

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

**Present:**

Mr. Justice Sikder Mahmudur Razi

**ADMIRALTY SUIT NO. 32 OF 2020**

**IN THE MATTER OF:**

ENMA LIMITED CORPORATION.

...Plaintiff.

-Vs-

M.V. KITANA and others.

...Defendants.

Mr. Mohammad Hossain, Senior Advocate

...For the plaintiff-applicant.

Mr. Mohiuddin Abdul Kadir, Adv. with

Mr. Noor Mohammad Majumder, Adv.

...For the defendant Nos. 1, 2 and 6.

**The 8<sup>th</sup> June, 2026**

1. Two applications for discovery of documents have been filed by the plaintiff. One application being entry no. 2971 dated 17.05.2023 and another application being entry no. 3724 dated 18.05.2026. In both the applications the plaintiff has sought for direction upon the defendant no. 6 to make discovery of certain documents. In response to the 1<sup>st</sup> application, defendant no. 6 filed an affidavit being entry no. 2597 dated 21.04.2026 and also produced copies of some documents by way of list of documents which, as per learned Senior Advocate Mr. Mohammad Hossain, to some extent meet the requirements of the plaintiffs. In response to the 2<sup>nd</sup> application the plaintiff has filed a written objection being entry no. 3790 dated 19.05.2026.

2. While the hearing of the 1<sup>st</sup> application was on progress, the plaintiff pressed for discovery of all the documents as listed in his application being entry no. 2971 dated 17.05.2023 in paragraph no. 9. In this regard, the defendant no. 6 has categorically stated on oath in his affidavit that he has produced all the documents in its possession by way of list of documents bearing entry no. 1118 dated 10.02.2026 and apart from those no further documents are in his possession which could be produced to satisfy the demands of the plaintiffs.

Mr. Mohammad Hossain, learned Senior Advocate appearing on behalf of the plaintiff, submits that the purported transfer of ownership in respect of the defendant vessel was effected with the sole intent to evade lawful liabilities. According to Mr. Hossain such a practice is not uncommon in the maritime industry. He further contends that, in several jurisdictions, the procedural ease with which ownership of vessels may be transferred provides fertile ground for unscrupulous persons and entities to employ sophisticated subterfuges with a view to frustrating legitimate claims of creditors.

Elaborating his submission, Mr. Hossain argues that such conduct has, over time, impelled admiralty courts to invoke their equitable jurisdiction to lift the corporate veil, so as to ascertain the true ownership and control of the vessel and to hold the real wrongdoers accountable, notwithstanding any ostensible change in title.

According to Mr. Hossain, the narrative set out by Defendant No. 6 in his written statement, when read as a whole, discloses circumstances strongly indicative of a sham and colourable transaction, undertaken to defeat the plaintiff's claim. In such a context, he submits, a full and proper discovery becomes not only justified but imperative. Accordingly, the production of all

documents as listed in the application is necessary to reveal the true nature of the transaction and to enable the Court to arrive at a just and effective adjudication of the dispute.

Subsequently, by filing another application being entry no. 3724 dated 18.05.2026 Mr. Hossain draws attention of this court to paragraph no. 2 of the said application wherein relying on the written statement of the defendants it has been stated that defendant no. 1 vessel has been purchased by defendant no. 6 from original owner and from Lloyd's List Intelligence from where it appears that Anchor Nautical S A was owner of the vessel from 27.06.2019 to 17.07.2020, Bluefin Maritime Incorporated was owner from 18.07.2020 to 02.09.2020 and Bluefish Marine Corporation became the owner on 03.09.2020. Mr. Hossain next submits that in case of sale of a vessel under Sale Form 2012 some documents are required to be exchanged between the parties and list of those documents has been mentioned in paragraph no. 3 of the application. Mr. Hossain submits that the Sale Form has been placed by the defendants with his list of documents being entry no. 1118 dated 10.02.2026. Mr. Hossain finally submits that the sham transaction will be evident if the defendants are directed to produce the list of documents mentioned in paragraph no. 3 of the application exchanged between Anchor Nautical SA and Bluefin Maritime Incorporated and between Bluefin Maritime Incorporated and Bluefish Marine Corporation.

