

IN THE HIGH COURT OF SINDH AT KARACHI

Admiralty Suit No. 37 of 2001

[Hashim Ali Rizviv.....Owners of the Vessel m.v. ECO EGRAM]

Dates of Hearing : 20.09.2021, 19.11.2021 & 26.11.2021
Plaintiff through : Mr. Abdul Razzak, Advocate.
Defendant through : Mr. Agha Zafar Ahmed, Advocate a/w
Mr. Adnan Ahmed, Advocate.

JUDGMENT

Zulfiqar Ahmad Khan, J:-The present action at law has been filed under the Admiralty jurisdiction of this Court for the recovery of plaintiff's wages.

2. Quintessentially, the Plaintiff was appointed as the Chief Officer on vessel M. V. ECO ELHAM owned by Iranian Eco Shipping Company and Islamic Republic of Iran Shipping Line. The latter also owned the Defendant vessel M.V. ECO EGRAM which appointed M/s. Terra Marine Agencies Pvt. Ltd. of Pakistan as their manager to act on their behalf in Pakistan. The Plaintiff was thus in fact engaged as Chief Officer by Terra-Marine Agencies as Master of Vessel as per the industry practice and he was originally stationed at M. V. ELHAM. While the plaintiff was working on M.V. ECO ELHAM some dispute arose among the Pakistani and the Iranian Shipping companies that resulted in salary stoppage of the plaintiff's as well as of other crew members. Not only so, they were allegedly not even provided foods while stranded in Iranian waters, which fact was even agitated by Pakistan press here and flagged all over the maritime industry. It is further alleged that the plaintiff worked on M.V. ECO ELHAM from 10.03.2001 till 13.10.2001 when crew members were allowed to leave

the vessel only after they had signed a disclaimer against the owners. The Plaintiff was given a certificate of wages issued by the master of the vessel confirming that on 13.10.2001 the owners/vessel owed him US\$17,498.95 (United States Dollars Seventeen Thousand Four Hundred Ninety Eight and Ninety Five) which was promised to be paid at Karachi by the master of the vessel, which amount was however never paid, from his date of joining till his signing off from the vessel. Therefore, the plaintiff filed instant admiralty suit with the following prayers:-

(i) arrest of the sister vessel m.v. Ekram which is lying within the Port of Karachi and order that it be not released till security to cover the amount of this suit is received by Nazir whereafter it may be released;

(ii) grant judgment and decree for US\$17,498.95 with interest/compensation @ 18 per cent from the date of suit;

(iii) grant costs of the suit; and

(iv) grant any other or further relief which is deemed fit and proper in the circumstances of the case.

3. The Defendant contested the matter by filing its stance through written statement and denied the assertions of the plaintiff. It is alleged by the defendant that no wages were due to any crew member of M.V. ECO ELHAM including the plaintiff. It is however admitted in the written statement that the defendant vessel is a sister ship and that the vessel was bareboat chartered from year to year with the responsibility fixed with M/s. Terra Marrin.

4. The record shows that on 08.12.2003 issues were framed and matter was referred to the Commissioner for recording of evidence. The issues settled by this court are as under:-

- “1. Whether the plaintiff is entitled to claim Maritime lien against the defendant vessel?
2. Whether the Plaintiff is entitled to receive wages of US\$ 17,498.95 from the Defendant vessel?
3. What should the decree be?

5. Mr. Abdul Razak advocated the case of the plaintiff stating that the plaintiff rendered his services on the M.V. ECO ELHAM owned by the owner of defendant vessel M.V. ECO EGRAM hence plaintiff filed the instant suit against the owner of the sister ship vessel, claiming his unpaid wages. He further stated that the defendant's witness did not dispute that 49 crew members filed admiralty suit(s) against the defendant vessel and all of those crew members were paid off (out of the Court) except the plaintiff as the owner of vessel raised baseless objection on the wages of plaintiff, aimed to deprive the plaintiff from his wages discriminately. He further argued that claim of plaintiff's wages falls within the definition of the “maritime lien” against the vessel M. V. ECO EGRAM owned by the owners of the vessel M. V. ECO ELHAM, on which the Plaintiff served. He concluded that the plaintiff is entitled to the claim of maritime lien against the defendant vessel and entitled to the payment according to the Master's Certificate.

