

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(ADMIRALTY JURISDICTION)**

**Admiralty Suit No. 01 of 2017**

Ban Hoe Leong Marine Suppliers SDN BHD  
....Plaintiff

-Versus-

M.T. FADL-E-RABBI, IMO No. 9078177, Flag-  
Panama and others  
....Defendants

Mr. Md. Yamin Newaz Khan, Advocate  
...For the plaintiff

None  
...For the defendants

Heard on:26.08.2025  
Judgment on : 27.08.2025

**Present:**

**Mr. Justice Zafar Ahmed**

Plaintiff has filed the instant admiralty suit praying for a decree for realization of unpaid dues for an amount of BDT 38,55,860.00 equivalent to USD 49,434.10 (based on prevalent exchange rate at the time of filing of the suit on 08.01.2017) against the principal defendants jointly and severally together with *pendente lite* interest.

The claim of the plaintiff arose out of supply of bunker to the 1<sup>st</sup> defendant vessel M.T. FADL-E-RABBI (IMO No. 9078177). The 2<sup>nd</sup> defendant Eden Line Limited, which is a company registered and based in Bangladesh, is the registered owner of the vessel.

None of the defendants contested the suit. Accordingly, the suit proceeded *ex parte*.

On 04.03.2021, the following issues were framed:

01. Has the plaintiff any cause of action against the defendants?
02. Has the plaintiff suffered any loss due to non-payment of the price of bunker supplied to the vessel M.T FADL-E-RABBI?
03. Are the defendants liable to make payment for the price of bunker supplied to the vessel M.T. FADL-E-RABBI by the plaintiff?
04. Is the plaintiff entitled to any decree against the defendants?  
If so, to what extent?

Plaintiff is Ban Hoe Leong Marine Suppliers SDN BHD which is based in Malaysia. The plaintiff filed the suit through its constituted attorney Mr. Mehadi Hasan who signed the Vokalatnama. He also signed the plaint and verified the same. He also deposed as sole plaintiff witness (PW1). He produced the copy of 'General Power of Attorney' (GPA) dated 02.11.2016 (exhibit-1) executed by the plaintiff by dint of which PW1 filed the suit and deposed as witness. The GPA (exhibit-1) requires judicial scrutiny.

In respect of power of attorney, the applicable laws are the Power of Attorney Act, 2012 (came into effect on 01.07.2013) and the Power of Attorney Rules, 2015 (came into effect on 23.07.2015).

Rule 5(2) of the Rules, 2015 requires that the power of attorney executed outside Bangladesh has to be stamped either under the Stamp Act, 1899 or Stamp Duties (Additional Modes of Payment) Act, 1974, as the case may be, within a period of 03 months from its entry into Bangladesh. In this case, the GPA (exhibit-1) was not so stamped.

Rule 10 of the Rules, 2015 deals with procedures to be followed in respect of both irrevocable and general power of attorney executed outside Bangladesh.

Rule 10(2) requires that the power of attorney must contain colour photographs of the executant of the power of attorney and the attorney. Photographs are to be identified by the executant by putting his signature on those. Exhibit-1 (GPA) contains photograph of the executant but does not contain that of the attorney.

Rule 10(4) requires that the general power of attorney and its copy must contain information as to National Identification or Birth Registration Certificate or Passport of the executant and the attorney. A copy of the Malaysian Identity Card (IC), officially known as

MyKad, of the executant has been attached to the GPA but no relevant requisite information of the attorney has been provided in the GPA.

Rule 10(5) requires that within a period of 02 months from its entry into Bangladesh, the power of attorney and its copy have to be authenticated by the Ministry of Foreign Affairs or by a designated officer so appointed by the government. In the case in hand, the exhibit-1 (GPA) was not so authenticated.

Exhibit-1 (GPA) was executed by one Hean Keng Hock, a Malaysian national. The GPA was notarized by S. S. Ravichandren, a Notary Public of Malaysia. The signature of the executant was authenticated by the Bangladesh High Commission in Malaysia. The GPA was authenticated by the Ministry of Foreign Affairs, Malaysia and the Bangladesh High Commission, Malaysia.

