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

ADMIRALTY SUIT NO. 21 of 2023

IN THE MATTER OF:
Island Oil Limited.
... Plaintiff.
VERSUS
M.T. MANDALA (Ex. MT SOUTHERNPEC 18, (IMO NO. 95000598, *and* others.
... Defendants.

Mr. Mohiuddin Abdul Kadir, Adv.
Ms. Zinia Amin, Adv.
Mr. Noor Mohammad Mozumder Roni, Adv.
…For the Defendant No. 1, 2 & 3-applicants.

Mr. M. Belayet Hossain, Sr. Adv. with
Mr. Md. Humayun Kabir, Adv.
Mr. M. Mahmudul Hasan, Adv.
…. For the Plaintiff-opposite parties.

The 27th January, 2026

Present:
Justice Sikder Mahmudur Razi

1. Factual matrix of the instant suit in a nutshell are that the instant Admiralty Suit No. 21 of 2023 was instituted on 04 April 2023 by the plaintiff, an international bunker trading company, seeking recovery of a sum of USD 728,052.32, equivalent to BDT 80,085,755.20, arising out of unpaid bunker supplies made to the vessel MT MANDALA (formerly MT SOUTHERNPEC 18) on 13.01.2017 and 19.02.2017 and due date of payment of which were on 27.02.2017 and 20.04.2017. Upon presentation of the plaint and an accompanying application for arrest, this Court admitted the suit and ordered arrest of the vessel, which at the relevant time was lying within the territorial waters of

Chattogram Port, Bangladesh. Subsequently, in order to secure release of the vessel, the principal defendants furnished a bank guarantee bearing No. 0003230015 dated 08 May 2023 issued by Southeast Bank Limited, Agrabad Branch, Chattogram, in the amount equivalent to the plaintiff's claim.

2. On 05.03.2025, defendants applied for return of the plaint and consequential release of the bank guarantee.

3. Mr. Mohiuddin Abdul Kadir, learned advocate for the defendants-applicants submitted that the suit is barred by limitation which is evident from paragraph no. 3 of the plaint in which the plaintiff stated that the bunker was supplied to the vessel on 13.01.2017 and 19.02.2017 and due date for payment of the price for the bunker was 27.02.2017 and 20.04.2017.

He next submitted that the suit has been filed by suppression of facts. The invoices were addressed to one Manum Opus Shipping Pte Ltd, the charterer which is evident from the plaintiff's list of documents being entry no. 2218 dated 04.04.2023 and all the communications in relation to payment of bunker was made with said Magnum Opus Shipping Pte Ltd., which is also evident from the plaintiff's list of documents being entry no. 10610 dated 10.12.2025. The bunker was supplied at the order of Magum Opus Shipping Pte Ltd, the charterer but the plaintiff did not make the said entity party to this suit. Furthermore, from the plaintiff's list of documents it is apparent that the

bunker was supplied by Seven Seas Oil Trading Pte Limited, Southernpec (Singapore) Pte Ltd, CCK Petroleum (Labuan) Limited and not by the plaintiff. Additionally, although the owner of the vessel at the time of bunker supply namely SPC Oscar Pte Ltd., Hong Kong and the charterer company Magnum Opus Shipping Pte Ltd of Singapore are listed companies in the register of the respective companies and very much alive till date but the plaintiff did not take any action against those entities since 2017.

The learned advocate next submitted that the vessel was actively trading in the region since 2017 (which is also evident from the list of documents supplied by the defendant-applicant being entry no. 7835 dated 30.11.2023) where the bunkers were supplied but the plaintiff did not bring any action all those years. On the other hand, the period of limitation for recovery of bunker price in Bangladesh is 3 (three) years as per Article 53 of the First Schedule of the Limitation Act, 1908 but the plaintiff has filed the suit in Bangladesh after 6 years on 04.04.2023. He added that the law of limitation being a procedural law, the law of forum (*lex fori*) shall apply and the plaintiff's claim is therefore, barred by limitation under the law of Bangladesh.

He next submitted that the plaintiff's claim for supply of bunker does not create a maritime lien on the vessel according to the law of Bangladesh and further whether a claim shall be classed as maritime lien or not would be decided by the law of the forum (*lex fori*) and in

Bangladesh supply of bunker does not create a maritime lien on the vessel. The learned advocate next submitted that the alleged claim has been filed under section 3(2)(l) of Admiralty Court Act, 2000 for "Goods and materials supplied to a ship for her operation and maintenance" but in order for the court to exercise the *in rem* jurisdiction in respect of a claim under section 3(2)(l) the condition set out in Section 4(4) need to be satisfied. He further submitted that the name of the present owner of the vessel namely Jeil International Co. Ltd who purchased the ship on 31.07.2017 has not been mentioned in the four corners of the plaint and the present owners of the vessel were neither the owners or charterers of the vessel when the bunker was supplied and as such they could not be the party liable *in personam* for the claim of the plaintiff and as such an *in rem* jurisdiction cannot be exercised in respect of the defendant vessel.

The learned advocate next submitted that the defendant has filed before the court the Certificate of Registry, Continuous Synopsis Record (CSR) issued pursuant to SOLAS which conclusively prove that when the bunkers were supplied the present owners were not the owners of the vessel. The learned advocate further submitted that the invoice issued by the plaintiff did not even name the previous owners of the vessels which show that the bunker was supplied at the instance of the charterer and not even at the instance of the previous owner.

