given valid intimation, in the shape of legal notice, to the Defendants-KPT before filing the present suit. Furthermore, the present case was filed when plaintiffs' subject vessel was sold out to other person (defendant No.3) without notice to the plaintiffs, who started removing scrap and machineries lying at site, as such the present suit was filed under the provision of CPC and not in pursuance of KPT Act. Learned counsel in support of the plaintiffs' stance has relied upon the case law reported as *PLD 1959(WP) Karachi 369*.

Before proceeding further, it would be appropriate to discuss section 87 of the KPT ACT, which reads as under:-

“87. Limitation of suits, etc. No suit shall be commenced against any person for anything done or purporting to have been done; in pursuance of this Act, without giving to such person one month's previous notice in writing of the intended

suit and of the cause, thereof, nor after six months from the accrual of the cause of such suit.

And, in the case of a suit for damages, if tender of sufficient amends shall have been made before the suit was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender."

[Emphasis supplied]

From reading of the above provision, it appears that no suit shall be commenced against any person for anything done or purporting to be done in pursuance of KPT Act without giving one month's previous notice. It is an admitted position that no notice under section 87 of KPT Act was served before filing the suit. Furthermore, the bar under section 87 of the KPT Act, would be attracted in case firstly, where the act done or purported to have been done, meaning thereby that where past act of the KPT has been impugned. Secondly where the impugned action was done or purported to have been done under the Act itself or the rule and regulations framed thereunder. Limitation to challenge the act done or purported to have been done, under the KPT Act, is six months from the date of accrual of cause of action.

18. From the record, it appears that the plaintiffs being the attorney of M/s. Iqbal Trading company, the auction purchaser of the subject vessel, had approached the defendant KPT with the request to allow them to break/salvage the subject vessel in the port area and in this regard the plaintiffs also executed bond of undertaking [Exh.D/1] dated 13.09.1995, wherein 'inter alia' it was undertaken that the plaintiffs shall pay the dues against the vessel, if any, within a week from the receipt of the bill failing which the KPT shall be entitled to stop the removal of scrap material from the breaking site or to forfeit the security amount. Pursuant thereof, KPT vide its letter dated 03.10.1995 [Exh.D/2] subject to the conditions granted permission to the plaintiffs to undertake the breaking/salvaging of the subject vessel which was lying/submerged at Baba Pool Anchorage area. The said permission was valid up to 31.03.1996. Record also shows that the plaintiffs could not complete the breaking/ salvaging work within the stipulated time and consequently, the plaintiff through its letter dated 30.03.1996 [Exh.D/3] sought extension of six months with effect from 01.04.1996 to 30.09.1996 for completion of work. From the note

written on Exh. D/3, it appears that the permission was granted subject to clearance of KPT dues up to 30.09.1996. It transpires from the letter dated 24.12.1997 [Exh.D/6] the plaintiffs paid KPT dues up till 30.06.1996, however, thereafter the plaintiff failed to pay dues of the KPT despite several letters and reminders. When the plaintiffs failed to pay/clear the dues and clear the wreck, KPT issued final notice dated 29.08.1998 [Exh. D/12] whereby the plaintiffs were finally warned to remove subject wreck within 30 days failing which the subject vessel was to be auctioned through public notice and the security amount if any was to be forfeited. The dues of the KPT was subsequently accumulated to Rs.5,50,000/- this fact is also reflected from the plaintiffs own letter dated 06.11.2001 [Exh.12]. Resultantly, the KPT in order to recover the amount and get the subject wreck clear auctioned the subject vessel to defendant No.3.

In the instant case, from the above discussion, it appears that the plaintiffs have impugned the past actions of the Defendant KPT whereby in the year 1998-99 the defendant KPT stopped the plaintiffs to remove the scrap of the subject vessel from site and secondly when the defendant KPT issued public notices dated 30.10.2001 [Exh.10] and dated 07.05.2002 [Exh.11] in daily DAWN and daily JANG respectively, for removal of the salvage of subject vessel. The plaintiffs sent legal notice dated 06.08.2002 [Exh.13] and filed present suit on 23.08.2002.

