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

Present:
Justice Sikder Mahmudur Razi

Admiralty Suit No. 4 of 2018

Midland Bank Limited
…Plaintiff.
Vs.
M.V. KALAMATA TRADER
and others.
…Defendants.
Mr. Mohammod Hossain, Sr. Adv. with
Mr. Abdul Halim Shikder, Advocate
........For theplaintiff-Applicant.
No one appears
.... For the defendant nos. 1 to 6 and 16
to 18-Counter Claimants.

The 11th August, 2026

1. The instant application for return of counter-claim has been filed by the original plaintiff, namely Midland Bank Ltd. The counter-claim was filed by defendant Nos. 1 to 6 and 16 to 18.

2. It appears that defendant No. 1 is the vessel *M.V. Kalamata Trader* (IMO No. 9701293), defendant No. 2 is the Master of the said vessel, and defendant No. 3 is the owner and other persons interested in the said vessel.

On the other hand, defendant No. 4 is the vessel *M.V. Cape Syros* (IMO No. 9676204), defendant No. 5 is the Master of the said vessel, and defendant No. 6 is the owner and other persons interested in the said vessel.

On the other hand, defendant No. 16 is the vessel *M.V. Majestice* (IMO No. 9694438), defendant No. 17 is the Master of the said vessel, and defendant No. 18 is the owner and other persons interested in the said vessel.

2.1 The applicant-plaintiff is represented by the learned Senior Advocate, Mr. Mohammod Hossain, assisted by Mr. Abdul Halim Shikder, learned Advocate. On the other hand, Mr. Tanim Hossain Shawon, learned advocate along with Mr. Nojeeb Huda were the learned advocates for the defendant vessels, its' masters and the owners and other persons interested therein. At the prayer of the learned Advocate for the defendants, the hearing of the application was adjourned on 20.07.2026 and again on 03.08.2026. Thereafter, on 10.08.2026, when the matter was taken up for hearing, no one appeared on behalf of the said defendants. Consequently, upon hearing the learned Advocate for the plaintiff-applicant, the matter was fixed for order on 11.08.2026. Even today, no one appears on behalf of the defendants. Accordingly, the matter is taken up for passing order.

3. It has been contended that the counter-claim filed by defendant Nos. 1 to 6 and defendant Nos. 16 to 18 are not maintainable under the Admiralty jurisdiction of this Court, inasmuch as the counter-claims do not disclose any cause of action against the plaintiff.

It has further been contended that the Schedule of Claims annexed to the counter-claims does not disclose that the defendant vessels have suffered any loss and, therefore, the counter-claims are not maintainable under section 3(2) of the Admiralty Court Act, 2000.

It has also been asserted that the plaintiff instituted the suit bona fide upon the documents submitted by the exporter of the cargo and, therefore, no liability can arise against the plaintiff so as to sustain the counter-claims.

Finally, it has been contended that a plain reading of the counter-claims demonstrates that the claims made therein do not fall within any of the categories of maritime claims enumerated in clauses (a) to (r) of sub-section (2) of section 3 of the Admiralty Court Act, 2000.

4. Mr. Mohammad Hossain, learned Senior Advocate for the plaintiff-applicant makes his submissions in line with his application.

5. However, for proper and effective adjudication of the instant application, it has become incumbent upon this court to go through the plaint of the instant Admiralty Suit.

It is an undisputed fact that the instant Admiralty Suit No. 04 of 2018 has been instituted by Midland Bank Ltd., as the plaintiff, impleading as defendants as many as 14 (fourteen) vessels, their respective Masters, owners and other persons interested therein, together with their local agents, as well as the exporters and importers of the alleged consignments. From the plaint, it appears that defendant No.48, M/s Global Agro Resources Incorporation shipped a huge quantity of fresh potatoes to defendant No. 47 and it has been asserted in the plaint that when those potatoes were placed on board the ships/vessels defendant Nos.44 and 45 being the local agent of those vessels issued in total 41 Bills of Lading.

It has further been asserted in the plaint that although the defendant vessels received the cargo in apparent good condition and issued the respective Bills of Lading, but did not discharge the cargo to the consignee.

It has further been asserted in the plaint that the plaintiff bank on receipt of the relevant shipping documents purchased the documents and made ‘advance’against the subject shipment to the exporter i.e. defendant No.48.

