

Present:
 Mr. Justice Md. Iqbal Kabir
 And
 Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 394 of 1998

Mongla Port Authority, represented by the
 Chairman, Mongla Port Authority, P.S.-Mongla,
 District-Bagerhat, its Branch Office, Khalishpur, P.S.-
 Daulatpur, District-Khulna

....Appellant

Versus

M/S. Mashreki Traders Ltd., represented by its
 Managing Director, 64, Motijheel C/A, Dhaka, and
 another

....Respondents

No one appears

....For both parties

Judgment on 26.08.2025.

Md. Iqbal Kabir, J:

The appeal is directed, at the instance of the plaintiff/appellant, against the judgment and decree dated 25.01.1998 and 3.02.1998 respectively passed in Money Suit No. 35 of 1989, by the learned Subordinate Judge, 1st Court, Khulna, thereby decreeing the suit.

The short facts leading to preferring this appeal, are that the appellant, as plaintiff, filed the Money Suit alleging inter-alia that the plaintiff, Mongla Port Authority, is engaged in the management, maintenance, development, and protection of the port, including navigation of ships, loading and unloading of goods, and providing related storage facilities at the Rouge Veldt Jetty. The defendant No. 2 is the owner of the seagoing vessels M.V. Bengal Pride and M.V. Bengal Star, engaged in import-export trade and maritime transport. The defendant No. 1 obtained permission from the plaintiff to act as the shipping agent of defendant No. 2 at Mongla Port. On 07.09.1986, M.V. Bengal Pride arrived at Mongla Port with goods and anchored at the port buoy. On 16.05.1987, defendant No. 2 gave an undertaking to pay the port and pilotage dues to the plaintiff, pursuant to which the plaintiff issued a clearance certificate for the said vessel. After discharging the goods, the ship departed from the port on 22.05.1987. Thereafter, on 18.06.1987, the plaintiff submitted Bill No. 2640/27, claiming Tk. 26,43,700.85 as port and pilotage charges in respect of M.V. Bengal Pride.

Thereafter, the vessel M.V. Bengal Star arrived at Mongla Port on 06.02.1987 carrying goods; however, the authority issued a letter of undertaking

to the plaintiff for availing port and pilotage facilities. In view of the said letter of undertaking, the plaintiff issued a release letter. The ship left the port on 17.04.87 without paying port and pilotage dues. The plaintiff issued bill No. 2641/27, thereby claiming the port and pilotage dues of the said ship amounting to Tk. 4,56,571.34, as on 18.06.87. Accordingly, the total amount owed by the defendants in respect of the two vessels towards port and pilotage fees stands at Tk. 31,00,272.19, together with interest of Tk. 8,69,113.21, making an aggregate claim of Tk. 39,69,385.40 for which the plaintiff instituted the present suit.

However, the alleged amount was demanded through several memos, those are MPA/AC/R/0300/87-11493 dated 10.11.87, MPA/AC/R/0414/88-99 dated 4.11.88, MPA/AC/R/0300/88-2491 dated 8.3.88, MPA/AC/R/0300/88-3/22 dated 24.3.88, and MPA/AC/R/0300/88-6116 dated 30.5.88. However, instead of payment, the defendants promised by a letter dated 03.08.88 to pay the dues to the plaintiff in installments, and the installment would be Tk. 5 (five) lac. But the defendants did not pay the amount as promised. In such a position, by a legal notice dated 18.4.89, the plaintiff demanded the alleged due amount, but the defendants did not heed to pay any amount, knowing that such plaintiff again served another legal notice dated 12.8.89, thereby, demanding the due amount. But, on 25.10.89, defendant Nos. 1 and 2 verbally refused to pay such an amount.

On the contrary, defendant Nos. 1 and 2 contested the suit by filing a joint written statement, thereby denying all material assertions made in the plaint. However, it has been claimed that defendant No. 2, through the two sea-going ships, namely M. V. Bengal Pride and M. V Bengal Star transporting goods to domestic and foreign ports. The defendant No. 1 is the agent of defendant No. 2, who is working for all necessary formalities regarding the arrival and departure of the said ships at Mongla port. The defendant No. 1, M.V Bengal Pride, transported salt from the Kandla port of India and reached the provincial gate (Hiron Point) at the edge of the Mongla port area on 07.09.86. It has been claimed that following the rules, as per the instructions of the authority, the pilot, Mr. Abdullah, was assigned to the port, which reached Hiron Point and boarded the ship, thereby, taking all responsibilities for bringing it to Mongla Port. Under his supervision, the ship was brought to a place near Mongla Port and anchored without a buoy on the excuse that there was no suitable buoy to anchor it. The ship was anchored in the Pashur River, located in the north-south direction near Mongla Port, without a buoy. The pilot reported that the anchor was not properly fixed to the ground of the river bottom; thus, on his instructions, it was re-anchored in a nearby place. Though that place was

also not completely safe to keep the ship, as a result, the ship was grounded there.

