

IN THE HIGH COURT OF SINDH, KARACHI.

Suit No.1716 of 2010

Present:

Mr. Justice Nazar Akbar

Plaintiff through Mr. Mazhar Imtiaz Lari, Advocate.

Defendant None present.

Date of hearing 12.02.2014

JUDGMENT

NAZAR AKBAR, J- The Plaintiff has filed the instant Suit for recovery of an amount of US\$40,957.00 against the Defendant stating therein that the Plaintiff imported 2940.157 M. Tons All Beef Inedible Extra Fancy Tallow under the 10 Bills of Lading from USA for delivery at the Port of Karachi and a sum of US\$19,99,306.76 was paid by the Importer to the shippers. The Defendants No.1 and 2 are the owner of the Vessel/Tanker MT "STOLT MARKLAND" and carry on business their in Pakistan through their local agent/Defendant No.3. The said consignment was delivered to the Defendants No.1 and 2 at the port of Houston and the Defendants No.1 and 2 undertook to carry the said consignment on board their Vessel and deliver the same at the Port of Karachi. Thereafter, the Plaintiff made arrangement to receive the said consignment. The said ship arrived at on or about 01.02.2010 and discharged all the consignment and the same was completed on 02.02.2010 the details of discharge operation and the quantity of the consignment was given in the Surveyor's Report. According to the learned counsel for the Plaintiff, as per detail only 2903.744 M. Tons was

discharged and received from the Vessel as against the manifested quantity of 2940.157 M. Tons. The shore tanks accordingly gave receipt to the Defendants for 2903.744 M. Tons. The short landing of 36.413 M. Tons was reflected in the Out-Turn Report signed jointly by the KPT and the Defendant No.3. On account of short landing of 36.413 M. Tons, the Plaintiff suffered a loss of US\$40,957.00. Therefore, the plaintiff filed instant Suit with the following prayers:

“The Plaintiffs prays for judgment and decree for a sum of US\$40,957.00 against the Defendants jointly and severally with cost and interest/markup/damages/compensation @ 19% per annum, with quarterly rest thereon pendentelite and future and for any other or better relief which the Honourable Court may deem fit and proper in the circumstances of the case.”

2. On 21.01.2011 notices issued against the Defendants, were returned un-served. Thereafter on 24.03.2011 notices were again issued to the Defendants No.1 to 3 and returned served and the case was adjourned for filing of written statement of the Defendants No.1 to 3 for 31.05.2011, but no written statements were filed. On 22.10.2012, the Defendant No.3 was declared ex-parte. On 22.04.2013, the Defendants No.1 and 2 have also been declared ex-parte, as record shows that no application for leave to defend was filed by the Defendants within statutory period of 10 days.

4. On 12.10.2014, Examination-in-Chief of PW Rahmat Ali was recorded in Court. In support of his pleadings the witness of the Plaintiff has filed Affidavit-in-Exparte Proof dated 22.11.2013 Exh.PW-____ and other documents as Exh.PW-1/____ to Exh.PW-1/____. Learned counsel for the Plaintiff submits that Photocopies were being placed

because the Surveyor is supposed to have one original copy of the Annexure, therefore, original cannot be retained by the Plaintiffs or their Surveyor.

5. I have perused the record and heard learned counsel for the Plaintiff. There is no contest to the Claim of the Plaintiff. The Defendants did not appear in Court though served to pursue the case and they chose to remain absent. Plaintiff has arrayed in the pleadings the Defendants, but they did not turn up, they were also ordered to be proceeded *ex-parte*. The version of the Plaintiff, supported by evidence, has gone un-rebutted and unchallenged. Therefore, there is no option but to believe the unchallenged version of the Plaintiff with regard to recovery of US\$40,957.00 on account of goods imported by the Plaintiff from them.

6. In the circumstances mentioned above, the suit of the Plaintiff is decreed as prayed with cost.

JUDGE

MUBASHIR