The learned Advocate, finally, submitted that this Court lacks jurisdiction to entertain an action *in personam* between the parties, as both parties are foreign entities, the cause of action did not arise within Bangladesh, and no action arising out of the same incident or series of incidents is pending before this Court; consequently, none of the requirements stipulated under section 5(1) is attracted. In support of his submissions Mr. Kadir cited number of decisions which will be discussed in the findings section of this order.

4. Per Contra, Mr. M. Belayet Hossain, learned Senior Advocate for the plaintiff submitted that the plaintiff invokes section 3 (2) (1) with section 4 (4) of the Admiralty Court Act, 2000 and pursuant to the same, the registered owners of the vessels as its beneficial owners who received the bunker from the plaintiff remain liable *in personam* as well as their vessel *in rem*. This establishes the critical liability nexus that justifies the execution of action *in rem* against the vessel and this Court rightfully and successfully applied the same. The applicant-principal defendant no. 3 has developed the arguments without proper contextualization.

He next submitted that upon receipt of the bunker, the registered owners of the vessel namely MT MANDALA (Ex. MT SOUTHERNPEC 18, IMO No.: 95000598, Flag: South Korea) engaged in a fraudulent and sham transfer of their vessel in order to evade

liability. They conducted a paper transaction that did not transfer ownership from the registered owner of the vessel who received the bunker from the plaintiff. The purported transfer was conducted for nominal consideration, which holds no legal value in the transfer of ownership of the vessel. The sale did not reach its finality, and the current registered owner of the vessel is not a bona-fide purchaser for value. The allegation of a sham transaction cannot be dismissed without proper disclosure and for this it requires full- fledged trial.

He next submitted that due to the fact that the sale transaction was not completed and, furthermore, that the current registered owner of the vessel is not the bona fide purchaser for value, they hold the liability for settling the invoice for the bunkers supplied by the plaintiff. The alleged transfer was a result of a sham transaction and has no legal effect. The learned advocate added that it is a well-established principle of law that parties cannot employ sham transactions to evade liability for an obligation they incurred. The law does not allow the use of sham transactions to avoid obligations. The sham transaction will not absolve the current owner of the liability to pay for the bunkers that were supplied to the previous owner. The plaintiff relentlessly pursued the owner for the settlement of their long overdue bunker supplies. Despite repeated demands, the defendant failed to fulfill their obligation, which has resulted in an unacceptable delay in the receipt of their rightful dues.

He next submitted that the instant Admiralty Suit & the accompanying arrest application satisfy the requisite threshold requirements under the Admiralty Court Act, 2000. The suit has been filed within the prescribed time limit, brought before the appropriate forum and substantiated with adequate evidence to establish a prima facie case and as a result, the same is maintainable for consideration of this Court.

He further submitted that the legal premise of Order VII Rule 10 of the Code of Civil Procedure, 1908 which provides for return of plaint where the Court lacks territorial or pecuniary jurisdiction, has no application in the present suit. The instant Admiralty Suit is squarely maintainable before this Court under the Admiralty Court Act, 2000, in particular under Sections 3(2)(1) and 4(4) thereof.

The learned advocate next submitted that Order VII Rule 10 of the Code of Civil Procedure, 1908 mandates that a plaint shall be returned when, on the basis of the statements made in the plaint alone, it appears that the Court does not have jurisdiction to entertain the suit. It is a settled principle of law that such an application is to be tested on the averments in the plaint as they stand, without delving into the defence or denials made in the written statement or otherwise.

He further submitted that the invocation of Section 151 of the Code of Civil Procedure in aid of Order VII Rule 10 is equally without basis. Section 151 confers inherent power upon the Court to secure the

ends of justice or prevent abuse of process, but it cannot be invoked to override the express provisions of substantive law or to defeat statutory admiralty jurisdiction conferred upon this Admiralty Court.

He next submitted that since the defendants have submitted themselves to the jurisdiction of this court, therefore, they are now *estopped* from challenging the jurisdiction of this Court. He further added that law does not permit a party to simultaneously take advantage of the court process and contest its jurisdiction.

The learned advocate next by giving reference of the Port Call Schedule of the vessel submitted that the time span at those ports were not sufficient enough to bring any legal action against the vessel and therefore, delay will not stand as a bar in maintaining the claim.

He next submitted that the bunker supply which is the subject matter of the instant suit is governed by a contract which made the General Maritime Law of the United States of America as the applicable law (clause 22.1 of the agreement supplied at the time of hearing) and in United States the bunker supplies creates a maritime lien. By referring clause 22.3 of the said agreement the learned advocate further submitted that the company for its benefit has the right to proceed against the buyer and/or vessel and/or any other party in such jurisdiction worldwide as the company in its sole discretion sees fit. The learned advocate added that in United States so far Maritime Law is concerned timeliness is governed not by a fixed statute but by

laches-an equitable inquiry that require the applicant-defendant to prove both unreasonable delay and resulting prejudice. Therefore, this suit fulfils all the legal requirements.

