

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

Admiralty Suit No. 36 of 2017

M.T. Gagasan Johor and another

Plaintiff

-Versus-

M.V. Banglar Shikha and others

Defendants

Mr. Mohammod Hossain, Senior Advocate

... For the plaintiff

Mr. Mohiuddin Abdul Kadir, with

Ms. Zinia Amin, and

Mr. Noor Mohammad Mozumder Roni, Advocates

... For the defendant Nos. 1-3

The 12th February of 2025

Present:

Mr. Justice Zafar Ahmed

The 3rd defendant has filed the instant application for dismissal of the suit on the grounds of winding up of the 2nd plaintiff company and for return of 2 (two) original registration certificates of two vessels owned by 3rd defendant furnished as security.

On 21.05.2016, a collision occurred between the vessels M.T. Gagasan Johor, IMO No. 9528897, Flag: Malaysia and M.V. Banglar Shikha, IMO No. 8908478, Flag: Bangladesh within the territorial water of Bangladesh. The vessel M.T. Gagasan Johor as the 1st plaintiff and its registered owner Gagasan Joh Sdn. registered in

Kuala Lumpur, Malaysia as the 2nd plaintiff filed the instant suit for damages and compensation against the vessel Banglar Shikha, its Master, registered owner and others as defendants praying for a decree for USD. 4,150,200.00 together with interest and cost.

This admiralty Court admitted the plaint on 08.06.2017 and passed an order for arrest of the 1st defendant vessel Banglar Shikha. The 3rd defendant Bangladesh Shipping Corporation, which is a statutory body established by the President's Order No. 1 of 1972, is the owner of the 1st defendant vessel. On an application of the 3rd defendant, this Court on 23.08.2024 modified the earlier order of arrest and directed the 3rd defendant to deposit the original registration certificates of two vessels owned by it to be kept at the custody of the Marshal of the Court. The 1st defendant vessel was released from the order of arrest.

Be it mentioned that earlier the former Master, former Chief Engineer and former Chief Officer of the 1st plaintiff vessel filed Admiralty Suit No. 36 of 2016 in Bangladesh against the present plaintiffs and others for recovery of seaman's wages. In the said suit, the 1st plaintiff vessel was arrested on 31.05.2016. Eventually, the 1st plaintiff vessel was sold in auction which was approved by this Court on 10.07.2024. The present 3rd defendant is not a party to the said suit.

Relevant facts:

The 1st plaintiff is the vessel itself and the 2nd plaintiff is the company which is the owner of the vessel. The vessel is represented by her constituted attorney Mr. Abul Hasan by dint of a power of attorney executed on 03.06.2017 by the Master of the vessel Md. Zahirul Islam authorising the attorney to institute and/or defend any suit or legal proceedings in Bangladesh for and on behalf of or in the name of M.T. Gagasan Johor (1st plaintiff).

The 2nd plaintiff company is represented by Mr. Abul Hasan by dint of a power of attorney executed on 08.01.2016 by Capt. Johari Mohd Noh, Chief Executive Officer (CEO) of the company to institute any legal proceedings in Bangladesh or to defend the company.

It is admitted by the parties that in Companies (winding-up) Petition No. WA-28NCC-1025-12/2016 under Sections 217(1)(b) and 218(1)(e) of the Companies Act, 1965, the High Court of Malaya at Kuala Lumpur (Commercial Division) on 02.02.2017 passed an order for winding up the 2nd plaintiff company. Mr. Duar Tuan Kiat of Ernst and Young, Level 23A, Menara Milenium, Jalan Damanlela, Pusat Bandar Damansara, 50490 Kuala Lumpur was appointed as liquidator of 2nd plaintiff company. The instant suit was filed on 08.06.2017.

Arguments:

The learned Advocate for the 3rd defendant submits that the vessel cannot sue as a plaintiff in an admiralty proceeding. The learned Advocate next submits that the 2nd plaintiff company was wound up on 02.02.2017. Under Section 301(2) of the Companies Act, 1994 of Bangladesh, on the appointment of a liquidator, all the powers of the directors cease, except so far as the committee of inspection or if there is no such committee, the creditors sanction the continuance thereof. The crux of the argument of the learned Advocate is that the company was wound up earlier and the suit was filed subsequently. The power of attorney executed earlier by the CEO of the company was no longer valid at the time of filing the suit. As such, the suit fails.