6. Mr. Agha Zafar Ahmed, Advocate set forth the case of the defendant. The crux of this arguments was that the plaintiff only served on M.V.ECO ELHAM, whereas he is hinging his claim with M.V.ECO EGRAM which was arrested by this Court, but in fact the plaintiff has no direct claim or maritime lien on M.V.ECO EGRAM. During course of arguments Mr. Agha Zafar Ahmed, Advocate referred to Section 549 of the Pakistan Merchant Shipping Ordinance, 2001 and

contended that a seaman under law has lien on “the ship” and the word “the” clearly establishes that a seaman is to have lien only on the ship he served, and since the plaintiff never served on M.V. ECO EKRAM, therefore, the plaintiff is not entitled to the relief claimed.

7. Heard the arguments and considered the evidence. In my considerate view, the Issue Nos. 1 & 2 are inextricably linked, based upon similar evidence and record, therefore, it would be advantageous to discuss those simultaneously.

8. So as to strengthen and validate his grievances, the plaintiff amid his examination-in-chief produced the material documents, in following sequence:-

“Contract of employment as Exh. P/5.

Final balance of wages as Exh. P/6.

Notice issued to the Consulate General of Islam Republic of Iran dated 10.11.2001 as Exh. P/7.

Certificate of discharge as Exh. P/8.

Certificate of Watchkeeping and Services as Exh. P/9.

Crew List of MV Eco Elham as Exh. P/10.

9. On the other hand, Capt. Saulat Majeed produced his affidavit-in-evidence on behalf of the defendant as well as Board Resolution passed in his favour to give evidence on behalf of the defendant.

10. It is a common knowledge that there are two forms of admiralty actions (a) action *in rem* and (b) action *in personam*. Courts have held that an action *in rem* is the one in which the plaintiff seeks to make good a claim to or against a certain property e.g. a ship or

cargo in respect of which (or in respect of damages done by which) he alleges that he has an actionable demand. Thus in collision actions and in other cases where the plaintiff claims maritime lien, he can, if the *res* be within the jurisdiction, by process served upon its corpus, procure (for example) a ship's arrest and detention by a Court until either the owners bail it out by giving security for the amount claimed by him, or until the Court gives judgment upon the claim, when, if he be successful, effect may be given to such judgment by sale of the property in order to satisfy it. Hence in effect the order of the court operates directly upon the statutes of the property and transfers an absolute title to the purchaser. An action *in personam* on the other hand is an ordinary action as in common law courts. The judgment of the court in such cases is in the nature of a command or prohibition against the unsuccessful party, though it may be enforced against his property by subsequent proceedings but even if the court sells the property by execution under the judgment, it does not thereby transfer to the purchaser an absolute title but only such title as the owner may in fact have had.

11. A significant peculiarity of an action in rem is that the plaintiff is allowed to commence the proceeding by going after specific piece of property, the ship or the cargo or certain other associated property. It is not a proceeding against any one person or other, nor does it deal with this or that person's title to the thing (*res*), but is a legal device employed for satisfying, under conditions of seafaring life and exigencies of international maritime transactions and the claim of a person who has suffered damage or injury. The distinguishing feature of the action in rem has always been the ability

of the maritime claim to proceed against the ship directly, which was regarded as the defendant i.e., the ship being personified. Whereas the action in personam is of the same nature as ordinarily common law action commences by summons served on a defendant which is a person, natural or juridical and not thing (res). In this context of claim on sister ships, it would be useful to reproduce Section 4 of the Ordinance hereunder:-

4. Mode of exercise of Admiralty jurisdiction.-

(1) Subject to the provisions of section 5, the Admiralty jurisdiction of the High Court may in all cases be invoked by an action in personam.

(2) The Admiralty jurisdiction of the High Court may in the cases mentioned in clauses (a) to (d), (i) and (r) of subsection (2) of section (3) be invoked by an action in rem against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property of the amount claimed, the Admiralty jurisdiction of the High Court may be invoked by an action in rem against that ship, aircraft or property.