It has further been asserted that the plaintiff also communicated the shipping documents to the defendant No.46 which was acting as “collecting bank" for the plaintiff bank and "presenting bank" to the importer of the cargo i.e. defendant No.47. As the plaintiff did not receive any payment against the Bills of Lading from defendant No.46 for a considerable period of time they inquired into the matter, sent on different dates swift messages and ultimately came to know from the said defendant No.46 that they neither endorsed the Bills of Lading and the subject Bills of Lading were still under their custody and neither have it issued any shipping guarantee nor endorsed the copy of the documents, which implies that defendant No.46 did not facilitate release of the subject consignments in any manner whatsoever.

In view of such reply from defendant No.46, the plaintiff being the lending Bank further inquired into the matter to defendant Nos.44 and 45 who are acting as the local agents of the vessels and who issued the Bills of Landing in question. But as they did not receive any answer from the said local agents about the whereabouts of the cargo they instituted the instant suit on apprehension of misappropriation of those cargoes by the defendants in collision with each other.

6. Against this backdrop, the instant Admiralty Suit was instituted and orders of arrest were obtained against the defendant vessels. Subsequently, upon information received from the Customs Authority, it came to light that the cargoes in question had never in fact been shipped on board the vessels. Upon discovering the fraud stated to be perpetrated upon it through the shipping documents, the plaintiff Bank withdrew the Admiralty Suit. Notwithstanding such withdrawal, defendant Nos. 1 to 6 and 16 to 18 and some other vessels and their owners pursued their counter-claims seeking, inter alia, reimbursement of interest paid in connection with the bank guarantees furnished for release of the vessels and legal costs incurred in defending the proceedings.

7. The question that now falls for determination is whether such a counter-claim is maintainable and ought to be permitted to proceed for trial.

8. It is a settled principle of Admiralty law that a ship owner is not entitled to damages for arrest simply because the plaintiff's suit was ultimately unsuccessful or withdrawn. It is equally well settled that, in order to succeed in a claim for damages for the wrongful arrest of a vessel, the shipowner must prove that the arresting party acted either *mala-fide* (in bad faith) or with *crassa negligentia* (gross negligence). *Mala-fides* is established where the arresting party had no honest or bona fide belief in its legal entitlement to arrest the vessel. On the other hand, *Crassa negligentia* is established where the arresting party acted with such gross negligence or with so little factual or legal foundation as to imply malice, or proceeded with the arrest without any genuine or reasonable consideration of whether adequate grounds existed to justify the arrest.

9. On a plain reading of the plaint, it appears that the instant Admiralty Suit has been instituted by a scheduled bank of Bangladesh for the ultimate recovery of the money paid by it as an "advance" to the exporter, which also falls within the definition of "loan" as provided in section 2(ga) of the Artha Rin Adalat Ain, 2003.

It further appears from the averments made in the plaint that, before instituting the suit, the plaintiff Bank made inquiries with defendant No. 46, which was acting as the presenting bank, and thereafter with defendant Nos. 44 and 45, the local agents who had issued the Bills of Lading in question, in an attempt to ascertain the whereabouts of the cargo. The suit was instituted only after those inquiries failed to satisfactorily disclose the whereabouts of the cargo and the plaintiff apprehended misappropriation thereof.

The subsequent discovery that the cargo had never actually been shipped undoubtedly undermined the factual foundation upon which the order of arrest had been obtained. That subsequent discovery, however, does not, by itself, establish that the plaintiff Bank had acted *mala fide* or with *crassa negligentia* at the time the arrests were sought. The relevant consideration is the state of affairs existing when the orders of arrest were applied for and whether, on the materials then available, the plaintiff acted in bad faith or with such gross negligence as would attract liability for wrongful arrest. On the pleadings presently before this Court, I find no such material.

10. Be that as it may, although the counter-claims have been filed in the course of the proceedings and are procedurally permissible under the law, they do not disclose the essential ingredients of *mala fides* or *crassa negligentia* on the part of the plaintiff. Consequently, the very foundation upon which a claim for damages for wrongful arrest can be maintained is absent in the present case.

11. Accordingly, the application is allowed in a modified form. Although the plaintiff-applicant has prayed for return of the counter-claims, the question is not merely whether they should be presented before another forum. Upon examination of the counter-claims and the materials placed before this Court, I have found that they do not disclose the essential factual foundation of *mala fides* or *crassa negligentia* necessary to sustain a claim for damages for wrongful arrest. Returning the counter-claims would, in such circumstances, serve no useful purpose. The ends of justice would therefore be better served by dismissing the counter-claims rather than returning them.

12. Accordingly, in modification of the relief sought, the counter-claims filed by defendant Nos. 1 to 6 and 16 to 18 is hereby dismissed.

(Sikder Mahmudur Razi, J;)