Knowing this, the authority somehow managed to pull the ship to the middle of the river with the help of a tug, but by this time, the ship's rudder propeller had gotten stuck in the ground and was twisted and damaged. Due to negligence and careless activities on the part of the plaintiff, the alleged valuable sea-going ships fell into such a situation, causing irreparable damage to the defendant. Thereafter, in order to unload the goods, the damaged ship was taken to Buoy No. 1 with the help of a tug and anchored. The unloading work continued till 14.10.86. The plaintiff authorities were requested to make arrangements to move the ship from the buoy to a safe place by using a tug immediately after unloading the goods. But the plaintiff did not pay any attention to it; instead, on 22.10.86, he wrote a letter. In reply plaintiff was requested to take the ship to a safe place using a tug, but the plaintiff/authorities played a silent role, resulting in the ship of defendant No. 2 becoming scrap. Thus, the plaintiff is entitled to get port and pilotage fee from the defendant No. 2 for the period 7.9.86 to 14.9.86 i.e., 7(seven) days wherein the rate is half, the unloading period from 14.9.86 to 14.10.86 i.e., for 32 (thirty two) days and from 14.10.86 to 23.10.86 i.e., 9(nine) days which has passed as idle time and from 24.10.86 to 22.05.87 i.e., for 211 (two hundred and eleven) days at half rate.

However, the defendant claims that the plaintiff owed some money from the M. V. Bengal Star; therefore, when the said ship arrived at Chittagong Port along with the imported goods loaded on it. The plaintiff/authority, in collusion with others, detained the ship without allowing the goods from the vessel. On that count, the defendants suffered all the losses. As a result, it has brought attention to the Ministry, which was obliged to pay such a claim. However, due to the illegal and unjust pressure, the defendants, being helpless, promised to pay the legal dues to the plaintiff/authority and paid Tk. 5(five) lac. The illegal claim of the plaintiff would not be acceptable; knowing such, on 03.02.88, they forcibly took an undertaking from the defendants. He claims the plaintiff is not entitled to get the entire amount or any interest for the port and pilotage fees. Therefore, the suit deserves to be dismissed with costs.

The Trial Court in order to dispose of the suit, framed as many as three issues, and decided all the issues in favour of the plaintiff/appellant and against the defendants.

The court below partially decreed the suit with costs against the defendant Nos. 1 and 2. By the judgment, it was decreed that the plaintiff is entitled to get Tk. 21,45,540.34 (Tk. Twenty One Lakh Forty Five Thousand Five Hundred Forty Taka and Thirty Four Paisa) out of Tk. 39,69,385/40, as

port and pilotage dues and interest at the prevailing bank rate of 16% on the unpaid amount.

Feeling aggrieved and dissatisfied with the judgment and decree dated 25.01.1998 and 03.02.1998 respectively passed by the learned Subordinate Judge, 1st Court, Khulna, this present plaintiff, as appellant, has preferred the instant appeal.

No one appears to this Court to press the appeal.

Though, record shows that the matter appeared in the list for hearing along with the name of the learned Advocate for the appellant. The learned DAG also brought to our notice that the concerned authority of the appellant was requested to take steps. But no one turns up to this Court. Respondent was also reluctant for an unknown reason.

However, on perusal, it appears that based on the following grounds appeal has been filed:

The learned Sub-Judge erred in law as well as in fact in decreeing the suit of the plaintiff partly as an when the plaintiff's claim in Tk. 39,69,385.40 as Port and Pilotage Charges due to defendants, and when defendants did not try to disprove the same by adducing any oral and documentary evidence, but the trial Court most arbitrarily has decreed the suit partly for Tk. 21,45,540/34 only in place of the claimed amount for Tk. 39,69,385.40.

The defendants were requested several times by giving letters for payment and lastly they admitted to pay the amount charged by plaintiff but subsequently denied to pay and when admitted facts and when defendants in writing requested plaintiff for installment also and when it was allowed to them but subsequently denied to pay but the learned Court without considering the facts and when defendants admitted to repay but the trial Court most arbitrarily and whimsically has altered the amount for which plaintiff being prejudiced has preferred the appeal against part decree.

Defendants have raised the question of negligence on the part of Pilot who pilotaged defendants' ships for negligence the ship has been damaged but the defendants did not try to prove the same by adducing cogent and relevant papers and other oral and documentary evidences but the learned Court has misread and misconstrued the facts and has decreed the suit in part which is highly illegal and not maintainable.