From the above, it appears that the action of the defendant KPT was not only the past act but also taken under KPT Act, therefore, the above provisions fully apply to the present case and the suit was required to be filed after service of notice under section 87 of the KPT Act. Apart from this, in the present case, it is an admitted position that no notice under section 87 of the KPT Act was given by the plaintiffs prior to filing of the present case. Furthermore, legal notice [Exh.13] sent by the plaintiffs cannot be termed as notice under section 87, whereby the KPT was notified only for suit for recovery of damages, if the KPT fail to stop Arshad Ansasri, defendant No.3, [debarred] and Riaz Ahmed Panjwani from breaking and the removing the scrap of subject vessel, whereas the suit was filed for declaration, injunction and

damages of specific amount which too was not mentioned in the legal notice. However, for the sake of arguments, if it is assumed that the legal notice was under section 87 of the KPT Act, even then the suit was filed before completion of the period as required under said the provision. In the circumstances, the present suit is hit by section 87 of the KPT Act for want of statutory notice only. The above issues are answered accordingly.

19. In the present case, since the parties in support of their stance have also led evidence therefore, I feel it appropriate to give findings on the other issues on merit as well. However, before dilating upon the issues settled by the court, it would be imperative to discuss the question of ownership as claimed by the plaintiff.

20. From the record, it appears that though the plaintiffs have sought declaration of ownership of the subject vessel in the present case, however, no separate issue has been framed in this regard. Record also transpires that the plaintiffs after the settlement issues in this case, filed an application (CMA No. 3141 of 2003), for additional issues, inter alia, in respect of ownership of the subject vessel, which was subsequently withdrawn on 04.08.2003.

The plea of the plaintiffs in the present case is that they are the owners of the subject vessel as they purchased the same from Mr. Muhammad Iqbal, proprietor of M/s. Iqbal Trading Company, after payment of sale consideration through a sale agreement dated 09.06.1996 [Exh.3]. Whereas the Defendant-KPT denied the said stance of the plaintiffs as at no point in time the said Muhammad Iqbal ever informed the said fact to the KPT. There is nothing available on record, which could show that either Muhammad Iqbal of M/s. Iqbal Trading Company and/or the plaintiffs prior to the present dispute ever informed the Defendant-KPT about the change of ownership of the subject vessel. Conversely, all the letter/notices (Exh. D/1 to D/7 and D/10 to D/19), were being addressed by the defendant-KPT to plaintiffs as the attorney of M/s. Iqbal Trading Company, which the plaintiffs never disputed through their letters. Moreover, the witness of the plaintiff in his cross-examination has also admitted the fact that the plaintiff did not inform the KPT about the change of ownership of the

subject vessel between 21.08.1995 to 06.11.2001. Furthermore, under the law if execution of any documents, which is required to be attested, is disputed the same can be proved under Article 79 of Qanun-e-Shahadat Order 1984, which reads as under:

“Article 79. Proof of execution of document required by law to be attested. It shall not be used as evidence until two attesting witnesses at least have been called for the purposes of proving its execution, if there be two attesting witnesses alive and subject to the process of the court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any documents, not being a Will, which has been registered in accordance with the registration Act, 1908 (XVI of 1908) unless its execution by the person by whom it purports to have been executed is specifically.