An interesting part of the GPA (exhibit-1) is that the named constituted attorney in the GPA are Mr. Mehadi Hasan and Mirza Zahir Uddin Ahmed described as “Advocates of ATTORNEYS & ASSOCIATES OF IP LAWS, Building 572, Road No. 8, Suit-G1, Baitul Aman Society, P.S. Adabar, Dhaka 1207, Bangladesh.” They were authorised to, *inter alia*, file suit, sign, verify and declare plaint, give evidence and depositions in respect of the 1<sup>st</sup> defendant vessel M.T. FADL-E-RABBI. However, the suit was filed and the plaint was verified by Mr. Mehadi Hasan as constituted attorney. No explanation,

whatsoever, has been given as to why the co-attorney Mr. Mirza Zahir Uddin Ahmed did not act as constituted attorney.

In *Shah Alam vs. Abdul Kalam*, 54 DLR 276, it was held that a power of attorney not executed before or authenticated by a notary public nor any representative of the foreign mission, is not admissible in evidence. It was further held that only a duly constituted attorney can represent an absent party. In *Creative Chemicals Ltd. vs. MV Ocean Hope and others*, 18 BLC 770, this Admiralty Court held that in the absence of any power of attorney to give deposition on behalf of the plaintiff, the entire deposition of the plaintiff's witness is not admissible in evidence.

The above-mentioned two cases were decided prior to introduction of the Power of Attorney Act, 2012 and the Rules, 2015. The applicable law in those cases was the Powers-of-Attorney Act, 1882.

The new Act and the Rules are more specific and detailed compared to the earlier law. In *Abul Khair Md. Nazmul Huq and ors. vs. Government of Bangladesh and ors.* (Writ Petition No. 12985 of 2021), LEX/BDHC/0055/2022, the writ petitioners executed a power of attorney outside Bangladesh after coming into force of the New Act, 2012 and the Rules, 2015 authorising the constituted attorney to file the writ petition. The constituted attorney accordingly filed the

writ petition. The High Court Division found that the power of attorney was not executed as per the provisions of the Rules, 2015. This Division held that since the power of attorney was not a valid piece of document, the writ petition was not maintainable as not being in form.

In the case in hand, the general power of attorney (exhibit-1) failed to comply with the requirements of law. Therefore, the *ratio* laid down in the above-mentioned cited cases equally apply to the instant case.

The upshot of the above discussions is that exhibit-1 (GPA) was defective inasmuch as the same was not executed in accordance with law. It cannot be treated as a proper legal document. It follows that the plaint, which was verified and filed by dint of the GPA, was not so verified and filed in accordance with law.

There is another aspect of the case. The relevant laws are discussed first, prior to examining the facts.

Section 6 of the Admiralty Court Act, 2000 and Rule 3 of the Admiralty Rules, 1912 are fairly specific and self-contained in prescribing the manner of institution of admiralty suits. Section 6 and Rule 3 state that admiralty suit shall be instituted by a plaint drawn up, subscribed and verified according to the provisions of the CPC. Let us examine the relevant provisions of the CPC.

The plaint shall contain the name, description and place of residence of the plaintiff (Order VII, rule 1). The plaint has to be signed by the party. However, due to absence or for other good reason, if the plaintiff is unable to sign the plaint, it may be signed by any person duly authorized by the plaintiff to sign the same or to sue on his behalf (Order VI, rule 14). Plaint has to be verified by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case (Order VI, rule 15).

The plaintiff of the instant suit has been described in the plaint as “Ban Hoe Leong Marine Suppliers SDN BHD, having its office at.....”. The plaintiff is represented by its constituted attorney, namely “Mehadi Hasan Babu”. The plaint and the General Power of Attorney (GPA) are silent as to whether the plaintiff is a body established by or registered under the law. The name of the chairman or managing director or partners or managing partners of the plaintiff has neither been mentioned in the plaint nor in the GPA. The executant of the GPA did not mention in what capacity he executed the GPA or how he is connected with the plaintiff. The GPA is silent as to the legal status of the plaintiff.