The learned trial Judge in his page-8 has clearly observed that "প্রঃ নং ১ এ উল্লেখ আছে এম, ভি বেংগল প্রাইড চালনা বন্দরে পৌছেছে এবং উহার প্রস্থানের তারিখ ১৭-৫-৮৬ কাজেই বাদীর অবহেলার কারনে বা ইচ্ছাকৃত ভাবে এম, ভি বেংগল প্রাইড জাহাজটি দীর্ঘ দিন আটকিয়ে রাখা হয়েছে

মর্মে ১/২ নং বিবাদীর দাবীর সত্যতা পাওয়া যাচ্ছে না।" and so it is clear that negligence of Port Authority does not prove.

In his judgment the learned Judge has observed at page-8 of his judgment that, "উল্লেখ্য এম, ভি বেংগল প্রাইড জাহাজের পোর্ট এন্ড পাইলটেজ বাবদ আরজিতে বাদী পক্ষ থেকে ২৬,৪৩,৭০০/৮৫ টাকা দাবী করা হয়েছে অথচ প্রঃ নং ১ যাহা বাদী কর্তৃক অনুমোদিত হয়েছে উহাতে উল্লেখ আছে ১৬,৮৮,৯৯৬/- টাকা। কাজেই এম, ভি বেংগল প্রাইড জাহাজের পোর্ট এন্ড পাইলটেজ বাবদ দাবী ১/২ নং বিবাদীর কাছে ১৬,৮৮,৯৯৬/- টাকা পেতে অধিকারী হইতেছেন।" but the learned trial Judge has misread and misconstrued the facts that exhibit No. 1 is for the permission letter to use port which is called port and pilotage permission after arrival of the ship of the defendants for unloading the goods carried by the ship and it can be found at the deposition of P.W. 1, so the part decree is not maintainable rather plaintiff deserves full decree for the decretal amount as claimed for.

The judgment and decree in part passed by the learned Subordinate Judge is otherwise bad in law and is liable to be set aside, and the suit is decreed for the full amount demanded.

However, during trial parties were tried to prove their respective cases, the plaintiff examined one witness and adduced documentary evidences i.e., exhibit No. 1 the letter of undertaking dated 16.05.87 given by Messrs. Mashrefi Traders Ltd. and Bengal Liner Ltd. to the plaintiff Mongla Port Authority, Exhibit No. 2, Bill No. 2640/27 dated 18.6.87 for the port and pilotage dues of the ship M, V, Bengal Pride by the plaintiff, Exhibit No. 2(Ka)-2 (ta), Bill No. 2A-2 (k) the arrival and departure and pilot reports, Exhibit No. 3 bill, Exhibit No. 3(Ka) -3 (chh) arrival and departure and pilotage dues, Exhibit-4 memo No. 11493/2, Exhibit-4 (Ka) to Exhibit-4 (Gha) memo No. 11493/2, 3122/13, 6116/1.3, 99/7, Exhibit No. 5 under taking, Exhibit No. 6 Legal Notice, Exhibit No. 7 reply, Exhibit No. 8 and 9 letter to the Advocate of plaintiff, and Exhibit No. 10 legal Notice.

On perusal, it appears that no witness was presented by the defendant. But, PW-1 Sheikh Shahadat Hossain was partially crossed by the defendant. The defendant Nos. 1 and 2 did not take any steps or participate in the cross-examination.

Upon consideration of the materials and evidence on record, the trial Court, by its judgment and decree dated 25.01.1998 and 03.02.1998, decreed the suit in part against the defendant Nos. 1 and 2.

This Court examined the exhibit along with the plaint, written statement, and other materials. It appears that the defendant No. 2, M/s Bengal Liner Limited, was the owner of the shipping vessels M/s Bengal Pride and M/s Bengal Star, and defendant No. 1 was engaged in the import, export, and

maritime transport business through the said vessels. The defendant No. 1, M/s Mashrefi Traders Ltd., obtained permission to act as the shipping agent under the plaintiff M/s Mongla Port Authority. The M/s Bengal Pride reached the Mongla Port on 6.2.87 and left the port, upon discharge of the goods on 17.4.87. However, it appears the total charge for port and pilotage for both the ships remains due. According to the defendants, the ship M.V Bengal Pride arrived at the entrance gate (Hiron Point) of the port area on 7.8.86. Knowing that the plaintiff engaged the pilot, Mr. Abdullah, to take the said ship from Hiron Point to Mongla Port. However, he was boarded and on his instruction, the ship was anchored without a buoy nearby to the Pashur River, on the pretext that there was no suitable buoy to anchor it. Thereafter, on 14.09.86, the ship was taken to Buoy No. 1 with the help of a tug for unloading the goods, and such unloading continued till 14.10.86. However, there was a request to anchor the ship at a safe place with the help of a tug; though, the ship remained there for seven days, and thereafter it was shifted on 23.10.86. It was alleged that due to not anchoring the ship at the right place, it was seriously damaged and almost useless. Since the ship remains therein for which the plaintiff is entitled to get charges for 07.09.86 to 14.09.86, i.e., 07 (seven) days at half rate, from 14.9.86 to 14.10.86, i.e., 32 (thirty two) days, from 14.10.86 to 23.10.86, i.e., 9 (nine) days at full rate, from 24.10.86 to 22.10.86, i.e., 211 (two hundred and eleven) days at half rate.