**3.** The submissions advanced by Mr. Mohiuddin Abdul Kadir in response to the 1<sup>st</sup> application of the plaintiff are mostly a reiteration of the statements made in his affidavit. He merely adds that no one can be compelled to perform an impossibility. In response to the 2<sup>nd</sup> application Mr. Kadir submits

that the applications are liable to be rejected as it is simply a fishing expedition and part of the series of dilatory techniques adopted by the plaintiff to defeat justice by causing delay. He next submits that Bluefin Maritime Corporation was never the owner of the defendant vessel and the name of Bluefin Maritime Corporation was wrongly entered in record by Lloyd's List Intelligence report based on 3<sup>rd</sup> Party Information and Lloyd's List Intelligence has corrected the report and removed it from their report and the defendant has filed with their list of documents being entry no. 4339 dated 13.07.2023 relevant communications with updated Lloyds List Intelligence report. Mr. Kadir next submits that the defendants has produced most the documents with their list of documents being entry no. 1118 dated 10.02.2026 and the remaining are irrelevant and not necessary for adjudicating of the instant dispute. He next submits that registered owner of the vessel is the person or company who is named as owner in the certificate of registry of the vessel and according to Commercial Documents Evidence Act, 1939 the Certificate of Registry is a document included in Part I of the schedule of the Act and according to the act the court 'shall presume' that the document has been duly made by or under appropriate authority, was so made and the statements made therein are accurate. He next submits that the presumption is rebuttable and it is for the plaintiff to rebut the presumption. He finally submits that PW-1 has already been examined but the plaintiff failed to produce any evidence of any sham transaction.

4. Heard the learned advocate of the respective parties and perused the applications for discovery of documents filed under Order XI Rule 12 and the affidavit and written objection filed by defendant no. 6 in response to the said applications.

**4.1** It appears that Defendant No. 6, even prior to the passing of any order for discovery, filed before the Court a number of documents by way of a list of documents, being Entry No. 1118 dated 10.02.2026. Defendant No. 6 also filed an affidavit wherein, in paragraph 4, he furnished a chart detailing- the documents sought, the documents already filed before the Court, the documents not in his possession, and the documents which, according to him, sufficiently meet the requirements of the plaintiff. Furthermore, the defendants placed before the court by way of list of documents being entry no. 4339 dated 13.07.2023 copy of the Lloyd's List of Intelligence Report which evinced the mapping of the ownership of the vessel which has also been marked as Exhibit-X on cross examination of PW-1 as well as email correspondence with Lloyd's List Intelligence. It appears on face of those documents that Bluefish Marine Corporation purchased the vessel from Anchor Nautical S.A. The plaintiff still failed to place any document or report subsequent to the said email correspondence or reviewed list to show that those reviewed list or correspondence is fake or manipulated documents.

**4.2** Furthermore, while advancing his submissions in support of the second application relating to the list of documents prescribed under the Sale Form, Mr. Hossain fairly concedes that certain documents, particularly those mentioned at serial Nos. a(vi) and a(x), have no application to the present case. He further contends that the requirement contained in serial No. a(xi) may be waived, whereas the document referred to in serial No. a(xii) has become redundant and otiose in view of the completion of the registration process.

**4.3** In a proceeding of civil nature, the "burden of proof" is an essential concept that determines which party must establish a fact to succeed in their claim or defense. Section 101 of the Evidence Act, 1872 stipulates that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. This is known as the *onus probandi*. The standard of proof remains the "balance of probabilities," which requires more than 50% truth to establish a *prima facie* case. Discovery is intended to facilitate this, but it must not be used to bypass the necessity of the plaintiff proving their own version of events. If a plaintiff fails to establish a *prima facie* case, the defendant may succeed, leading to the dismissal of the suit, even if, the defendant withheld or failed to adduce any evidence. Therefore, discovery should not be used to "bail out" a party that has failed to meet its primary evidentiary burden.

**4.4** Order XI Rule 12 allows a party to apply for an order directing the opponent to make discovery on oath of all documents which are or have been in their possession or power relating to any matter in question. This is often followed by Rule 13, where the party must file an "Affidavit of Documents" specifying which documents are in their possession, which they object to produce, and which they no longer have. The law empowers the court to facilitate exchange of information and discovery of documents but this power is not unfettered. The primary limitation is designed to prevent discovery from being weaponized to grant one party a tactical advantage that destroys the case of the other party. In suit of civil nature, each contesting party has a primary burden to prove its own version of the facts. Discovery should not

serve as a substitute for a party's obligation to collect its own evidence. Another fundamental limitation on the court's power is that it cannot compel the impossible. A party can only be directed to discover or produce documents that are in its "possession". Here in the instant matter the defendant no. 6 by filing affidavit has stated which of the documents are not in his possession. Therefore, even if any order is passed for production of those documents, the same would, in the view of this Court, be otiose.

Accordingly, in view of the affidavit and written objection filed by Defendant No. 6, the applications for discovery of documents filed by the plaintiff have lost its force; it is, therefore, disposed of in light of the observations made above.

Let this matter be fixed on 06.07.2026 for PW-2.

Sikder Mahmudur Razi, J: