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

***Present**:*
Justice Sikder Mahmudur Razi

Admiralty Suit No. 82 of 2017

IN THE MATTER OF:

Md. Saidur Rahman Letu
.... Plaintiff.
VERSUS
M.V. ASIA ZIRCON II and others.
... Defendants

Mr. Mokim Miah, Advocate.
...For the Plaintiff.
Mr. Tanim Hossain Shaown, Advocate with
Mr. S.M. Mohsin Ali Advocate
.......For the defendant No.6
Mr. M. Belayet Hossain, Senior Advocate
... For the defendant Nos. 1 & 4

The 26th July, 2026

1. Upon an application filed by the plaintiff in Admiralty Suit No. 82 of 2017, seeking transfer of Money Execution Case No. 25 of 2019, presently pending before the 2nd Commercial Court, Dhaka, to this Court, a Rule was issued on 03.05.2026 in the following terms:

> *"Let a Rule be issued calling upon the defendants to show cause as to why an order of transfer of the Money Execution Case No. 25 of 2019 pending before the 2nd Commercial Court, Dhaka to this court for analogous disposal together with Admiralty Suit Nos. 79 of 2017 and 82 of 2017 should not be passed and/or pass such other or further order or orders as to this court may seem fit and proper".*

2. It is the case of the plaintiff-applicant that the instant Admiralty Suit has been instituted claiming compensation for the loss and damage suffered by the plaintiff on account of the delivery of damaged/off-specification Indonesian steam coal in bulk, which was carried by defendant No. 1 vessel. It is further contended that the vessel, M.V. ASIA ZIRCON II, was unseaworthy and that, due to such unseaworthiness, the cargo in question was damaged.

It is the further case of the plaintiff that, pursuant to an order of this Court, a Joint Survey was conducted and, according to the Joint Survey Report, the quality of the cargo was found to be off-specification. Subsequently, pursuant to the order of this Court, defendant No. 1 vessel was released from arrest upon furnishing a Bank Guarantee.

It is the further case of the plaintiff that defendant No. 6, namely, Galaxy Energy and Resources Co. Pte. Ltd., being the supplier of the cargo in question, is also jointly and severally liable with defendant No. 1 for the damage caused to the said cargo. It is further the case of the plaintiff-applicant that, since the liability of defendant No. 6 is co-extensive with that of defendant No. 1 in respect of the subject matter of the suit, the Money Execution Case No. 25 of 2019, now pending before the learned District Judge, Dhaka, ought to be transferred from that Court to this Court for adjudication along with the instant Admiralty Suit.

From the assertions made by the plaintiff-applicant, it further appears that Defendant No. 6 had earlier instituted Arbitration Application No. 057 of 2018 before the Singapore International Arbitration Centre (SIAC) and obtained an award in its favour in the said arbitration proceeding. Pursuant to the said arbitral award, Money Execution Case No. 25 of 2019 was filed for enforcement and execution thereof.

It is the further case of the plaintiff-applicant that, since the parties to the said execution proceeding are substantially the same as those involved in Admiralty Suit No. 82 of 2017 and Admiralty Suit No. 79 of 2017, the Money Execution Case ought to have been heard analogously with the aforesaid Admiralty Suits. It is the further contention of the plaintiff-applicant that the said arbitral award was passed *ex-parte*.

With these assertions the plaintiff prays for making the Rule absolute and for transfer of the said Execution Case No. 25 of 2019 before this court.

3. The Defendant No. 6- the original supplier of the cargo in question entered appearance as well as filed a written objection against the said application.

3.1 Mr. Tanim Hossain Shaown, learned advocate for the defendant no. 6 submits that the dispute adjudicated upon by the Arbitral Tribunal in Singapore between the plaintiff and Defendant No. 6 is materially and substantially different from the subject matter of the instant Admiralty Suit. He next submits that the instant proceeding is a maritime dispute and has been instituted as an action in rem, arising out of the alleged unseaworthiness of Defendant No. 1 vessel. In contrast, Defendant No. 6 instituted Money Execution Case No. 25 of 2019 for realization of the compensation awarded on account of the breach of contract between Defendant No. 6 and the plaintiff in respect of the sale of coal, as the plaintiff failed to make payment of the contractual price.

The learned Advocate further submits that this Court exercises admiralty jurisdiction under the Admiralty Court Act, 2000, whereas Money Execution Case No. 25 of 2019 was instituted by Defendant No. 6 under the provisions of the Arbitration Act, 2001, read with the Code of Civil Procedure, 1908. Thus, according to the learned Advocate, the two proceedings are distinct and operate within separate statutory frameworks.

He next submits that the Arbitration Act, 2001 is a special law under which a foreign arbitral award is required to be recognized and enforced by the District Judge in the same manner as a decree passed by a Civil Court. As such, there is no scope for transferring Money Execution Case No. 25 of 2019 to this Court by invoking Section 24 of the Code of Civil Procedure, 1908, since exercise of such jurisdiction would, according to the learned Advocate, defeat and frustrate the provisions and scheme of the special law governing the recognition and enforcement of foreign arbitral awards.

The learned advocate further submits that the plaintiff-applicant has failed to disclose any cogent ground or sufficient justification for seeking transfer of the said Money Execution Case to this Court. He next submits that transfer of a proceeding from one Court to another is a discretionary relief, and that such discretion can only be exercised upon the existence of sufficient and cogent reasons. According to the learned Advocate, no such ground has been made out in the instant case.

With these submissions Mr. Tanim Hossain Shaown learned Advocate for defendant No. 6 prays for discharging the Rule.

4. On the other hand, Mr. M. Belayet Hossain, learned Senior Advocate appearing on behalf of Defendant Nos. 1 and 4, also raised objection to the proposed transfer of Money Execution Case No. 25 of 2019 from the Court of the learned District Judge to this Court. By filing an affidavit-in-opposition, he brought to the notice of this Court that, in respect of the said Money Execution Case, the plaintiff-applicant has already filed an application under Section 46(1)(a)(i) and (iv), read with Sections 7 and 10 of the Arbitration Act, 2001, challenging the recognition and enforcement of the arbitral award.

He next submits that the claim of the plaintiff has already been sufficiently secured by furnishing a Bank Guarantee at the time of release of the vessel in question from arrest. He next submits that Defendant Nos. 1 and 4 were neither parties to the original arbitration proceeding nor parties to Money Execution Case No. 25 of 2019.

The remaining submissions advanced by Mr. Hossain are substantially similar to those made on behalf of Defendant No. 6 and, therefore, need not be repeated.

5. I have learned Advocates for the respective parties as well as gone through the applications, written objections and the materials and record.

5.1 Admittedly, another Admiralty Suit, being Admiralty Suit No. 79 of 2017, was also instituted before this Court by the plaintiff seeking, inter alia, an order restraining payment under the Letter of Credit (LC) in favour of Defendant No. 6, being the shipper/supplier of the cargo in question. It is also an admitted position that the plaintiff failed to obtain any interim order restraining payment under the said LC and, ultimately, payment thereunder was made. Consequently, with the subsequent payment under the LC, the principal relief sought in the said Admiralty Suit appears to have substantially lost its efficacy.

5.2 It is further an admitted position that the arbitration proceeding was initiated by Defendant No. 6 against the plaintiff alleging breach of contractual obligations, particularly in relation to demurrage allegedly incurred due to delayed payment under the LC, delayed discharge of the cargo and detention charges allegedly suffered in respect of Defendant No. 1 vessel.

5.3 It is also undisputed that an Agreement for Sale in respect of the cargo in question was entered into and executed between the plaintiff and Defendant No. 6. Articles 13 and 14 of the said Agreement contain specific provisions relating to dispute resolution, governing law and arbitration.

5.4 It appears that Defendant No. 6 initiated the arbitration proceeding pursuant to the arbitration agreement contained in the said Agreement, which ultimately culminated in an arbitral award. Thereafter, invoking the provisions of the Arbitration Act, 2001, Defendant No. 6 instituted Money Execution Case No. 25 of 2019 before the competent Court in Bangladesh under Section 45 of the said Act, seeking recognition and enforcement of the foreign arbitral award.

5.5 At this juncture, it is pertinent to note that the Arbitration Act, 2001 itself provides a specific statutory mechanism for resisting the recognition and enforcement of a foreign arbitral award. Section 46 of the said Act prescribes the grounds upon which recognition or enforcement of such an award may be refused. Admittedly, the plaintiff has already availed itself of the said statutory remedy by filing an application under Section 46(1)(a)(i) and (iv) of the Arbitration Act, 2001, challenging the recognition and enforcement of the foreign arbitral award. The said application is presently pending for adjudication before the competent Court.