(4) In the case of any such claim as in mentioned in clauses (e) to (h) and (j) to (q) of subsection (2) of section (3), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner of charterer of, or in possession or in control of the ship, the Admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against-

(a) that ship, if at the time when the action is brought it is beneficially owned as respects majority shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

(5) In the case of the claim in the nature of towage or pilotage in respect of an aircraft, the Admiralty jurisdiction of the High Court may be invoked by an action in rem against that aircraft if at the time when the action is brought it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) In the case of a claim in the nature of a maritime lien, other than a claim on a Bottomry or Respondentia bond or to the possession of the ship, the Admiralty jurisdiction of the High Court may be invoked by an action in personam against the owners of the property which would have been arrested if the proceedings had been in rem .

(7) Notwithstanding anything in the preceding provisions of this section, the Admiralty jurisdiction of the High Court shall not be invoked by an action in rem in the case of any such claim as is mentioned in paragraph (n) of subsection (2) of section 3 unless the claim relates wholly or partly to wages, including any sum allotted out of wages or adjudged by a competent authority under the relevant law to be due by the way of wages.

(8) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the Court shall have jurisdiction to hear and determine any question arising as to the title to, or priorities of claim in, the proceeds of sale.

(9) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his ordinary residence or a place or business within Pakistan.

[emphasis supplied]

12. As seen from a bare reading of the above provision of law, the Ordinance, 2001 clearly enables plaintiff's claim on the sister ship M.V. ECO EKRAM under clause (b) of sub-section (4) of Section 4 which aspect has been dilated in many judgments of the Supreme Courts, as detailed in the forthcoming paragraphs.

13. Reverting to the issues under discussion, it is an admitted position that the plaintiff served on the vessel owned by the same owner thus defendant vessel is a sister ship, hence claim of plaintiff against the owner of the vessel (sister-ship vessel) praying for his unpaid wages is valid and tenable under the Ordinance as detailed above. It is crystal clear from the appraisal of the evidence that that the defendant's witness himself did not dispute that 49 crew members filed admiralty suits against the same vessel and all of those claimants were paid off. At this juncture, it is considered illustrative to reproduce certain admission of defendant's witness made during cross-examination which is delineated hereunder:

“I see para 6 of exhibit D/1 and state that I have not filed any bare boat charter Agreement with my affidavit in evidence”

“I see Exhibit P/10 and state the same appears to be the crew list of MV Echo Elham”

“It is correct that not all members of exhibit P/10 had filed their cases against subject vessel in this Court. However, when they were explained their legal position and as well as their contractual position they agreed to accept their salaries till the arrival of MV Echo Elham at Port Bunder Abbas and not the further period for which they had unlawfully detained the vessel. As such a compromise agreement to the effect was signed by all and duly allowed by the court.”

“ It is incorrect to state that no such agreement was entered upon between the parties. Vol states the same is matter of record, in the Court.”

“Admiralty Suit No.15/2001 to Admiralty Suit No.45/2001 and Admiralty Suit No.50/2001 to Suit No.67/2001 these were the cases filed by the crew members as listed in Exhibit P/10 against the Defendant Vessel. I am not sure, as the record is unavailable at this time of cross examination.”

It is possible as he is practicing advocate. I am not sure that the compromise deed entered upon earlier was the subject matter endorsed in the above mentioned cases. Did your company enter into compromise agreement with the crew members in the above cases or someone else.”

“It is correct that I have not filed any documents against the allegations leveled against the Plaintiff in my Affidavit in Evidence.”

