

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 463 OF 1983

Date	Order with signature of Judge
Plaintiffs:	Bank AlFalah Limited, Formerly, Bank of Credit & Commerce International (Overseas) Limited through Mr. Abdul Sattar Lakhani, Advocate.
Defendants	Karachi Tank Terminal Limited & others,
Date of hearing:	21.10.2014

JUDGMENT

NAZAR AKBAR, J. The plaintiff has filed this suit for declaration, possession, permanent injunction and recovery of Rs.2,72,70,000/- against the defendants.

2. The brief facts of the plaintiffs' case are that the plaintiff has extended various credit facilities/loans against imported merchandise (LIM) to Global Produce Limited in consideration whereof and a security for repayment, the plaintiff had obtained pledge/lien of various goods/materials comprising Tallow, Soyabean oil and Caustic Soda, which goods were imported by Global Produce Ltd., and financed by the plaintiff. During the year 1982-83, various consignments of Tallow, Soyabean Oil and Caustic Soda in respect of which the plaintiff had a pledge/charge/lien were handed over to Defendant No.1 for storage at the defendants terminal and it was agreed that the goods would not be delivered, alienated, except as authorized by the plaintiff. Necessary documents were executed by Defendant No.1 in favour of the plaintiff

relating to the storage of goods. On or about 05-07-1983, the defendants at the request of the plaintiff furnished a statement of goods/stocks held by them under the pledge/lien/charge of the plaintiff on account of the said Global Produce Limited and on 31.7.1983 the plaintiff was surprised to receive a letter from defendant No.1 stating that they had no stock of Soyabean Oil and only a very small quantity of Tallow and falsely and dishonestly alleged that the outstanding dues of Global Produce Limited on the stock of Caustic Soda had been paid and that the plaintiffs had no lien over the stock/goods held by Defendant No.1. The plaintiff immediately responded to the said letter by telex dated 2.8.1983 followed by a detailed letter in which the plaintiff set out the correct facts and position. The defendants by their telex dated 3.8.1983 falsely and dishonestly alleged that they had given delivery of Tallow and Soyabean oil to Global Produce Ltd., against the delivery orders issued by the plaintiff and reiterated the contents of their letter dated 31.7.1983. On or about 2.8.1983, the plaintiffs received from Global Produce Ltd., a copy of telex dated 2.8.1983, received by Global Produce Ltd., from Defendant No.1 in which it was alleged that the outstanding of Global Produce Ltd., has been discharged/repaid and nothing was due to the plaintiffs and the plaintiff had no lien claim or charge over the Caustic Soda. On or about 2/3.8.1983, Global Produce Ltd., responded to the aforesaid telex from Defendant No.1. The plaintiff claimed that they have by virtue of the pledge/charge/lien over the said goods vested right, title, interest over the said goods and they suffered irreparable loss/damage, by the conduct and actions of the defendants.

3. Defendants No.2 and 3 being Directors of Defendant No.1 are joined as defendants as they are also personally liable for their fraudulent and unlawful actions and conduct in relation to the goods

held as agents/trustees of the plaintiff. Defendant No.4 was joined in the above suit under the order of this Hon'ble Court dated 25.8.1983 without prejudice to the plaintiff's right and remedies against defendant No.4. However, once Defendant No.4 was ordered to be joined as a defendant in the suit, the said defendant No.4 admitted before this Hon'ble Court in the joint statement of parties and counsel that defendant No.4 had received from defendant No.1 delivery of 1547.217 liquid metric tons of Tallow and 1509.484 liquid metric tons of Soyabean oil under their own delivery orders and not under any delivery orders issued by or obtained from the plaintiff. The alleged delivery of 1547.217 liquid metric tons of Tallow and 1509.484 liquid metric tons of Soyabean oil by defendant No.1 to defendant No.4 were not pursuant to or under the plaintiff's delivery orders or instructions and such delivery effected by defendant No.1 to Defendant No.4 are clearly illegal, unlawful, unauthorized, contrary to the agreements between the plaintiff and defendant No.1 and as such Defendant No.1 to 3 are liable in law to the plaintiff for wrongful, unauthorized delivery of the aforesaid stocks of Tallow and Soyabean oil which upto 5th July, 1983 were admittedly held by defendant No.1 for the benefit and on behalf of the plaintiff as reflected in the stock statement. All the delivery orders were false, forged, fabricated, unauthorized, collusive and have been prepared by the defendants with the intention to defeat the plaintiff's lawful right as pledges. Therefore the plaintiff is entitled to receive and recover from the defendants No.1 to 3 value/cost of Tallow at the rate of Rs.9380.00 per metric ton which was the value/cost as on 30.8.1983 and the value/cost of Soyabean oil at Rs.8,800.00 per metric ton. The plaintiff is thus entitled to receive and recover from Defendants No.1 to 3 a total sum of Rs. 2,72,70,000/- together with interest thereon at

14% per annum with effect from the date of the suit until payment of the plaintiff's claim. Additionally, the plaintiff is entitled to receive and recover from defendant NO.1 to 3 a sum of Rs.29,06,064.00 being the value of 461.280 metric tons found short by the Surveyors acting under Nazir's instructions. The quantity disclosed in the defendants stock report was 6276 L.M.T. whereas the quantity actually found in the tank by the Surveyor and Nazir was 5815.242 L.M.T. Defendant No.1 has no legal valid or justifiable lien over the stocks of Caustic Soda comprising of 6276.522 metric tons.

4. Defendant No.1 filed written statement challenging the maintainability of the Suit, as it was not filed by the authorized Officer and also denied any knowledge of lien/pledged goods of the Plaintiff on the stock of Defendant No.4. It was also denied that Caustic Soda was offered to be purchased by M/s. Rawal Steel Rerolling Works Limited. Defendant No.1 claimed that the Plaintiff and Defendant No.4 were in collusion with each other to deprive Defendant No.1 from its lawful claim of storage charges of stock of the Plaintiff and Defendant No.4. Defendant No.2 adopted the written statement of Defendant No.1 and no other defendant filed any written statement.

5. The Court framed following issues:-

- i) Whether the suit as framed and filed is maintainable in law?
- ii) Whether the defendant No.1 can claim any right or lien over the Caustic Soda pledged to the plaintiff by defendant No.4 as security for the latter's borrowings?
- iii) Whether the plaintiff having received the amount of its dues from the defendant No.4 and/or defendant No.1 lost its lien over the goods subject matter of the suit pertaining to the defendant No.4?

- iv) Whether the defendants No.2 and 3 are personally liable and whether Mr. Muhammad Naseem had authority to institute the suit and/or sign the plaintiff?
- v) What should the decree be?

6. Witness of plaintiff Syed Muhammad Anwar Raza filed his affidavit in evidence and recorded his statement. He was not cross-examined and the side of defendants to lead their evidence was closed on 10.01.2008.

7. I have heard the arguments of learned counsel for plaintiff.

8. The burden of Issue No.1 was on the Plaintiff alongwith the Issue No.4 that Muhammad Naseem had the authority to institute the instant suit for and on behalf of the Plaintiff against the Defendants. Despite the fact that the defendants have not contested beyond filing of written defence, the Plaintiff in his evidence has failed to address this issue as neither any Power of Attorney in favour of said Muhammad Naseem, who had signed and verified the Plaint, has been filed nor even it is alleged in the Affidavit-in-Evidence that the Plaintiff bank had authorized Mr. Muhammad Naseem to file Suit against the Defendants. Not only this, the Plaint itself is silent that when and how Muhammad Naseem was authorized to institute the Suit on behalf of the Plaintiff against the Defendants. Therefore, precisely the Issue No.1 is decided in negative following the dicta laid down by Hon'ble Supreme Court in the case reported in **PLD 1971 SC 550** Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 heirs) and followed in **2000 SCMR 437** Messrs A.M. Industrial Corporation Limited ..Vs.. Aijaz Mehmood and others.

9. In view of my findings on issues No.1 that the suit as not maintainable, I feel that it is not necessary to reply other issues framed by the Court. Consequently, the Suit stands dismissed with no orders as to cost.

J U D G E

Imran/PA