The learned Advocate appearing for the plaintiffs submits that the ship is a juristic person and the Master of the vessel can authorise any person to initiate a legal proceeding or defend the same on behalf of the vessel. In respect of the winding up of the 2nd plaintiff company, the learned Advocate submits that the Code of Civil Procedure, 1908 of Bangladesh (in short, the 'Code') is silent as to the consequence of a suit already filed by a company which is wound up later on. He submits that in the instant case, in spite of winding up of the 2nd plaintiff company, the suit shall not fail on this ground. The learned Advocate refers to Section 209 of Contract Act, 1872 of

Bangladesh. The learned Advocate alternatively submits that the 1st plaintiff vessel is competent to continue the suit and as such, the suit shall not fail.

The learned Advocate for the 3rd defendant objected to the submission that the ship is a juristic person. The issue requires clarification.

Juridical personality of a ship:

In *The Bombay and Persia Steam Navigation Company Limited vs. Shepherd and ors.*, ILR 1888 12 Bom 237, the High Court of Bombay observed that it was usual to make the ship and her owners defendants in cases of damage arising out of a collision. The Court referred to various provisions of the then Code of Civil Procedure, 1882 (now, Code of Civil Procedure, 1908) and the definition of ‘person’ given in the then General Clauses Act, 1868 (now, General Clauses Act, 1897) and concluded that the expression ‘defendant’ used in Section 28 of the Code of 1882 (identical provision is contained in Order 1 rule 3 of the Code of 1908) includes a vessel which for this purpose is invested with a persona. In *M.V. Elisabeth and ors. vs. Harwan Investment and Trading Pvt. Ltd. and ors.*, AIR 1993 SC 1014, the Indian Supreme Court observed that an action in *rem* is directed against the ship itself to satisfy the claim of the plaintiff out of the *res*. The ship is for this purpose treated as a person. Referring to *The Bold Buccleugh* (1851) 7 Moo. PC 267, the

Indian Supreme Court further observed that a maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it “travels” with the ship. Because the ship has to “pay the wrong it has done”, it can be compelled to do so by a forced sale. In *ICICI Ltd. vs. M.F.V. ‘Shilpa’ and ors.*, AIR 2002 Bom 371, the High Court of Bombay held that it is a peculiar feature of the admiralty jurisdiction that a vessel or ship is treated as a person against which a civil suit can be filed which is capable of being arrested for satisfying the claim of the plaintiff.

In Anglo-American admiralty jurisprudence, the concept of investing the ship with the character of a ‘*persona*’ has been taken a bit further. For example, it is stated in the *Corpus Juris Secundum* (West publishing Co. Vol. 2, Admiralty, 92, p. 202), “Under admiralty law and maritime usage a ship has an identity of her own, a juridical personality, so that she may be sued in *rem*..... In *rem* jurisdiction exists only where subject matter of the action, or a substituted thereof, is within the jurisdiction of the Court.”

It is stated in Benedict, *The Law of American Admiralty*, 6th Edn. vol. 1, p.3, “In admiralty the vessel has a juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from those of the owner) which may be enforced by process and decree against the vessel,for admiralty in appropriate cases administers remedies in *rem*,.....” In *The*

United States vs. The Big Malek Adhel, etc., 43 US (2 How) 210 (233) (1844), Justice Story observed, “The vessel which commits the aggression is treated as the offender, as the guilty instrument to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner.....”

The *Latin* term ‘*vinculum juris*’ is translated as “a bond of the law” meaning the tie that legally binds one person to another (Black’s Law Dictionary, 9th Edn.). The purpose of attaching the concept of ‘*vinculum juris*’ with the ship in traditional Anglo-American admiralty jurisprudence is to obtain security for satisfaction of the claim and to put pressure on the persons interested in the ship to appear and defend and put in alternative security, if so desire.

Samareshwar Mahanty in his text book ‘Maritime Jurisdiction of Admiralty Law in India’, 2nd Edn. 2018, at pp. 82 and 83 observed that it would be incorrect to extend the conceptualisation further and impart juridical personality to the ship in all respects, constituting the ship into a legal person having full corporate capacity. The author argues, for example, a ship itself cannot sue for enforcing some legal right or interest though at common law by practice of admiralty Court the owners of a ship or cargo may sue as such (without naming themselves in the pleading), (vide Halsbury’s Laws of England, 4th Edn. (reissue), vol. 1(1), Article 375, p. 473) they do so as owners, enforcing their rights, and the ship does not sue in its own right as a

person; and the owners are under obligation to identify themselves on request of any other party. The author of the text book referred to *M.V. Elisabeth* (*supra*) wherein the Indian Supreme Court has put the matter cautiously in holding that for the purpose of satisfying the claim of the plaintiff out of the res in an action in *rem*, the ship is treated as a person.

