

IN THE HIGH COURT OF SINDH, KARACHI

Admiralty Suit No.03 of 2018

*[Glander International Bunkering DMCC
vs. M.V. "MISKI" and others]*

Glander International Bunkering
DMCC (*Plaintiff*) : Nemo for Plaintiff.

M.V. "MISKI", Jubba General
Trading Co. LLC and Transbridge
Logistics Pakistan (Pvt.) Ltd.
(*Defendants No.1, 2 and 3,
respectively*) : Nemo for Defendants.

Date of hearing : 05.09.2019

Date of Judgment : 23.09.2019

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has filed the present *lis* against the Vessel-M.V. "MISKI" and its owner for recovery of amounts mentioned in the prayer clause, which is reproduced herein below_

"The Plaintiff, therefore, prays for Judgment and Decree against the Defendants jointly and severally as follow:

- A) *Judgment and Decree in the sum of US\$45,590.18.*
- B) *Order Arrest and Detention of Defendant No.1 until the Plaintiff's claim is paid or security for payment of the same is furnished in the Hon'ble Court.*
- C) *Order sale of the Defendant No.1 Vessel in satisfaction of the Decree.*
- D) *Award profit / Mark-up/Compensation for delayed payment at the rate of 2% per month (compounded monthly) for each month of delay from the date of filing of suit till the date of payment.*

E) Award Cost and any other relief or reliefs that this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The relevant facts for deciding the case of Plaintiff, as averred in the plaint, are that the latter (Plaintiff) is a corporate entity functioning under the laws of United Arab Emirates. Plaintiff supplied Bunkers to Defendants and particularly Defendant No.1 at the Port of Ajman on 07.06.2017 of the value of AED 123,480.00 (US\$ 33618.66 Approx.) against Invoice No.32074.

Despite clear stipulations between the parties hereto, that is, Plaintiff and Defendants No.1 and 2, the outstanding dues of the Plaintiff were not settled. It is further averred that the Defendants have acknowledged their liability through an E-mail dated 27.07.2017, which is appended as Annexure “*H*” with the Plaint, but the fact remains that till the time of filing of the present proceeding, the outstanding amount of Plaintiff together with interest and compensation to the tune of Rupees AED 167,451.49 was not settled for which the Plaintiff has sought a money decree.

3. The Defendants No.1 and 2 were ordered to be proceeded *ex parte*, as despite service of notice and summon, they never entered appearance, whereas, Defendant No.3 has contested the claim of Plaintiff by filing a Written Statement, wherein, it is mentioned that Defendant No.3 is acting as agent of Fair Sea International FZC and not that of Defendants No.1 and 2. *Secondly*, the Defendant No.3 has stated that it is continuously providing food and other items (**necessaries**) to the Crew of Defendant No.1. The said Defendant No.3 has also denied any relationship with Plaintiff and nexus with the subject transaction.

4. It is also pertinent to mention here that besides the present *lis*, there are following other connected Suits_

- i. Admiralty Suit No.02 of 2018
- ii. Admiralty Suit No.07 of 2018.
- iii. Admiralty Suit No.01 of 2019.
- iv. Admiralty Suit No.06 of 2018 (*already decided by the Judgment dated 06.09.2019*).

5. The Commissioner was appointed to record the evidence in order to expedite all the cases. However, the learned Commissioner has submitted her Report dated 25.04.2019 along with Statement of Plaintiff (dated 23.04.2019), showing inability of Plaintiff to produce witnesses, who are foreign nationals (*Russian and Indian*), while reserving its rights to file application to record the evidence via Video Conference; which was never done till all the connected suits including present *lis* were reserved for announcement of Judgment.

6. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of one's claim or defence. Plaintiff has not come forward to testify and discharge the burden of proof about its claim. The reported decision of Hon'ble Supreme Court handed down in the case of Rana Tanveer Khan v. Naseer Khan-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendants, thus the Plaintiff is not entitled to any relief.

7. Consequently, this suit is dismissed, with no order as to costs.

JUDGE

Dated 23.09.2019
M.Javid.PA