

# IN THE HIGH COURT OF SINDH AT KARACHI

## Admiralty Suit No.01 of 2019

[M/s. Commercial Bank International PSC vs. M.V. MISKI and another]

Dates of hearing : 11.09.2019 and 27.09.2019.

Date of Decision : 02.10.2019.

Plaintiff : M/s. Commercial Bank International PSC,  
through M/s. Jahanzeb Awan and Shahan  
Karimi, Advocates.

Defendants : Nemo.

### Case Law relied upon by Plaintiff's Counsel

1. 1990 MLD page-1779 [Karachi].  
*[Emirates Bank International Ltd. vs. Messrs Oosman Brothers and 9 others]. Emirates Bank case.*
2. PLD 2011 Karachi page-257  
*[Habib Bank Limited vs. Bahjani Scrap Trading Company LLC and 2 others]. HBL case.*
3. 2011 CLD page-963 [Lahore]  
*[Habib Bank Limited through Authorized Attorneys vs. Azam Majeed]. HBL case.*

### Case law relied upon by Defendants' Counsel

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### Other precedent

- i- PLD 2019 Sindh page-130  
*[In re: Letter of Administration of Deceased Tahir Ahmed Khan]*

- Law under discussion:**
1. Admiralty Jurisdiction of the High Courts Ordinance, 1980 (the "Governing Law").
  2. The Merchant Shipping Ordinance, 2001, (MSO).

3. Qanun-e-Shahadat Order, 1984  
(Evidence Law).
4. The Contract Act, 1872.
5. The Civil Procedure Code, 1908  
(CPC)

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:-** Plaintiff is a Foreign Bank incorporated under the laws of the United Arab Emirates (UAE), has filed the present action at law against the Defendants with the following Prayer Clause\_

*“The Plaintiff, therefore, prays that this Hon’ble Court may be pleased:*

- a) To pass judgment and decree against the Defendants in favour of the Plaintiff for AED 6,390,809.68 or US\$ 1,740,179.63 equivalent on the date of payment;*
- b) To grant markup at the rate of fifteen percent (15%) per annum from the date of default;*
- c) To issue a warrant of arrest of the Defendant No.1 (M.V. MISKI) which may only be allowed to leave the Port in the event of furnishing security to the extent of the amount claimed in the instant Admiralty Suit;*
- d) In the event no security is provided in terms of (c) hereinabove, to pass orders for the sale of the Defendant No.1 Vessel for realization of the outstanding dues of the Plaintiff from the sale proceeds;*

*If (d) hereinabove is granted (whether in the interim or otherwise), then direct the Official Assignee not to release the proceeds till the final disposal of the present suit;*

- e) To grant cost of the Suit; and*

*f) Grant any other or better relief that this Hon'ble Court may deem fit and proper under the circumstances of the case."*

2. Defendant No.1 is a Ship / Vessel, presently berthed at Karachi Port and is owned by Defendant No.2 (*Jubba General Trading Company LLC*), which is a limited liability company incorporated under the Laws of United Arab Emirates (*UAE*). It is the case of Plaintiff as averred in the plaint, that the latter has advanced a loan to Defendant No.2 pursuant to the Credit Facility Agreement, which has been produced in the evidence as Exhibit **PW/5**. Similarly, ancillary documents were also executed by the parties hereto for securing the finance facility.

3. It is also necessary to point out that apart from the present *lis*, there are following connected suits filed in this Court in respect of various claims against the same Defendants, which were all clubbed together in order to avoid any conflicting decision\_

1. Admiralty Suit No.02 of 2018  
*[already decided by Judgment dated 23.09.2019].*
2. Admiralty Suit No.03 of 2018  
*[already decided by Judgment dated 23.09.2019].*
3. Admiralty Suit No.06 of 2018  
*[already decided by Judgment dated 06.09.2019].*
4. Admiralty Suit No.07 of 2018  
*[already decided by Judgment dated 23.09.2019].*

4. The present *lis*, like afore-referred cases, was also proceeded *ex parte* as the Defendants did not opt to contest the matter. Consequently, evidence was recorded on commission and the learned Commissioner submitted the Report dated 25.04.2019 along with the deposition and record produced.