The learned advocate next submitted that under section 13 of the Limitation Act, 1908, in computing the period of limitation for this Admiralty Suit No. 21 of 2023, the time during which the Applicants-Principal Defendants Nos. 1 to 3 were absent from Bangladesh must be excluded as a matter of *lex fori*, and such period does not count towards limitation. Section 13 is designed to prevent a debtor from allowing the limitation period to run while remaining outside the reach of the competent forum. In admiralty, an action *in rem* may be effectively commenced only when the *res* is within the territorial jurisdiction of the Court so that arrest may be effected. Accordingly, the period during which the vessel remained outside Bangladesh is to be excluded from the computation of time. On the facts, the vessel and her owners were absent from Bangladesh throughout the post-2017 period, and she entered and remained within Bangladesh waters only shortly before the initiation of this Admiralty Suit No. 21 of 2023 and her subsequent arrest. Upon deducting the excluded period, the filing of this Admiralty Suit No. 21 of 2023 on 04 April 2023 is within time and the plea of limitation is wholly misconceived and liable to be rejected.

The learned advocate further submitted that both acknowledgment and refusal to pay on demand give rise to fresh cause

of action and since in the instant matter in hand Magnum Opus expressly acknowledged its liability on 22.03.2017, on 03.04.2017 and thereafter by making part payment on 05.04.2017 and also refused to pay on demand made by the lawyer on 11.03.2021, therefore, those gave rise to a fresh starting point of limitation and as such the instant suit is not barred by limitation.

5. In reply, the learned Advocate Mr. Mohiuddin Abdul Kadir submitted that the present applicant-defendant is not a party to the bunker supply agreement, and therefore the question of applicability of U.S. law does not arise. Drawing the attention of this Court to page 17 of the list of documents, being Entry No. 7835 dated 31.11.2023, he further submitted that upon transfer of the vessel to its present owner, the Marine Shipping Department, Hong Kong, China, having been satisfied that the vessel was free from all kinds of encumbrances, issued a "Certificate of Deletion," thereby closing the registry of the vessel with its office. Consequently, there is no scope whatsoever to contend that the transfer was a sham transaction.

He further emphasized that there is not a single averment in the plaint to suggest that the transfer of ownership of the vessel to its present owner was a sham or colourable transaction. Nor is there any basis to contend that the plaintiff was unaware of such transfer, inasmuch as, following the transfer, the name of the vessel was changed from *MT Southernpec 18* to *MT Mandala*, and all relevant particulars of

the vessel are preserved in the public domain and made accessible for transparency. The learned advocate further submitted that section 13 of the Limitation Act, 1908 is not applicable to the facts of this suit.

6. I have heard the learned advocates for the respective parties, perused the plaint, application for return of plaint, written objections and other materials of record. It appears that the defendants-applicants prayed for return of the plaint claiming that the claim of the plaintiff is barred by limitation and the Admiralty Court lacks jurisdiction to hear the suit in its present form and the statutory conditions for an *in rem* claim has not be fulfilled. Accordingly, the issues are considered under the following two heads namely "Limitation Period" and "Admiralty Jurisdiction and Statutory Conditions".

But before considering the issues, it is necessary to mention the timeline of the transactions as stated in the plaint. It has been stated in the plaint that the bunker was supplied through 'Seven Seas Oil Trading Pte. Ltd', 'Southernpec (Singapore) Pte Ltd & 'CCK Petroleum (Labuna) Ltd' on 13.01.2017 and 19.02.2017. The invoices were issued on 23.01.2017 & 02.03.2017 and the due date of payment was 27.02.2017 & 20.04.2017. Since, the payment was not made within the due date in spite of repeated reminders therefore, the plaintiff issued 'debit notes' on 16.03.2017 and 05.04.2017. Some part payments were made on 05.04.2017. Although not mentioned in the plaint, it transpires from the plaintiff's list of documents, being Entry No. 10610 dated

10.12.2025, that the email correspondences exchanged between Magnum Opus and the plaintiff were dated 22.03.2017, 29.03.2017, and 03.04.2017. It further appears from the plaintiff's list of documents being entry no. 2218 dated 04.04.2023 that in response to a notice of the plaintiff's designated law firm dated 27.07.2017, the designated law firm of SPC Oscar Pte Ltd (the previous owner of the vessel) and Southernpec (Singapore) Shipping Pte Ltd submitted a reply on 07.08.2017, whereupon the plaintiff's designated law firm issued a further letter to the law firm of SPC Oscar on 16.08.2017. However, for reasons best known to the plaintiff, the said reply of SPC Oscar and another has not been filed by the plaintiff.

7. Limitation Period

7.1 In determining whether the instant suit is barred by limitation we need to focus on certain issues based on the arguments and counter arguments of the respective parties and those are (i) what will be the governing laws of limitation (ii) what is the period of limitation under the governing law and (iii) whether there is any extenuating circumstances in computing the limitation period.

7.2 The followings authorities and decisions will be very useful in deciding, "what will be the governing laws of limitation"

Dicey, Morris and Collins, in their book titled as "THE CONFLICT OF LAWS" Fourteenth Edition, volume- 1, Chapter 7

(page-177) cited that, “Rule 17- All matters of procedure are governed by the domestic law of the country to which the court wherein any legal proceedings are taken belongs. (*lex fori*)” It has further been stated by the said authors that, “The principle that procedure is governed by the *lex fori* is of general application and universally admitted.”