5.6 The plaintiff, however, seeks transfer of Money Execution Case No. 25 of 2019 to this Court principally on the ground that the disputes involved therein are connected with the subject matter of the present Admiralty Suit and that analogous hearing of the two proceedings would avoid conflicting decisions and multiplicity of proceedings.

5.7 In support of such contention, the plaintiff has placed reliance upon certain orders passed in matters where Money Suits were transferred for analogous hearing with Admiralty Suits. However, upon examination, those orders do not appear to advance the case of the plaintiff. The proceedings transferred in those cases were Money Suits in which the trials were still pending. More importantly, the disputes involved in the respective Admiralty Suits and the corresponding Money Suits were found to be so inextricably connected and inseparable that their separate adjudication could have resulted in overlapping findings or conflicting decisions. Those considerations cannot automatically be extended to a Money Execution Case instituted for recognition and enforcement of a foreign arbitral award under the Arbitration Act, 2001.

5.8 The said distinction is material. Money Execution Case No. 25 of 2019 is not an original proceeding for adjudication of the underlying contractual disputes between the parties. Those disputes have already been subjected to arbitration and have culminated in an arbitral award. At the stage of recognition and enforcement, the competent Court is required to proceed within the statutory framework prescribed by the Arbitration Act, 2001. The plaintiff itself has invoked that framework by filing its objection under Section 46 of the said Act. The scope and nature of adjudication in such a proceeding are, therefore, materially different from those arising in the present Admiralty Suit.

5.9 On the other hand, the instant Admiralty Suit is still at a preliminary stage. Upon perusal of the averments made in the plaint and upon consideration of the submissions advanced by the respective parties, it appears that the Admiralty Suit has been instituted primarily on allegations relating to the unseaworthiness of Defendant No. 1 vessel and the consequences allegedly flowing therefrom. The claim of the plaintiff in the Admiralty Suit also stands sufficiently secured, as Defendant No. 1 vessel was released from arrest upon furnishing an adequate Bank Guarantee.

5.10 Thus, although the two proceedings may have arisen against the background of the same commercial transaction and may share certain factual circumstances, such commonality by itself is not sufficient to justify their analogous hearing. What is material is whether the issues requiring adjudication in the two proceedings are so intrinsically connected that they cannot conveniently or effectively be determined separately. In the present case, I do not find such an inseparable nexus.

Rather, the nature, scope and object of the two proceedings are fundamentally different. In the Admiralty Suit, this Court is called upon to adjudicate the maritime claim pleaded by the plaintiff against the vessel and the concerned defendants. In Money Execution Case No. 25 of 2019, the competent Court is concerned with the recognition and enforcement of a foreign arbitral award and with the objections raised thereto under Section 46 of the Arbitration Act, 2001. The questions requiring determination in the latter proceeding are governed by the specific statutory regime relating to foreign arbitral awards and need not depend upon the eventual determination of the issues raised in the Admiralty Suit.

5.11 Furthermore, the plaintiff, having already invoked the remedy available under Section 46 of the Arbitration Act, 2001 before the competent Court, has not been able to demonstrate that its objection to the recognition and enforcement of the foreign arbitral award cannot be effectively adjudicated by that Court. Nor has it been shown that continuation of the two proceedings before their respective Courts would necessarily result in inconsistent or irreconcilable findings.

5.12 Transfer and analogous hearing of proceedings are intended to facilitate the proper and effective administration of justice and not merely to bring before one Court all proceedings having some factual connection with the same commercial transaction. Unless the issues are substantially common and their separate adjudication is likely to cause real inconvenience, prejudice or a genuine possibility of conflicting decisions, the mere existence of some factual overlap cannot, by itself, furnish sufficient justification for transfer.

5.13 In view of the foregoing discussions, I am of the considered view that no sufficient ground has been made out for transfer of Money Execution Case No. 25 of 2019 from the 2nd Commercial Court, Dhaka to this Court for being heard analogously with Admiralty Suit No. 82 of 2017. The statutory objection already filed by the plaintiff under Section 46 of the Arbitration Act, 2001 may be determined by the competent Court in accordance with law, independently of the issues requiring adjudication in the present Admiralty Suit.

6. Accordingly, I do not find any merit in the Rule issued in Admiralty Suit No. 82 of 2017. The Rule is, therefore, discharged.

There shall, however, be no order as to costs.

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(Sikder Mahmudur Razi.J.)