5. It is also a matter of record that Plaintiff has initiated proceeding against Defendants in the jurisdiction of UAE by filing a Case No.7321 of 2017 in the Plenary Commercial Circuit at Sharjah Federal Court of First Instance. When the present *lis* along with aforementioned suits were reserved for announcement of Judgments, on observations made in the present *lis*, the learned counsel for the Plaintiff under his Statement dated 19.09.2019 filed a Judgment rendered by the above Court [at Sharjah]. Considering this, the present *lis* was fixed for rehearing vide order dated 23.09.2019. On 24.9.2019 following question was framed\_

*“ Learned counsel for the Plaintiff seeks further time to assist the Court on the observation made on 23.09.2019. Learned counsel has to assist the Court that the Judgment of Sharjah Court, United Arab Emirates, in respect of same loan transaction which is subject matter of present lis, can be executed through the present suit or this suit is to be decided on merits. Further, the order of priority in respect of claim as laid down in different judgments in admiralty jurisdiction, should be applicable to Plaintiff being mortgagee and their case / claim may not be considered under Section 73 of Civil Procedure Code, 1908.”*

6. Even though the matter proceeded *ex parte* against the Defendants but it is still the duty of the Court to evaluate the claim of Plaintiff and the evidence led within the parameters of law. The following points require consideration\_

- i) *Whether the relationship between the Plaintiff and Defendant No.2 is that of Mortgagee and Mortgagor, respectively?*
- ii) *Whether the Judgment handed down in a foreign jurisdiction {Sharjah Court} in respect of same loan facility upon which the present lis is filed, should be decided on its own merits, or the*

*present proceeding can be converted into an execution proceeding for implementing the afore-referred Decision of Sharjah Court?*

iii) *What should the Decree be?*

7. M/s. Jahanzeb Awan and Shahan Karimi, Advocates, representing the Plaintiff, has referred to various material documents which were produced in the evidence and made submissions by placing reliance on the cited case law, mentioned in the opening part of this judgment.

8. Arguments heard and record perused.

**POINT NO.1.**

9. On behalf of Plaintiff, its local representative, namely, Muhammad Yassar Farooq has testified, who has appeared before the learned Commissioner and submitted his Affidavit-in-Evidence and his examination-in-chief was recorded. The original Power of Attorney in favour of above named representative / witness of Plaintiff has been produced in the evidence as PW/2 and it is duly notarized by the Notary Public at Dubai. Exhibit PW/3 has been referred to which is a commercial License issued to Plaintiff by Government of Dubai for carrying out its business activities. This license shows that the Plaintiff is a Public Joint Stocks Company. Exhibit-PW/4 is a Facilities Offer Letter dated 01.11.2015, for extending credit facility to Defendant No.2. Similarly, **PW-5** is the main Credit Facilities Agreement under which the relationship between the parties hereto is governed. Learned counsel has referred to Clause-10 of this Agreement (page-85 of the evidence file) to fortify the arguments about events of default. Exhibit PW/6 is a document relating to mortgage, which evidences the fact that Defendant No.1-subject Vessel has been mortgaged with Plaintiff to the extent of principal amount of AED 5500000 (*Five Million Five Hundred Thousand-United Arab Dirham*).

Appended with this last document is the First Preferred Panamanian Mortgage in respect of Defendant No.1. This means that present Plaintiff has a First Preferred Mortgage Charge over the subject Vessel / Defendant No.1, *inter alia*, in terms of Clause-3 of this document.

As per Clause 4 of above Exhibit **PW/6**, the subject Vessel / Defendant No.1 is treated as continuing security and guarantee for fulfillment of the secured obligations of present Defendant No.2. Apart from this, there are other stipulations mentioned in this mortgage document, requiring present Defendant No.2 to faithfully comply the terms and conditions of loan facility. Clause-7 of this document is about enforcement; *inter alia*, ‘authorizing the present Plaintiff being a mortgagee, upon occurrence of an event of default’, to take possession of the Defendant No.1 whether actually or constructively (Clause 7.1.1), or, to sell the Defendant No.1 or any share therein and to recover from the Defendant No.2 (owner) on demand all losses, damages, liabilities or expenses; Clause 7.1.6 and 7.1.8, respectively.

Facts of present case also show that Defendant No.2 has also violated Clause 5.2.8 and its Sub-Clauses of the above mortgage document-PW/6, which require, *inter alia*, that Defendant No.2 shall notify the present Plaintiff about arrest of the Vessel (Defendant No.1) or any other lien on the Vessel and at all times promptly pay dues and other out goings in respect of the Vessel, including wages and pension of its Master and Crew.

10. The entire evidence of Plaintiff has gone unchallenged as the Defendants did not lead any evidence. **Point No.1 is answered in Affirmative** that relationship between the Plaintiff and Defendant No.2 is that of Mortgagee and Mortgagor, respectively, and the Defendant No.1 was mortgaged with Plaintiff in respect of the loan facility; hence, present claim in the suit falls within the ambit of Section 3 of the Governing Law.