13. It unfurls from evaluation of the Record and Proceedings that the plaintiff amid his examination-in-chief exhibited Contract of Employment dated 10.03.2001 (Exhibit P/5 available at page 11 of evidence file) and he also produced Master’s Certificate, Final Balance of Wages dated 13.10.2001 for US\$ 17,498.95 (United States Dollars Seventeen Thousand Four Hundred Ninety Eight and Ninety Five) [signed by the Master, Exhibit P/6 available at page 19 of the

evidence file]. In this respect, Plaintiff issued a Notice dated 10.11.2001, to the Consul General of the Islamic Republic of Iran [Exhibit P/7 along with it's A.D. Receipt]. The Plaintiff also produced Certificate of Discharge and Character Certificate dated 13.10.2001, issued by the Master [Exhibit P/8]. The Plaintiff also filed a list of crew of Eco Elham which is 'Exhibit P/10' with whom the defendant entered into compromise and settled at 60% of their wages as admitted in cross-examination by the Defendant's witness. The defendant did not enter into compromise with the Plaintiff because the Plaintiff was not willing to get only 60% of his claim from the Defendant which fact is admitted by the Defendant in his cross-examination. The defendant's attorney, who had signed the Written Statement, did not appear in Court for cross-examination. Defendant's witness appeared for cross-examination on behalf of the Defendant claimed to be Vice Chairman of Eco Shipping Company representing Government of Islamic Republic of Iran. Interestingly the Defendant's witness has not even signed the Written Statement filed on behalf of the Defendant. Nonetheless claim of wages evidently is already verified by the Master of the vessel which was not disputed by the defendant in his cross examination and this Court in the case of *Abdus Samad Khan v. m.v. Al-Aida* (1989 CLC 2168) went on to hold that "a certificate by the Master of the vessel is always accepted as proof of employment, wages and the amount paid and due, such certificate is issued in the course of employment by the Master who is agent of the owner. He is also the agent necessity and is an authorized and competent person to issue such certificate."

14. With regards contentions of the learned counsel for the defendant that under Section 549 of the Ordinance 2001, liens for wages remain glued to the ship on which a claimant has served, it would be useful to reproduce full text of the said Section to comprehend the issue. The said section is thus reproduced hereunder:

549. Seamen's lien for wages, etc. (1) *A seaman shall have a lien on the ship, and shall not by any agreement forfeit his lien on the ship, or be deprived of any remedy for the recovery of his wages to which in the absence of the agreement he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtained in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Ordinance, shall be void.*

(2) *Nothing in this section shall apply to a stipulation made by the seamen belonging to any ship which according to the terms of the agreement, is to be employed on salvage service with respect to the remuneration to be paid to them for such service to be rendered by that ship to any other ship.*

A plain reading of the above section suggests that even if a ship is lost, wages' claims would survive. The understanding that a wager's claim would only be restricted to the ship on which he performed services is neither intent nor propose of the above section, in fact the said section gives an understanding that seamen's wages would survive in all circumstances, even if the ship is lost and later salvaged. As stated earlier the issue at hand is dealt with under section 4(4)(b) of the Ordinance, 2001 where such a claim travels to any other ship which, at the time when the action was brought, was beneficially owned by the same owner. Legally speaking a "sister-Ship" is a ship which is under the same beneficial ownership or in simple terms, owned in majority by the same owner or class of owners. Thus apart from arresting an offending ship in order to

secure a maritime claim, a claimant may also arrest a sister ship of the offending ship in order to secure his claim. The International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 1952 and the International Convention on the Arrest of Ships, Geneva, 1999 (of which Pakistan is a member) are very clear regarding the position of the arrest of a sister ship for maritime claims.

15. Now coming to the case law on the issue as to action in rem against a sister ship, the Hon'ble Supreme Court in the case of C.V. LEMON BAY v. Sadruddin (reported as 2012 CLD 1319) where the Plaintiff shipped first consignments through vessels "A" and "B", while the second consignment was sent through vessels "C" and "D" and where upon failure of the shipping companies to obtain bank guarantees necessary for the release of consignments, Plaintiff claimed that it has suffered monetary loss and consequently filed two suits against the defendants in this High Court which were decreed in its favour and where the appellate Bench modified the decree by reducing the amount of the decree on the basis that in the first suit vessel "B" had not been impleaded as a defendant nor was it averred in the plaint that the vessel "B" was a sister ship of "A" and similarly in the second suit plaintiff had not impleaded vessel "D" as a defendant nor had any averment been made in the plaint that said vessel was a sister ship of the vessel "C", the Apex Court upheld the judgment and decree of the original side on the grounds that since claim of the plaintiff was based on the contract of carriage executed on behalf of the shipping companies and the modification agreed by them that the consignments would be released against bank guarantees and not on DAP basis as originally agreed and admittedly