At page nos. 196, 197 and 198 of the same book the following further discussions were made;

> *(7) Statutes of limitations. English law distinguishes two kinds of statutes of limitation: those which merely bar a remedy and those which extinguish a right; this common law rule was well-established, although it was subjected to searching judicial criticism, doubting whether the distinction between "right" and "remedy" provided an acceptable basis on which to proceed. Statutes of the former kind are procedural, while statutes of the latter kind are substantive. In general, the English law as to limitation of actions has been regarded as procedural, but ss.3(2) and 17 of the Limitation Act 1980 are probably substantive since they expressly extinguish the title of the former owner. Sometimes a statute creates an entirely new right of action unknown to the common law and at the same time imposes a shorter period of limitation than that applicable under the general law. An example is the Civil Liability (Contribution) Act 1978; where a person becomes entitled to a right to recover contribution under s.1 of that Act the limitation period is two years." There is Scottish, Australian and American authority in favour of the view that such special periods of limitation are substantive even though they are contained in a different statute from that creating the right.*

Where proceedings in England concern a matter which is under English choice of law rules to be governed by English law, i.e. English law is both the lex fori and the lex causae, nothing turns upon the classification of the English statutes of limitation which is applicable in any event. Whether the lex causae is that of a foreign country difficult questions can arise. The English law on this point has been greatly simplified by the Foreign Limitation Periods Act, 1984, but an account of the position at common law will indicate the difficulties it sought to resolve.

The position at common law. The lex causae and lex fori may differ not only in their periods of limitation but also in the nature of their limitation provisions. In considering foreign rules as to limitation the English courts have traditionally applied their own classification based on the distinction between barring a right and extinguishing a remedy. The position resulting from this approach, which would still be adopted in countries following the English common law rules, can be illustrated by reference to the different situations which can arise: (i) if the statutes of limitation of the lex causae and of the lex fori are both procedural, an action will fail if it is brought after the period of limitation of the lex fori has expired although that of the lex causae has not yet expired"; but will succeed if the period of limitation of the lex fori has not yet expired although that of the lex causae has expired. The first limb of this rule may still leave it open to the defeated claimant to seek his remedy in another jurisdiction. But its second limb has been criticised in that it may in effect enable a creditor to enlarge his rights by choosing a suitable forum: and that it may cause injustice to a debtor who, in reliance of the lex causae, has destroyed his receipts." (ii) If the statute of limitation of the lex causae is substantive but that of

the lex fori is procedural, the lex fori will probably apply if its period of limitation is shorter than that of the lex causae on the ground that it is inconvenient for the forum to hear what it considers to be stale claims. But once a substantive period of limitation of the lex causae has expired, no action can be maintained even though a procedural period of limitation imposed by the lex fori has not yet expired; in such a case there is simply no right left to be enforced. (iii) If the statutes of limitation of the lex causae and of the lex fori are both substantive, it is probable that the same results would follow as in the case just considered. (iv) If the statute of the lex causae is procedural and that of the lex fori substantive, strict logic might suggest that neither applied, so that the claim remains perpetually enforceable. A notorious decision of the German Supreme Court once actually reached this absurd result. But writers have suggested various ways of escape from this dilemma, and it seems probable that a court would apply one statute or the other."

7.3 In Her Highness Ruckmaboye vs Lulloobhoy Mottichund, reported in 5M.I.A.234: MANU/PR/0002/1852 it was held that the law of prescription, or limitation, is a law relating to procedure, having reference only to the *lex fori*. In the said judgment it was further held that, where a Court entertains a cause of action which originated in a foreign country, the rule is to adjudicate according to the law of that country, yet the Court proceeds according to the prescription of the country in which it exercises jurisdiction.

7.4 One of the notable decisions on this point is Rajamani vs Meenakshisundaram, reported in 1999(3)CTC309: MANU/TN/0216/1999. The essence of the decision is that the law of limitation being procedural in nature, the applicable law is the law of the forum, that is, Indian law, irrespective of the place where the cause of action arose or where the contract was executed.

7.5 As, observed earlier the position under English law has been simplified by the enactment of the Foreign Limitation Periods Act, 1984, but no such analogous statute exists in Bangladesh. Since, Bangladesh follows the traditional common law position and treats limitation law as purely procedural**,** therefore, based on the above proposition it can be hold that the Limitation Act of Bangladesh, as *lex fori*, exclusively governs the question of limitation in suits filed before Bangladeshi courts. Once the limitation period under Bangladeshi law expires, no suit can be maintained in Bangladesh**,** irrespective of whether the claim is still alive under the *lex causae*. The survival of limitation under foreign substantive law does not revive or preserve a remedy before Bangladeshi courts. Therefore, a claim that is time-barred under Limitation Act, 1908 is not enforceable, even if it remains enforceable under the law governing the cause of action.