Order XXIX, rule 1 of the CPC deals with subscription and verification of pleadings in suits by or against corporations. ‘Corporation’ means a body established by or registered under a law.

It is stated in the plaint that the plaintiff is a well known and a reputed business entity. As I already noted, the GPA is silent about the legal character or status of the plaintiff. PW1 (constituted attorney) deposed that the plaintiff is a proprietorship business concern. Since the plaintiff is neither a body established by nor registered under a law, it does not come within the ambit of Order XXIX. An unregistered body cannot sue or be sued as a corporation but all its members must be impleaded (AIR 1925 All. 337, ILR 14 Mad. 362, ILR 22 Bom. 729, ILR 46 Bom. 132). Therefore, in the instant case, the plaintiff being a proprietorship concern cannot sue in its own name. The suit ought to have been filed in the name of its proprietor, who is neither named in the plaint nor in the GPA. I have no hesitation to hold that the suit was filed in the name of wrong person and the plaint was not duly signed, verified and subscribed.

The defects mentioned in the preceding paragraphs (defective power of attorney and filing of the suit in the name of wrong person) are mere irregularities and can be remedied at any stage of the proceeding. Where a suit is instituted in the name of the wrong person as plaintiff, the Court may, at any stage of the proceedings, order any other person to be substituted or added as plaintiff or order that the name of the wrong plaintiff, who is improperly joined, be struck out and the name of any person who ought to have been joined as plaintiff be added [Order I, rules 10(1) and 10(2) of CPC].



The words “in the name of wrong person as plaintiff” mentioned in Order I, rule 1(1) include suits instituted by persons who had no right to do so (*Laxmikumar vs. Krishnaram*, A 1954 MB 156). Necessary party has to be brought on record. A necessary party is one who is bound by the result of the action and in whose absence the question cannot be effectually and completely settled unless he is a party [1992 (2) SCR 1]. Thus, the general rule that the suit cannot be dismissed on the ground of non-joinder of proper parties does not apply in the case of non-joinder of necessary parties. In *Abbas Khaleeli & ors. vs. Saifuddin Valika and ors.*, PLD 1969 kar. 692 the High Court of the then West Pakistan observed, *inter alia*, that the description of the plaintiffs was totally erroneous. No evidence had yet been recorded in the suit. It was held that the relevant provisions of the CPC are of an ameliorative nature, and not of a penal nature. Therefore, the plaintiff should be allowed an opportunity to cure the defects and the suit should not be dismissed. The Court further held that when the plaintiff is given an opportunity in the trial Court to cure the defects in the plaint, but he fails to do so the suit will have to be dismissed.

During the course of argument, the defects were pointed out to the learned Advocate of the plaintiff. By order dated 16.07.2025, this Court adjourned the argument hearing for 01 month to give an

opportunity to the learned Advocate to cure the defects. The defects were not cured.

Accordingly, this Court is left without any option but to dismiss the suit on the grounds that the plaintiff as described in the plaint is not authorized by law to sue in its own name and as such, the suit was filed in the name of wrong plaintiff, the power of attorney was defective and was not executed in accordance with law, and the verification of the plaint was not done in accordance with law and thus, the plaint was not subscribed and presented as per the mandatory provisions of the CPC. Moreover, the documentary evidence (2 bunker delivery receipts and 1 invoice) adduced by the plaintiff is not sufficient enough to prove the case. The plaintiff did not submit any other documents to prove the case, *e.g.* work orders placed by the principal defendant /owner of the vessel, proof that the plaintiff had actually sent the invoice to the defendant etc. Thus, the plaintiff's case, *prima facie*, does not pass the threshold of standard of proof *i.e.* balance of probability.

Accordingly, the suit is dismissed.