the bank guarantees which the shipping companies were obliged to obtain on behalf of the plaintiff, before releasing the consignment to the consignee were forged and where defendants released the consignments without obtaining the bank guarantees because of which the plaintiff did suffer a monetary loss, Sections 3(2)(h) and 4(4) of the Admiralty Jurisdiction of High Courts Ordinance, 1980, makes it clear that *admiralty jurisdiction of the court could also be invoked for an action in rem for the arrest of a sister ship such as "B" and "D" in the present proceedings, even if it was held that the sister ships had not been impleaded as defendants in the two suits and that there was no averment in the plaint asserting a claim against the sister ships, the decree in personam could still have been passed against the defendants even if a decree in rem was not permissible against the sister ships in view of S.4(4) of the Admiralty Jurisdiction of High Courts Ordinance, 1980.*

16. In the case of *Abdus Samad Khan v. m.v. Al-Aida* (1989 CLC 2168) it was held that *"maritime lien once attaches to the res is not defeated by its transfer to any person. It remain attached with res invisibly. For his claim wages the plaintiff has a maritime lien on defendant No.1 where he was employed as Chief Engineer and balance of wages have not been paid. The maritime lien which attached to the ship (defendant No.1) has travelled with it even after the change of hands from one person to the other"*. In the case of *Azhar Ahmad Khan v. M.V. Ashar* (PLD 1985 Quetta 278) it was held that *"right to sue in rem by virtue of subsection (4) of section 4 of the Ordinance, is in addition to the right of maritime lien"*. In the case reported as *NLR 1992 CLF 541* it was held that *"Maritime lien his*

unpaid wages would continue irrespective of change of ownership of the ship. Distinction between wages earned on board and wages earned while not on board was not relevant for purpose of present case because defendant had not taken defence that plaintiff had worked for ship but on board the ship. Under the circumstances, the Court was pleased to decree plaintiff's suit against defendant No.1 and 2 with costs for a sum of Rs.64,639.20/- and directed M/s. Habib Bank Limited who had furnished bank guarantee, to deposit the said amount in cash with the Nazir of the Court.

17. Since the agreement of plaintiff was in foreign currency, therefore, the plaintiff is entitled to have the amount in US Dollars or its present equivalents as per guidelines given by the Honb'le Supreme Court of Pakistan in the case of Sandoz Limited v. Federation of Pakistan (1995 SCMR 1431). The Hon'ble Supreme Court held that *"Justice demands that the creditor should not suffer from fluctuations in the value of the Pakistani rupee. If his contract is for foreign currency and he has bargained for the same, he should get that currency and no other, and that the language of the decree in such cases would give the judgment debtor the option to either make payment in foreign currency or in Pak rupees, and execution can always be taken out by the decree holder if no payment is made by the judgment debtor in respect of so many Pak rupees as equal the foreign currency at the rate of exchange prevalent on the date the payment is made."* Furthermore, the Hon'ble Supreme Court in the case of TERNI SPA v. PECO (Pakistan Engineering Company) Ltd. (1992 SCMR 2238) held that *"we would therefore, hold that where the money of account in respect of a contract is a foreign currency, or*

where it is not so but under the contract the particular account claimed is payable in particular foreign currency, Pakistan Courts can give judgment in so much of that foreign currency or the Pak rupees equivalent thereof at the time of payment”.

18. In sequel to the above discussion, deliberation and rationale, claim of the plaintiff is found legit, hence the **Issues No. 1 & 2 are answered in affirmation.**

19. So far as **Issue No.3** is concerned, sanguine to the set of circumstances and ramification as well as connotation of statues, the suit of the plaintiff is decreed to the extent of prayer clause (ii), however, with interest restricted to 6% only. Parties are left to bear their own costs.

Karachi
Dated:04.01.2023

JUDGE