7.6 At this stage of the judgment, in view of the submission of Mr. M. Belayet Hossain that the supply of bunkers creates a maritime lien under the law of the United States, which is the governing law under

the bunker supply agreement, and that such position of law should accordingly be applicable in Bangladesh while dealing with the present suit, this Court considers it imperative to address the said contention. The question is whether this contention is novel. The answer is in the negative. In *Bankers Trust International Ltd v Todd Shipyards Corporation*, popularly known as *"The Halcyon Isle"* areported in *[1981] AC 221; MANU/UKPC/0001/1980*, the Privy Council (on appeal from the Court of Appeal in Singapore) had already considered the issue and settled it. The appeal was allowed by a majority, and the judgment of the majority was delivered by Lord Diplock.

The fact of the said judgment in short was that it concerned competing claims against the vessel Halcyon Isle, which was a British ship registered in London and subject to a registered mortgage in favour of Bankers Trust International Ltd under British law. The vessel was subsequently repaired in the United States by Todd Shipyards Corporation, which under U.S. law acquired a maritime lien for the repair costs. When the ship later arrived in Singapore, it was arrested in admiralty proceedings and sold by order of the court for a sum insufficient to satisfy in full the claims of all the creditors of her owners. Todd Shipyards claimed priority over the mortgage on the basis of its alleged maritime lien under U.S. law. Bankers Trust resisted the claim, contending that under Singapore Admiralty Law which applies the English Admiralty Law, a ship repairer does not enjoy a maritime

lien and that priority must be determined according to the law of the forum. The dispute thus arose as to whether the existence and priority of the claimed maritime lien were to be determined by foreign law or by the law of Singapore as the forum where the ship was arrested. The intricacies involved in the said issue were articulated by their Lordships in the following terms:

> *At first sight, the answer to the question posed by this appeal seems simple. The priorities as between claimants to a limited fund which is being distributed by a court of law are matters of procedure which under English rules of conflict of laws are governed by the lex fori; so English law is the only relevant law by which the priorities as between the Mortgagees and the Necessaries Men are to be determined; and in English law mortgagees take priority over necessaries men.*
>
> *In the case of a ship, however, the classification of claims against its former owners for the purpose of determining priorities to participate in the proceeds of its sale may raise a further problem of conflict of laws, since claims may have arisen as a result of events that occurred not only on the high seas but also within the territorial jurisdictions of a number of different foreign states. So the lex causae of one claim may differ from the lex causae of another, even though the events which gave rise to the claim in each of those foreign states are similar in all respects, except their geographical location; the leges causarum of various claims, of which under English conflict rules the "proper law" is that of different states, may assign different legal consequences to similar events. So the court distributing the limited fund may be faced, as in the instant case, with the problem of classifying the foreign claims arising under differing*

foreign systems of law in order to assign each of them to the appropriate class in the order of priorities under the lex fori of the distributing court.

The quintessence of the judgment delivered by the majority as found in the headnotes of the judgment was as follows:

Held, allowing the appeal (Lord Salmon and Lord Scarman dissenting), that in proceedings in rem against a ship the order of priority between claims and the recognition of a right to enforce a maritime lien were matters to be determined according to the lex fori of the country whose court was distributing the proceeds of sale of the ship and that, therefore, in deciding whether to recognise a maritime lien which would have been enforceable against the ship under a foreign system of law, the Singapore court had to consider whether the events which had given rise to the lien would have been sufficient to create a maritime lien had they occurred within the jurisdiction of the court; and that, since under Singapore admiralty law a claim for the price of repairs to a ship did not fall within any of the classes of claims recognized as giving rise to a maritime lien and the court was not able to extend those classes, the ship-repairers lien was not enforceable and the mortgagees' claim was entitled to priority (post, pp. 235D, 238H-239-A, 241F-G, 242A-B)

The majority judgment in *Bankers Trust International Ltd v Todd Shipyards Corporation* was subsequently followed by the Federal Court of Australia in *Sam Hawk v Reiter Petroleum Inc [2016] FCAFC 26*, a case relating to the supply of bunkers.

I therefore, find no reason to depart from that position.

7.7 It is reiterated that, in Bangladesh, the law of limitation is procedural in nature (except for section 27). Accordingly, the Limitation Act, 1908, as applicable in Bangladesh, governs the determination of the limitation period in respect of the present cause of action. Admittedly under Article 53 of the First Schedule to the Limitation Act, 1908, the limitation period applicable to the present subject-matter is 3 (three) years, which expired long ago.

7.8 But the argument placed by learned Senior Advocate Mr. Mr. M. Belayet Hossain is that in computing the period of limitation section 13 of the Limitation Act, 1908 has to be taken into consideration as because the said section will operate as an extenuating circumstances since, the *res* i.e. the vessel and its owners were continuously outside Bangladesh until just before the suit i.e. they were absent from the jurisdiction of Bangladesh during this period and thus time did not run while they *res* and its owners were absent and whenever the vessel has entered into the territory of Bangladesh the suit has been filed i.e. the suit has been filed within time from the date of presence of the vessel in Bangladesh.