However, on our scrutiny, it is evident that the defendant Nos. 1 and 2 did not prove their claim by giving oral evidence in support of their statement. In support of their claim, there is no documentary evidence on record before the court. Moreover, the defendant No. 2 has admitted by its letter of undertaking dated 16.5.87(Exhibit-1), wherein it has states that “being owner of the above mentioned vessel do hereby under take to pay Tk. 16,88,969/- only being out standing port and pilotage dues against the above vessel to the Mongla Port Authority” in the alleged under taking rate was not mention or claim by the defendant Nos. 1 and 2, it is clear that rate was not disclose. In that context, it can be said that the present rate is not acceptable.

It was claimed by the defendant Nos. 1 and 2 that due to the negligence or willful act, the ship M.V Pride was detained for a substantial period. However, the exhibits clearly state M.V Bengal Pride reached the Chalna port on 7.9.86 and departed the port on 17.5.86. Therefore, the claim of the defendant Nos. 1 and 2 that the ship M.V Pride was detained for a long time due to the negligence or willful act of the plaintiff cannot be found to be true. Further, the plaintiff, by his plaint, claimed Tk. 26,43,700.85 for the port and pilotage of the ship M.V Bengal Pride. However, Exhibit 1 clearly shows the

claim was Tk. 16,88,969/-. Therefore, there is no scope for more, which was not claimed by the plaintiff; the plaintiff is entitled to receive Tk. 16,88,969/- from the defendant Nos. 1 and 2 for the port and pilotage of the ship M.V Bengal Pride. The plaintiff claimed Tk. 4,56,571.34 for the port and pilotage dues from the ship M.V Bengal Star. However, according to the defendant Nos. 1 and 2, the alleged claim was not correct. Despite such a claim, they did not give a correct account in their written statements.

It is pertinent to note that the plaintiff claimed the Port and pilotage charge for the alleged ship vide its Bill No. 2641/27 dated 18.6.87 (exhibit 3), and it also shows that the alleged amount of Tk. 4,56,571.34 was due from defendant Nos. 1 and 2. According to such exhibits, the defendants No. 1 and 2 are duty-bound to pay the said Tk. 4,56,571.34 to the plaintiff for the port and pilotage of the ship M.V Bengal Star. It appears, nothing was mentioned in the application as to the rate of interest and for what period the plaintiff has fixed the interest. But, the plaintiff demanded such money from the defendants for the port and pilotage dues by issuing memos dated 10.11.87, 13.1.88, 24.3.88, and 30.5.88. However, on perusal of the undertaking dated 3.2.88 (Exhibit 5), it is evident that the defendant promised to pay the money in installments. However, by legal notice dated 18.04.88 and 12.08.89 (exhibits 6 and 10), it has claimed that nothing was paid.

However, on our meticulous perusal of the entire evidence, it appears that the learned trial Court rightly observed that the plaintiff, by his plaint, claimed Tk. 26,43,700.85 for the port and pilotage of the ship M.V Bengal Pride. The plaintiff-appellant has failed to prove his case. The exhibit was also approved, and it has been mentioned that Tk. 16,88,969/-. In the context above, there is no scope for more, which was not claimed by the plaintiff; thus, the plaintiff is entitled to receive Tk. 16,88,969/- from the defendant Nos. 1 and 2 for the port and pilotage of the ship M.V Bengal Pride.

In the context, we are constrained to hold that the impugned judgment passed by the trial Court below is not liable to be interference with. The learned trial judge correctly and properly evaluated the evidence on record as to the right, title, and interest of the respective parties and rightly concluded the suit. The plaintiff-appellant, by adducing evidence, could not prove his claims. Considering the facts and circumstances of the case, along with the evidence on record discussed above, we are constrained to dismiss the appeal as the plaintiff/ appellant failed to prove his case.

In view of our discussion made in the foregoing paragraph by it is now clear that the instant appeal must have failed.

In a result, the appeal is dismissed, however, there will be no order as to the costs; the judgment and decree passed by the learned Subordinate Judge, 1st Court, Khulna, is hereby affirmed.

Send down the lower Court record with a copy of this Judgment to the Court below at once.

Md. Riaz Uddin Khan, J:
I agree