

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Admiralty Suit No.12 of 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.72/2013.
2. For hearing of CMA No.79/2013.

29.10.2018.

Mr. Mazhar Imtiaz Lari, advocate for plaintiff.
Mr. Mansoor Shaikh, advocate for the defendants.

1. Deferred.
2. This is an application under Order VI Rule 17 CPC seeking amendment in the plaint regarding the alleged claim of the plaintiff in respect of shortage of cargo on Defendant No.1.

Learned Counsel for the plaintiff submits that the original claim in this Admiralty Suit was US \$ 679,686/- and the same was based on the Cargo Discharge Report tentatively available. Whereas in Para-15 of the plaint it was categorically stated that Defendant No.1 i.e. Vessel is still in the process of discharging its Karachi Bound Cargo, and plaintiff reserves its right to claim further amount on the basis of shortage and non-delivery, if any, which will be ascertained after Final Draught Survey of the vessel, hence listed application. He submits that after completion of the discharge of cargo as per Draught Survey Report there is an excess of 175.293/- Metric Ton, which has been disputed, whereas according to the Daily Discharge Report, as well as KPT's weighment Scale, the plaintiff case is that a total of 219 Metric Ton is found short; therefore, through listed application, the plaintiff seeks amendment in the plaint and enhancement in the total amount of claim on the basis of said shortage.

On the other hand, learned Counsel for the defendants has opposed this application on the ground that the claim is to be settled on the basis of Final Outturn Report of KPT, which in this case shows excess cargo, whereas, as per circular of

Karachi Port Trust dated 28.5.1997, the same is to be based on the Joint Draught Survey, hence, no case of amending the plaint is made out.

I have heard both the learned Counsel and perused the record. Presently, this Court is concerned only to the amendment in the plaint in respect of the alleged claim of the plaintiff which according to them is based on alleged shortage of cargo as per Survey Report of their surveyors. They are disputing the Final Outturn Report as well as Final Draught Survey. The question that whether the claim is maintainable on the basis of Final Outturn Report or the Final Draught Survey, or for that matter, the Survey Report of the plaintiff's surveyors, is not the question to be decided by the Court at this stage, as this can only be dealt with, after leading of the evidence and at the time of final arguments that as to what claim is maintainable. The plaintiff in its plaint has reserved its right to amend the plaint on the basis of Final Discharge and the alleged shortage. It is the case of the plaintiff that according to their surveyors, the shortage has been recorded and the relevant document has been placed on record.

In the above circumstances, without dilating upon the objections of the defendants and without prejudice to their rights as above, I am of the view that listed application merits consideration and necessary amendments must be allowed. However, the same is subject to the observation hereinabove and such aspect of the matter will be decided at the final stage without prejudice to the rights of the defendants.

Accordingly, the application is allowed. Let amended plaint be filed by the plaintiff's counsel within 03 weeks' time.

Application stands disposed of.

J U D G E

Shahbaz