7.9 Now, let us see how far this submission is sustainable. Section 13 of the Limitation Act, 1908 runs as follows:

> ***13. Exclusion of time of defendant's absence from Bangladesh and certain other territories.-*** *In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from Bangladesh and from territories beyond Bangladesh under the administration of Government shall be excluded.*

Section 13 of our Limitation Act is analogous to Section 15(5) of the Limitation Act, 1963 of India and the answer to the argument of Mr. Hossain can be found in the celebrated judgment of Rajamani vs Meenakshisundaram, reported in 1999(3)CTC309: MANU/TN/0216/1999. Some important paragraphs of the said judgment are as follows:

> *9. Section 15(5) of the Limitation Act reads as follows:*
>
> > *15(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of Central Government shall be excluded.*
>
> *10. Wherever the cause of action might have arisen or wherever the contract has been made in respect of an act, the Courts in a country have jurisdiction to entertain action in personam provided that at the commencement of the action, the defendant was resident or present in that country. There cannot be any doubt that the law of the country in which the proceedings have*

been taken will apply to such proceedings. Law of limitation is always considered to be statute relating to procedure. The law of limitation is the law which bars the remedy and does not destroy the right. So, only law of limitation of the country in which the proceedings have been taken will be applicable, and not the law of the country in which the cause of action had arisen or the contract.

11. In the present case though the promissory note was executed in Singapore, the plaintiff filed the suit in India on the basis of the assignment made and on the basis of the permanent residence of the defendant.

12. With respect to the sustainability of the suit in India on the basis of the cause of action that had arisen outside India, the same has been decided in the Full Bench decision of this Court, in Muthukannai Mudaliar v. Andappa Pillai, MANU/TN/0087/1955 : AIR 1955 Mad 96 , which has been approved by the Apex Court in Muthu Chettiar v. Shanmugham, MANU/SC/0398/1968 : [1969] 1 SCR 444 . Similarly, even in T.M. & Co. v. H.I, Trust Ltd., MANU/SC/0028/1972 : [1972] 85 ITR 607 (SC) , the similar view has been taken. The Full Bench of this Court in Muthukannai Mudaliar v. Andappa Pillai, MANU/TN/0087/1955 : AIR 1955 Mad 96 , following various judgments, has found as follows:

> *The result of the authorities can be summed up briefly thus: (1) A suit can be instituted for personal relief against a defendant in a Court within the local limits of whose jurisdiction the defendant is residing or carrying on business on the date of the institution of the suit, wherever the cause of action for the suit had arisen; (2) In such a*

> *suit, the provisions of the Statute of Limitation in force in the country of the forum, i.e. the lex fori would apply.*

14. What is the scope of the word 'absent' has been decided in Atul Kristo Bose v. Lyon & amp; Co. I.L.R 1887 Cal. 457. It was submitted that the word 'absent' should be understood as applicable only to such persons as having been present or would ordinarily be present or may be expected to return. But while construing the scope of Sec. 13 of the Indian Limitation Act, 1887, the Full Bench of the Calcutta High Court in the said case has held that "but the section in question is not intended to define the persons for or against whom limitation shall run but to direct the mode of computing time. And if we were to attempt to restrict the meaning of 'absent' in such ways as are contended for, there is probably no limit to the number of suggestions that might be made and, as far as we can see, no reason for accepting one suggestion in preference to another". Relying on various judgments on the issue, it has further held as follows:-

> *It was pointed out in argument that, according to the construction which we place upon the Act, a man who was in England when a cause of action against him accrued, and has remained there ever since, may be liable after an indefinite time to be sued in a Calcutta Court. And it was contended that this was something absurd, something that the Legislature could not have intended, and that we ought to adopt some construction which would avoid it. The answer given by the Privy Council to a somewhat similar objections in the case already cited in sufficient. The words of the section are express, and the case is within them. Moreover there is no more hardship than in the converse case of a man resident in Calcutta, who there incurs a*

> *liability to another person resident in Calcutta, who remains in Calcutta long enough for any suit against him to be barred by the law prevailing in Calcutta, as well as ordinarily in England, who then goes to England and finds himself liable to be sued there any time within six years, and this is exactly what happened under the Statute of Anna in Williams v. Jones, 13 East., 439.*

15. So, it has to be decided whether the plaintiff can sustain the suit, though the defendant had not returned to India on the date of filing of the suit. In the present case, admittedly, the cause of action had arisen in foreign country when the defendant was in Singapore. Even according to the plaintiff, the defendant was in Singapore on the date of filing of the suit. The plaintiff himself has given the Singapore address of the defendant in the plaint. The Full Bench of this Court in Muthukannai Mudaliar v. Andappa Pillai, MANU/TN/0087/1955 : AIR 1955 Mad 96 has found in this regard that "the Courts in a country have jurisdiction to entertain action in personam in respect of any cause of action or relating to any contract wherever cause of action might have arisen or wherever the contract has been made provided that at the commencement of the action the defendant was resident or present in that country". (Italics is mine). Again in the conclusion, the same has been insisted by the Full Bench of this Court. Moreover, the words used in Section 15(5) of the Limitation Act themselves suggest that the defendant should be present in India on the date of filing of the suit. Otherwise, the question of computing the period of limitation taking into consideration of the defendant's absence would not arise. If the defendant continues to be absent such a calculation is impossible for the purpose of limitation. Moreover, the temporary visit to India also cannot be taken for the purpose of calculating the

limitation. As held by the Apex Court in T.M. & Co. v. H.I. Trust Ltd., MANU/SC/0028/1972 : [1972] 85 ITR 607 (SC) Section 15(5) presupposes that defendant was at one time present in India and later he has been absent from India, and, a person who was never in India cannot be considered as having been absent from India.