**POINT NO.2.**

11. The Legal Team of Plaintiff in response to the afore-referred point of law framed on 24.09.2019 has relied upon well-known cases of Emirates Bank [*supra*, (i) 1990 MLD 1779; (ii) HBL -PLD 2011 Karachi 257 and (iii) HBL -2011 CLD 963]. Coincidentally, in all these cited cases, judgments were of the Courts of the United Arab Emirates. It is argued that the present *lis* may be decided on its own merits as an action at *rem* against the Defendants by treating the same as an original and independent cause of action; but, at the same time, Plaintiff has no objection if the Order of Priority for settling claim as applicable in admiralty jurisdiction is applied to the present claim of Plaintiff.

12. Crux of the rule laid down in all these cases is, that (i) *execution can be obtained by proceeding under Section 44-A of CPC, as long as the country from which the decree was passed is United Kingdom or any reciprocating territory (underlined for emphasis)*; (ii) *a foreign judgment can be enforced by using it as a cause of action through a suit, subject to conditions stated in Section 13 of CPC, although such suit would not proceed like an ordinary suit but the findings of foreign judgment be binding on courts in Pakistan; this type of proceeding is to be filed within six years from the date of foreign judgment {Article 117 of the Limitation Act, 1908}*; (iii) *a suit can be on the original cause of action, as the same remains intact until that foreign judgment is satisfied*; (iv) *foreign judgments are presumed to be pronounced by a court of competent jurisdiction if it adheres to the conditions mentioned in Section 14 of CPC.*

13. Recently, in a Succession Matter, it is held that United Arab Emirates is also a reciprocating territory as envisaged in Section 44-A of the Code of Civil Procedure, 1908. The decision is reported in PLD 2019 Sindh page-130.

14. The above Judgment of Sharjah Court along with English Translation has been perused. The proceeding has been filed by present Plaintiff against Defendant No.2, another associate company of present Defendant No.2 and one of its Directors (Abdi Ali Farah). The Court of First Instance at Sharjah has given the Judgment on 30.07.2019. The Arabic version of decision together with English Translation (*in original*) are available in the record. The documents bear the stamp of Ministry of Justice and Foreign Affairs of the United Arab Emirates as well as Consulate General of Pakistan at Dubai (*all dated 17.09.2019*). Each page of the original version of decision as well as its English Translation bears the official stamp. It is clearly stated (in the Judgment itself) that despite service of notice, the present Defendant No.2 and other defendants did not contest the matter. *Ex facie*, the afore-referred foreign judgment (of Sharjah Court) has been given after due deliberations and taking into account the provisions of different statutes and case law, as applicable in the jurisdiction of United Arab Emirates. This foreign judgment is conclusive and satisfies the criteria laid down in the afore cited case law.

Hence, the requirement for producing and proving a document from the Foreign Jurisdiction has been complied with, *inter alia*, as provided in Article-89 of the Evidence Law read with Section 14 of CPC.

15. As per the above Foreign Judgment [of Sharjah Court], the present Defendant No.2 has been directed to pay to present Plaintiff an amount of AED 5723557-Five Million Seven Hundred Twenty Three Thousand Five Hundred and Fifty Seven Dirhams together with 5% (*five percent*) of the legal interest from the date of filing the case.

16. Considering the record of present suit, its outcome is quite obvious, but, in my considered view, there cannot be two decisions with regard to

same loan transaction / finance facility; that is, one passed in the foreign jurisdiction as above and the other one in the present proceeding.

In view of the above reported decisions and undisputed facts of the present case, the conclusion is that the Judgment given by the Court of Sharjah (UAE) in the Case filed by present Plaintiff against Defendant No.2, can be executed through the present proceeding. Therefore, the Judgment of Sharjah Court in a sum of AED 5723557 (Five Million Seven Hundred Twenty Three Thousand Five Hundred and Fifty Seven Dirhams) together with 5% (*five percent*) of the legal interest, can be executed through the present proceeding.

17. In the connected suits, particularly Suits No.2 and 7 of 2018, the order of priority of settling claims of different Plaintiffs in all these connected Suits has already been determined, according to which the claim of present Plaintiff in this *lis* will be settled after payment / settlement of dues / charges of Karachi Port Trust and wages / dues of Crew and Master of the subject Vessel (Plaintiff in Admiralty Suit No.6 of 2018). Thus, in the same order of priority present Plaintiff is entitled to a claim of AED 5723557 together with 5% of legal interest (as mentioned in the above foreign judgment of Sharjah Court), or, its equivalent amount in local currency (Pak Rupees).

**Hence, Point No.2 has been answered accordingly.**

**POINT NO.3.**

17. The present suit is decreed in the above terms.

**JUDGE**

Karachi

Dated: 02.10.2019.

M. Javaid/PA

