

## IN THE HIGH COURT OF SINDH AT KARACHI

Adm. Suit No.05/2006

M/s. Fauji Fertilizer Company Ltd. ----- Plaintiff

Versus

"M.V, B-India" &amp; others ----- Defendants

## BEFORE:

Mr. Muhammad Shafi Siddiqui, J

Date of Hearing: 08.12.2016

Plaintiff: Through Mr. Shaiq Usmani Advocate

Defendants: Through Mr. Ali Haider Advocate

## J U D G M E N T

**Muhammad Shafi Siddiqui, J.**-This suit is filed by the plaintiffs in admiralty jurisdiction of High Court Ordinance, 1980 for recovery of US Dollars 457,064/-

2. Notices and summons were issued and after filing written statement on behalf of the defendants following issues were framed:

1. Whether the instant suit is maintainable under law?
2. Whether the cause of action so required for maintaining the instant suit has been extinguished?
3. Whether the plaintiff's claim stands compensated for the alleged loss and hence cannot maintain the instant suit for and on behalf of the Insurance Company?
4. Whether the suit has been filed by an unauthorized person on behalf of the plaintiffs?

5. Whether the suit consignment (DI-Ammonium Phosphate) is not free from inherent vice? If so what is its effect?
6. Whether there was any damage caused to the suit consignment? If yes to what extent?
7. Whether the alleged damage caused to the suit consignment can in any way be attributed to the carrier's negligence, fault or failure?
8. What is the effect of joint surveys dated 3.6.2006 and 09.6.2006 carried out on board the vessel "B India" in respect of damaged cargo?
9. Whether the plaintiff is entitled to for the relief claimed for? If yes to what extent?
10. What should the decree be?

3. Parties have led their evidence in the matter. The core issue in the matter is issue No.4 which is to be considered first as priority demands.

4. I have heard the learned Counsels and perused the material available on record.

5. Learned Counsel for the plaintiff though argued that they have filed subject resolution authorizing the person to file and institute the suit on behalf of the plaintiff along with the plaint however this contention is not supported by the contents of the plaint or by the deposition of the witness and/or documents filed. This suit claimed to have been filed by one Ahmad Hassan son of Ahmed Jan Khan however there is no resolution in this regard. The list of documents attached with the plaint is also silent as far as this resolution is concerned.

6. Learned Counsel for the defendant has taken me to the affidavit of Ahmed Hassan and has shown certain documents. There is no availability of such authorization and resolution as objected to by the learned Counsel for

the defendant. One Captain Khawaja Wasiuddin was also produced as witness of plaintiff from a surveyor company but he filed his own resolution as he was employee of M/s Asian Inspection Private Limited. In cross examination also the first witness of plaintiff Ahmed Hassan has admitted that he has neither mentioned in the list of documents that such authorization is attached nor in the plaint or any other application filed. Though he deposed that he could produce it on the next date but it seems that this document was not even filed subsequently.

7. The Hon'ble Supreme Court in the case of Khan Iftikhar Hussain Khan of Mamdot vs. Messers Ghulam Nabi Corporation Ltd. reported in PLD 1959 SC (Pak) 258 observed even that a person/Director of the company is not competent to file a suit on behalf of the company unless he is so authorized by a resolution passed by Company's Board of Directors. In another case i.e Government of Pakistan vs. Premier Sugar Mills & others reported in PLD 1991 Lahore 381 it is observed that onus is upon the plaintiff when a company institutes a suit that it has been competently and authorizedly instituted. Unless specifically authorized in this regard, no person is considered to be competent to institute proceedings on behalf of a corporate entity even if that person is incharge of the affairs of that company.

8. In view of above facts, it seems that the suit was incompetently filed by the plaintiff through one Amjad Hassan who has no authorization in this regard hence the above suit is liable to be dismissed on this score alone.

9. In view of the reasoning the issue No.4 is answered in affirmative. The suit is therefore, dismissed.

10. There is no necessity of dilating upon other issues on account of dismissal of the suit as above.

Judge