16. In view of the above, the respondent/plaintiff cannot take advantage of the provisions of Section 15(5) of the Limitation Act, 1963 for the purpose of computing the period of limitation, and to say that the suit is not barred by limitation.

The essence of the said paragraphs are that although Indian courts may exercise jurisdiction *in personam* even in respect of causes of action arising outside India, such jurisdiction is premised on the defendant being resident or present in India at the time of institution of the suit. Section 15(5) of the Limitation Act, 1963 proceeds on the assumption that the defendant was at some point of time present in India and thereafter remained absent. It is only in such a situation that the period of the defendant's absence can be excluded while computing limitation. Where the defendant has continuously remained outside India, the very exercise of computing limitation by excluding periods of absence becomes impossible. A temporary or casual visit to India cannot be treated as sufficient presence so as to interrupt or suspend the running of limitation. In cases where the cause of action arose in a foreign country and the defendant was abroad both at the time of

accrual of the cause of action and on the date of institution of the suit, the plaintiff cannot invoke Section 15(5) to extend the period of limitation. A person who was never present in India cannot, in law, be said to have been "absent" from India within the meaning of Section 15(5). Consequently, the plaintiff is not entitled to the benefit of exclusion of time under that provision, and the suit, having been filed beyond the prescribed period, is barred by limitation.

7.10 Another notable case on this point is *P J Johnson and Sons vs Astrofiel Armadorn S.A. of Panama, Panama City and others, reported in AIR 1989 Ker 53: MANU/KE/0012/1989.* The following paragraphs of the said judgment are significant;

> *21. The question for the present purpose is whether or not Defendants 1 and 3, being foreign corporations, had residence in India so as to be subsequently absent to attract Section 15(5) of the Limitation Act. The answer would depend upon the further question whether these corporations or either of them had carried on business in India and not merely carried on business with India. The mere fact that a ship belonging to a foreign corporation traded with India by transporting goods or persons to and from this country did not mean that the foreign corporation owning the ship was resident in India in the sense that the corporation was carrying on business in India. A ship has no fixed place of residence anywhere except at the place of its registration. Although the master of a ship is for certain purposes an agent of the carrier and the ship is the property of the carrier by which the carrier trades in the carriage of goods or passengers, the master is not the owners' alter ago and his*

authority is limited, especially where he can communicate with the owners without difficulty, as is invariably the position in modern times. The foreign corporation owning the ship does not reside in the place visited by the ship unless the test of residence is satisfied, namely, that the corporation has an office at a fixed place where it carries on through its agents or servants its own business for a substantial period of time. The Plaintiff has no such case and there is no such evidence. Neither corporation has had at any time an office of its own in India where it carried on its own business.

22. At no time was either of the two foreign corporations a resident here. These corporations were never present here and were, therefore, never absent from this country. The suit was therefore barred by limitation.

7.11 In the present case in hand, the plaintiff's claim is for bunkers supplied on 13.01.2017 and 19.02.2017, due date of payment of which was on 27.02.2017 and 20.04.2017. As per Limitation Act, 1908 a suit on a contract or liquidated demand must be filed within 3 years. Here, the suit was filed on 04.04.2023 i.e. over six years after accrual of cause of action and thus far beyond the 3 years bar. As Section 13 of the Act, 1908 presupposes that, the defendant once was present in the jurisdiction before departing, therefore, a person who was never in Bangladesh cannot be considered as having been absent. Here admittedly the vessel and its owners were never within Bangladesh until arrest and neither the vessel is registered in Bangladesh nor has an office at a fixed place where it carries on through its agents or servants

its own business for a substantial period of time and therefore, no exclusion of time applies. In short, no other limitation law can revive this stale claim since under *lex fori* i.e. as per the Law of Limitation as applicable in Bangladesh the claim expired by April, 2020 and the instant suit that has been filed in April, 2023 is time barred.

7.12 On point of limitation another argument of Mr. Hossain was that acknowledgment of liability by Magnum Opus and refusal to pay even after demand by the lawyer on 11.03.2021 gave rise to fresh cause of action and therefore, the suit is not barred by limitation. However, from the plaint and documents of the plaintiff it transpires that the alleged acknowledged was dated 22.03.2017 & 03.04.2017 and part payment was made on 05.04.2017 and the said date was shown in paragraph no. 15 of the plaint as the last date when the cause of action arose. Therefore, from 05.04.2017 the limitation period of 03 years ends on 04.04.2020. Further if the demand by the plaintiff's law firm dated 27.07.2017, the reply by SPC Oscar Pte Ltd (the previous owner of the vessel) and Southernpec (Singapore) Shipping Pte Ltd by their law firm dated 07.08.2017 and further letter of the plaintiff's law firm dated 16.08.2017 are considered then the limitation period expires on 15.08.2020. The point of acknowledgment has been dealt with in Section 19 of the Limitation Act, 1908 which provides as follows:

> ***19. Effect of acknowledgment in writing***.-*(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability*

in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Evidence Act 1872 (I of 1872), oral evidence of its contents shall not be received.