In the present case, the sale agreement [Exh.3] is not a registered document and the plaintiffs in order to prove the execution of the same was required to produce the attesting witnesses in the case, which the plaintiff has not done. From the perusal of the record, it appears that the plaintiffs in support of their stance in the case though produced one Mr. Muhammad Zafar Nazir, as PW.2, however, perusal of his affidavit in evidence, shows that he did not state a single word about execution of the sale agreement [Exh.3]. Furthermore, the signatures of one of the attesting witnesses namely; Muhammad Zafar Nazir appearing on Exh.3 are different from the signature of PW.2 in his affidavit-in-evidence [Exh.15]. The said fact reflects that either PW.2, who has given evidence in the matter, was not the same who had attested the documents [Exh.3] as witness or Muhammad Zafar Nazir was not present at the time of execution of the same and someone else had signed the documents before his name. Besides this, the plaintiffs have also failed to justify the payment of sale consideration made by them to Iqbal trading company, the owner of the subject vessel in the record of KPT. In the circumstances, the claim of the plaintiffs in respect of ownership of the subject vessel without impleading M/s. Iqbal Trading Company from whom the plaintiffs claimed to have purchased the subject vessel, and non-production of attesting witnesses to prove execution of Exh.3, as required under the law, appears to be misconceived and untenable in law.

21. Reverting to the issues settled by this Court and my findings thereon as are as under:

ISSUE NO. 2 AND 4: Since these issues are connected with each other therefore, same are taken up together. Onus to prove these issues are on the defendant-KPT. Learned counsel for the plaintiff in respect to these issues have mainly relied upon the evidence of defendant's witness. In this regard, his main contention was that defendant-KPT after auction of the subject vessel to the predecessor in interest of the plaintiffs do not have any right over the subject vessel and cannot re-auction the same. The KPT could at best claim rentals from the plaintiffs to which the plaintiffs never denied the same.

As discussed above, from the record it appears, that the plaintiffs being the attorney of M/s. Iqbal Trading company, the auction purchaser of the subject vessel, had approached the defendant KPT with the request to allow them to break/salvage the subject vessel in the port area and in this regard the plaintiffs also executed Bond of Undertaking [Exh.D/1] dated 13.09.1995 wherein 'inter alia' it was undertaken by the plaintiffs that they shall pay the dues against the vessel, if any within a week from the receipt of the bill failing which the KPT shall be entitled to stop the removal of scrap material from the breaking site or to forfeit the security amount. For the sake of ready reference, the relevant portions/paras of Exh.D/1 are reproduced as under:

Exh.D/1

“ This bond of undertaking is given this 13 day of September 1995 to the Karachi Port Trust by the undersigned M/s. IQBAL TRADING CO. KARACHI through the Attorney Nazeer Ahemed of M/s. Mehboob Impex, having their office, at Hyderabad Sind, for the breaking/salvaging of the ship M. V. NARAN, Presently lying at Baba Pool Mooring.

The Attorney of the buyers of the vessel NARAN purchased from High Court Sind vide High Court order dated 22.12.1994 and saleded dated 8-2-1995 of the High Court of Sind, requested KPT for allowing them to dismantle/salvage the vessel NARAN at her present site, i.e. at Baba Pool Mooring. The KPT has agreed to allow to dismantle/salvage of the vessel in the port.

We now under take to KPT to carry out the breaking/salvaging work of the vessel in the port as under:

1.....

2.....

- 3.....
- 4.....
- 5.....
- 6.....
- 7.....
- 8.....
9. That we shall pay charges as have been fixed by KPT or which may be fixed by the KPT as and when intimated.
10. That we shall pay Rs.200,000/- i.e. Rs.100,000/- for faithful performance of the terms and conditions of the KPT, and completion of dismantling work of the above vessel in all respect and clearance of and the debris from the breaking site by 31-3-1996 and clearance of the dues in respect of the above vessel, as Rs.100,000/- against KPT dues if left unpaid by us.
11. That we shall arrange advance payment of Hard Fees for the period the vessel is allowed to occupy the Hard for being broken up.
12. That we shall pay the dues against the vessel, if any, within a week from the receipt of the bill, failing which the KPT shall be entitled to stop the removal of the scrap material from the breaking site or to forfeit the security amount.
13.
14. That we shall keep the KPT harmless and indemnified against loss, damages, cost or claim if any resulting in consequence of permission given for dismantling the said vessel.
15. That we in the event of any pollution of beach and water during the course of breaking the vessel be punishable under section 89 of KPT 1896.
16.
17.”

[Emphasis supplied]

Pursuant thereof KPT vide its letter dated 03.10.1995 [Exh.D/2] subject to the conditions granted permission to the plaintiffs to undertake the breaking/salvaging of the subject vessel which was lying/submerged at Baba Pool Anchorage area. For the sake of ready reference the relevant portion/para of Exh.D/1 is reproduced as under:

Exh.D/2

“ Considering the deteriorated condition of the vessel M.V. ‘NARAN’ (Ex. Kashmir) and in view of the report of mercantile marine Department, the port Authorities have acceded to your request to allow the vessel to be broken up in the port. Permission is hereby granted to undertake the breaking/salvaging of the vessel lying/submerged at Baba Pool Anchorage area and removal of scrap material from the port as per terms and conditions given in your Bond of Undertaking dated 13th Sep. 1995 to Karachi Port Trust.

This permission further will be subject to the compliance of the following instruction from Karachi port Trust:

- 1) This permission is valid till 31.03.1996.
- 2)
- 3)
- 4)
- 5)
- 6)
- 7) Fortnightly progress report of your working should be submitted to the harbor Master in writing and copy to this office.
- 8)
- 9)
- 10)
- 11) You will furnish a Security of Rs. 200,000/- with K.P.T. i.e., (a) Rs.100,000/- against the performance of faithful job as per your Bond of Undertaking and compliance of instructions of this letter and (b) Rs.100,000/- against the recovery of port charges if failed to pay by you on KPT Demand Notice.
- 12) In case of violation of any condition of your Bond of Undertaking and any instruction containing in this permission letter, necessary action will be taken as may be deemed fit as per rules/regulations of KPT and in addition your security will be forfeited.”

[Emphasis supplied]

From the perusal of Exh.D/1, it seems that the said permission was valid up to 31.03.1996. Record also shows that the plaintiffs could not complete the breaking/ salvaging work within the stipulated time and consequently, through their letter dated 30.03.1996 [Exh.D/3] sought extension of six months from 01.04.1996 to 30.09.1996 for completion of work. From the note written on Exh. D/3, it appears that the permission was granted subject to clearance of KPT dues up to 30.09.1996. It transpires from the letter dated 24.12.1997 [Exh.D/6] that the plaintiffs paid KPT dues up till 30.06.1996, however, thereafter the plaintiff failed to pay dues of the KPT despite several letters and reminders. When the plaintiffs failed to pay/clear the dues and clear the wreck, KPT issued final notice dated 29.08.1998 [Exh. D/12] whereby the plaintiffs were finally warned to remove subject wreck within 30 days failing which the subject vessel was to be auctioned through public notice and the security amount if any was to be forfeited. Relevant portion of Exh.D/12, for the sake of ready reference, is reproduced as under:

“With reference to above, it is regretted to inform that the wreck of the subject vessel has not been removed/cleared by you as yet, in spite of considerable period has been lapsed, which is dangerous for Sea Traffic in the Port.

In view of the above facts, you are finally warned to remove the subject wreck within 30 days, from the receipt of this notice, failing which the sunken wreck would be auctioned through public notice. The security amount if any would be forfeited, please note.”

[Emphasis supplied]

From the record, it also appears that KPT had also initiated enquiry proceedings in respect of recovery of outstanding dues relating to the subject vessel, which fact is reflected from Exh.D/14-A, Exh.D/15, Exh.D/16, however, there is nothing available on record which could show that the plaintiffs either denied and/or attended the said proceedings.

Record also transpires that the defendant –KPT through its letter dated 17.01.2001 [Exh.D/19] finally warned the plaintiffs to deposit the outstanding dues in seven (7) days failing which auction proceedings of the subject vessel will be initiated.

The dues of the KPT was subsequently accumulated to Rs.5,50,000/- this fact is also reflected from the plaintiffs own letter dated 06.11.2001 [Exh.12]. Resultantly, the KPT in order to recover the amount and get the subject wreck clear, after compliance with the legal requirement, put the remains of subject vessel on auction by inviting tenders through newspaper advertisement appeared in daily DAWN [Exh.D/23] and JANG [Exh. 11] both dated 07.05.2002, which defendant No.3 purchased the same. The said fact is reflected from the documents produced by the defendant-KPT through Exh.D/22].

Record also reveals that after the above said letter [Exh.D/12], various letters/notice were also sent to the plaintiffs for payment of outstanding dues, however, there is nothing available on record which could show that plaintiffs made payment in response of the above said letters/notices. The dues of the KPT was subsequently accumulated to Rs.5,50,000/- which fact is also reflected from the plaintiffs own letter dated 06.11.2001 [Exh.12]. Resultantly, the KPT in order to recover the amount and get the subject wreck cleared, put the subject vessel on auction. Failure to pay the dues, on the part of the plaintiffs clearly reflects that they have committed the breach of their Bond of Undertaking [Exh.D/1], and permission [Exh.D/2] relevant paragraphs whereof have been reproduced hereinabove.

In the circumstance, and in absence of any evidence of payment of outstanding dues by the plaintiff after 1996, I am of the opinion that

the defendant-KPT has justified their stance in the case. Accordingly, these issues are answered in affirmative.

22. **ISSUES NO. 5 & 6:** These are connected issues, therefore, same may conveniently be taken up together. The claim of the plaintiffs in the present case are in two folds; (i) Defendant-KPT without any justification and lawful excuse sold out the plaintiffs' subject vessel to defendant No.3. According to the plaintiffs though they salvaged the subject vessel to certain extent, however, a big portion of the subject vessel, till the time of subject auction, remained un-salvaged, which weigh to 1293 M.T having market value of Rs.1,55,16,000/- @ Rs.12000/- and (ii) when the plaintiffs were stopped from entering into the site to salvage the subject vessel, their equipment worth Rs.38,15,000/- were lying at the site, which were never allowed to be taken back and on the contrary, the same were allowed to be used by defendant No.3.

The defendant-KPT has vehemently disputed the claim of plaintiffs in their written statement. The stance of the defendant-KPT in this regard is that since the plaintiffs are not the owners of the subject vessel, therefore, they cannot claim any ownership right over the subject vessel, which was sold out to defendant No.3 on account of default in payment outstanding dues and further no equipment/machineries were left by the plaintiffs at the site when they were stopped from further salvaging the subject vessel. In view of the above denial, the burden was on the plaintiffs to prove their claim, which is in the nature of special damages through evidence. However, the record reveals that the plaintiffs did not produce any evidence in this regard. Moreover, the witnesses of the plaintiffs also failed to substantiate the stand taken by the plaintiffs in the case.

It is by now a well settled principle of law that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record and for general damages relating to mental torture, anguish, distress and defamation, those are to be assessed following the Rule of Thumb and the said exercise falls in the discretionary jurisdiction of the Court and has to be decided on basis of facts and circumstances of the case. Reliance in this regard can be

placed upon the cases of ABDUL MAJID KHAN v. TAWSEEN ABDUL HALEEM and others (2012 CLD 06) and Malik GUL MUHAMMAD AWAN v. FEDERATION OF PAKISTAN through Secretary M/o Finance and others (2013 SCMR 507).

In the circumstance, and in absence of any evidence in support of their stance relating to damages, which is special in nature, these issues are answered in negative.

23. **ISSUE NO.7** In view of the findings of above issues, I'm of the considered view that the Plaintiff has failed to establish his case, and hence the present suit is dismissed with no order as to costs.

JUDGE

Karachi
Dated : 11.10.2018