

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

ADMIRALTY SUIT NO. 3 OF 2017

IN THE MATTER OF:

Saifuddin Mahmud

..... Plaintiff

-VERSUS-

M.T. FADL-E-RABBI, (IMO No. 9078177, Flag:
Panama) and others.

.....Defendants

Mr. Md. Yamin Newaz Khan, Advocate

..... For the plaintiff

The 24th August, 2025

Present:

Mr. Justice Zafar Ahmed

Plaintiff has filed the instant admiralty suit praying for realization of unpaid dues for an amount of BDT 1,17,59,956.50 equivalent to USD 1,50,768.67 (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 1st defendant vessel M.T. Fadl-E-Rabbi (IMO No. 9078177, Flag: Panama). The 2nd 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 11.11.2020, the following issues were framed:

1. Has the plaintiff any cause of action against the defendants?
2. Has the plaintiff suffered any loss due to non-payment of the price of bunker supplied to the vessel M.T. FADLE-E- RABBI?
3. Are the defendants liable to make payment for the price of bunker supplied to the vessel M.T. FADLE-E- RABBI by the plaintiff?
4. Is the Plaintiff entitled to any decree against the defendants? If so, to what extent?

During the course of argument hearing, this Court, on 24.08.2025, framed 2 additional issues as per Order XIV, rule 5 of the Code of Civil Procedure (CPC). Those additional issues are as follows:

5. Is the suit maintainable in its present form and manner?

6. Is the suit barred by limitation?

Saifuddin Mahmud, who is the proprietor of 'Green Touch International' based in Chattogram, Bangladesh, is the plaintiff of the case. He gave evidence as PW1. The plaintiff did not examine any other witness.

Bunker supply and earlier Admiralty Suit No. 72 of 2011:

The plaintiff supplied bunker to the vessel in July, 2011. The payment was not made. The plaintiff filed Admiralty Suit No. 72 of 2011. During pendency of the said suit, the parties *i.e.* present plaintiff and the 2nd defendant (owner of the vessel) entered into a compromise agreement on 03.03.2016 (Exhibit-10) to settle the matter amicably out of Court. Thereafter, in terms of the compromise agreement, the plaintiff filed an application before this Court to dismiss the suit for non-prosecution. This Court, vide order dated 22.05.2016 allowed the application and dismissed the suit for non-prosecution (Exhibit-9).

Be that as it may, the principal defendants did not make any payment to the plaintiff according to the terms of the compromise agreement. Thereafter, the plaintiff filed the instant

suit for outstanding dues which arose out of bunker supply made in July, 2011.

Legal implications of dismissal of suit for non-prosecution:

Order XXIII, rule 1 of the CPC permits the plaintiff to withdraw the suit with or without permission of the Court. If the suit is withdrawn with permission of the Court the plaintiff is at liberty to institute a fresh suit in respect of the subject matter of the suit. On the other hand, if the suit is withdrawn without permission of the Court the plaintiff is precluded from instituting any fresh suit in respect of the subject matter of the suit.

Order XXIII, rule 2 makes it clear that the law of limitation shall not be affected by the first suit. In other words, if the plaintiff withdraws the first suit with permission of the Court and institutes a fresh suit, he is not entitled to deduct the time taken up by the suit withdrawn from the period of limitation applicable to his second suit.

The CPC does not contain any provision regarding dismissal of suit for non-prosecution. In *Amir Hossain Khairati being dead his heirs Altaf Hossain and others vs. Abdul Aziz Bepari and others*, 47 DLR (AD) 106, the Appellate Division

held that where the first suit is dismissed for non-prosecution, the provisions of Order XXIII, rule 1 do not apply to the second suit as the order passed in the earlier suit does not amount to withdrawal. It was further held that the plaintiff is not precluded from filing a fresh suit by making out a new cause of action on fresh averments made in the second suit.

Is the present second suit barred by limitation?

The question of limitation was not raised in the above-mentioned reported case. In the instant suit the law of limitation is an issue.

The first schedule of the Limitation Act, 1908 prescribes a period of limitation of 3 years for instituting a suit for the price of goods sold and delivered in cases, (a) where no fixed period of credit is agreed upon, the time from which the period of limitation begins to run is the date of the delivery of the goods (Article 52), and (b) where payment is to be made after the expiry of a fixed period of credit, the time from which the period of limitation begins to run is when the period of credit expires (Article 53). Under Article 56, the period of limitation is 3 years to file a suit for the price of work done by the plaintiff for the defendant at his request where no time has been fixed

for payment and the period of limitation begins to run from the date when the work is done.

The plaintiff has filed the instant suit for the unpaid price of bunker supplied in July, 2011 (the date of supply and payment schedule have not been given in the plaint). The earlier Admiralty Suit No. 72 of 2011 in respect of the self-same cause of action was dismissed for non-prosecution on 22.05.2016 following a compromise agreement dated 03.03.2016. The instant second admiralty suit was filed on 08.01.2017 for the same cause of action which arose in July, 2011. Accordingly, I have no hesitation to hold that the instant suit is barred by limitation. Moreover, the plaintiff is precluded from filing the instant second suit in respect of the self-same cause of action which was the subject matter of the earlier suit [*Amir Hossain Khairati (supra)*].

Learned Advocate appearing for the plaintiff submits that since the 2nd defendant admitted their liability in the compromise agreement, the plaintiff is entitled to the benefit of Section 19(1) of the Limitation Act.

Section 19(1) of the Limitation Act is reproduced below:

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an

acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. (*emphasis supplied*)

In *The National Insurance Company vs. Khan Brothers Ltd.*, 23 DLR 81, it was held that Section 19(1) lays down that a fresh period of limitation is to be computed in a case when before expiration of the normal period of limitation in respect of any property or right an acknowledgement of liability is made in respect of such property or right.

In *Haji Gaffar Haji Habib Janu vs. Wakil Ahmed*, PLD 1959 (WP) Karachi 611, the defendant admitted his liability to pay rent in his written statement. It was held that Section 19 does not extend the period of limitation because the acknowledgment was made after expiry of the period prescribed for instituting a suit for the recovery of the rent.

Reverting back to the case in hand, the 2nd defendant admitted their liability in the compromise agreement after expiration of the period of limitation. Therefore, the plaintiff is not entitled to the benefit to Section 19 of the Limitation Act.

Learned Advocate lastly attempted to argue that the defendants breached the terms and conditions of the compromise agreement. I have no doubt about that. However, if it is accepted that the cause of action of the instant suit is the breach of compromise agreement, the admiralty jurisdiction does not apply to the suit. Moreover, clause 13 of the compromise agreement contains an arbitration clause providing provisions for resolving the dispute arising out of the compromise agreement through arbitration administered by the Singapore International Arbitration Centre (SIAC) in accordance with 'SIAC Rules' and the seat of arbitration shall be at Singapore.

In view of the foregoing discussions, I conclude that the instant admiralty suit is hopelessly barred by limitation and also by the *ratio* laid down in *Amir Hossain Khairati* (*supra*). Accordingly, the suit fails.

In the result, the suit is dismissed.