The matter can also be looked into from a different perspective. It is settled principle in admiralty jurisprudence that the *res* is the ship. If the '*res*' is ascribed a full legal character, the ship should be permitted to sue as a plaintiff to recover the loss and damages sustained by her owners as a result of the damage done to her. If the owners decide to abandon the claim and not to prosecute and recover the damages, who would claim the damages on behalf of the ship or represent the ship as plaintiff? Is it the Master of the vessel or any person other than the owners? The person did not suffer the loss. If the suit filed by the ship is decreed, the person other than the owners of the ship shall get the decretal amount which he is not entitled to get under the law. This situation shall lead to an anomaly in the judicial system and would be an abuse of the process of the Court. This is another reason why the ship cannot sue as plaintiff. It follows that in the instant case the 1st plaintiff vessel M.T. Gagasan Johor is not competent to file the suit as plaintiff.

Winding up of the 2nd plaintiff company:

Now, I turn to the 2nd plaintiff which is the registered owner of the vessel. The 2nd plaintiff is a company incorporated in Malaysia. In this suit, the 2nd plaintiff is represented by its constituted attorney Mr. Abul Hasan by dint of a power of attorney executed in Malaysia on 08.01.2016 by the CEO of the company. I have already noted that the 2nd plaintiff company was wound up by order of the High Court of Malaya on 02.02.2017. The instant suit was filed on 08.06.2017 by dint of the power of attorney dated 08.01.2016. The official liquidator of the company appointed by the Malaya High Court has not yet filed any application for ratification of the action of the attorney so far as it relates to filing of the suit and to continue the same or to represent the 2nd plaintiff company by the official liquidator.

Section 302(2) the Companies Act, 1994 states that on the appointment of a liquidator, all powers of the directors cease. It follows that the liquidator, with the sanction of the Court, can institute any suit or other legal proceedings in the name and on behalf of the company (*Great Indian Motor Works vs. Employees*, AIR 1959 SC 1186). For continuing or defending a suit already instituted before the winding up, no sanction of the Court is necessary [*Eastern Coal Co. Ltd. vs. Sunil Kumar Roy*, (1969) 39 Com Cases 126 (Cal)]: The case in hand does not fall within this category.

Section 6 of the Admiralty Court Act, 2000 requires a plaint to be drawn up, subscribed and verified according to the provisions of the Code of Civil Procedure, 1908. Under Order 4 rule 1 of the Code, a suit is instituted by presenting a plaint to the Court. Order 3 rule 2 permits a party to appear, apply or act in Court through his recognized agent. A constituted attorney is a recognized agent. Order 29 rule 1 states that in suits by or against a corporation, *i.e.* a body established by or registered under a law, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

In the instant case, the power of attorney executed by the CEO of the 2nd plaintiff company became invalid after winding of the company. The suit was filed by the constituted attorney by dint of the invalid power of attorney. The fact is that the suit was filed after winding up of the company. Therefore, the official liquidator or his constituted attorney was the only person to file the suit (ILR 18 All 198, AIR 1918 Mad 362). In *Uttamram Vithaldas vs. Thakordas Parshottamdas*, AIR 1922 Bom 113a, it was held that when a plaint is signed and presented by the plaintiff's clerk who had no authority from the plaintiff to carry on business in the name of the plaintiff, it cannot be treated as a plaint signed by a recognized agent and the Court may dismiss the suit. In this case, the plaint signed and verified

by the constituted attorney Mr. Abul Hasan by dint of the invalid power of attorney cannot be said to be presented to the Court in accordance with law.

Section 209 of the Contract Act, 1872 states that when an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him. It was held in *Re Watson, ex P. Phillips*, (1886) 18 QBD 116 that the representatives of the principal may ratify any contract entered into on behalf of the estate of the deceased principal. Section 209 does not apply to the facts and circumstances of the case in hand.

Conclusion:

The upshot of the above discussions is that in admiralty proceedings a ship is invested with the character of a persona for the purpose of making her defendant only. She is not a 'persona' to sue as plaintiff. Therefore, the 1st plaintiff vessel was not competent to sue as plaintiff. The plaint was not signed, verified and presented by the person having authority on behalf of the 2nd plaintiff company on it being wound up. Hence, the application filed by the 3rd defendant for dismissal of the suit succeeds.

Accordingly, the suit is dismissed. The Marshal of the Court is directed to return the original registration certificate of two vessels,

namely, M.T. Banglar Jyoti and M.T. Banglar Shourabh to the learned Advocate for the 3rd defendant. The official liquidator of the 2nd plaintiff company is at liberty to file an application for restoration of suit in accordance with law, if so advised.

Arif, ABO