Explanation I. For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II. For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Explanation III. For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

But the plaintiff failed to show any such acknowledgment before expiration of the period of limitation i.e. either before 04.04.2020 or before 15.08.2020. Therefore, the argument of Mr. Hossain is without any substance. In the same way the argument of Mr. Hossain to extend the limitation period by serving a legal notice on 11.03.2021 which is

after the expiry of the period of limitation also deserves no consideration. On top of that, this court rather finds that Mr. Hossain has taken straddles (inconsistent) position throughout his argument to save a time barred claim, even if there be any.

7.13 On the question of limitation, another line of argument advanced by Mr. Hossain was that limitation is a mixed question of law and fact and, therefore, requires a full-fledged trial. This submission might have merited serious consideration had the determination of limitation depended upon and required examination of defence materials and any other evidence. However, that is not the situation in the present case. Here, upon a plain reading of the plaint itself it is manifest that the suit is hopelessly barred by limitation.

It is well settled by a catena of decisions that where the bar of limitation is apparent on the face of the plaint and the same does not require consideration of any statements made in the written statements or in the application for rejection, the Court is required to reject the plaint and the Court is under no obligation to proceed for trial. In such circumstances, no further evidence is required to be taken. Reference may be made to Nirmal Chandra vs. Ansar Ahmed & ors, 10 MLR (HCD) 344, Faiez Ahmed vs. Nur Jahan Begum, 11 BLT (HCD) 379, Abdul Malek Sawdagar vs. Md. Mahbubey Alam & ors, 57 DLR (AD) 18, Baitul Aman Co-operative Housing Society Ltd vs. Md. Shamsur Rahman & ors, 1981 1 BLD (AD) 307, Bangladesh Inland Water

Transport Corporation vs. Seres Shipping Incorporated One World Trade Centre & ors., 1984 4 BLD (AD) 222.

7.14 In the present case, the computation of limitation does not involve any disputed factual question, nor does it depend on any defence *plea* or statement made in the written statement or in the application. The bar of limitation is evident from the plaintiff's own pleadings. Therefore, the contention that the issue of limitation requires trial is wholly misconceived and cannot be sustained.

7.15 One of the submissions of Mr. Hossain was that the time span at the port calls of the vessel during this period were not sufficient enough to bring any legal action against the vessel and therefore, delay will not stand as a bar in maintaining the claim. Although this Court does not consider it strictly necessary to enter into this issue, but since the point has been raised by the plaintiff, it warrants a brief consideration. The Court notes that even if the plaintiff had any outstanding or unsettled claim against the charterer, Magnum Opus, the plaintiff was not diligent in pursuing any appropriate remedy in respect thereof. The plea advanced by the plaintiff that there was insufficient time to initiate proceedings at other ports is also untenable. According to the plaintiff's own case, the vessel arrived at the outer anchorage of Chattogram on or about 02 April 2023, whereas the suit was instituted and the order of arrest was obtained and effected on 04 April 2023. Therefore, it appears that the plaintiff was able to complete the procedural formalities and

secure arrest of the vessel within a period of less than 48 hours while as per plaintiff's admission the vessel called to different ports for almost the same as well as comparatively longer period. In the circumstances, the Court finds that there was clear laches on the part of the plaintiff in not pursuing its claim at an earlier stage.

8. Admiralty Jurisdiction and Statutory Conditions

8.1 Apart from limitation, the remaining question is whether the claim of the plaintiff is a "maritime claim" within the purview of Admiralty Court Act, 2000 and whether it meets the *in rem* conditions of Sections 3 and 4 of the said Act. Under Section 3(2)(l) of the Act, a claim in respect of "goods or materials supplied to a ship for her operation or maintenance" is explicitly a maritime claim. Bunkers fall squarely within this head. Thus, *prima facie* the Admiralty Court may entertain the claim, subject to the restrictions of Section 4 of the Act.

Section 4(4) of the Admiralty Court Act, 2000 governs *in rem* actions on general maritime claims (like supplies) against a ship. It provides a two-stage test:

(i) at the time of the cause of action, the person liable *in personam* must have been the owner, charterer, or in possession or in control of the ship; and

(ii) at the time of the action, that person must beneficially own all the shares of the ship against which the action is brought, or of another ship.

In short, the action *in rem* may be brought only against a vessel beneficially owned by the same person who was liable when the debt arose.

8.2 Here the plaintiff's own documents and the ship's registry show that the present defendants were not the owners or charterers when the bunkers were supplied. The bunkers were supplied at the charterer's request (Magnum Opus Pte Ltd.) and the invoices were addressed to the charterer, not even to the owner when the bunker was supplied and the Certificate of Registry/Continuous Synopsis Record etc. confirms a change of ownership of the vessel on 31.07.2017. As held in *St. Merriel's case (1963) VOL. I Lloyds's List Law Reports 63* and applied in Bangladesh, even a demise charterer is not treated as the "beneficial owner as respects all the shares" of the ship. Further, in *The Evpo Agnic* reported in [1988] 1 WLR 1090: [1988] 3 All E.R. 810 it was held that even if there were an equitable interest it will not create any ownership rather "owner" means the registered owner of the ship. Therefore, the charterer does not "beneficially own" the ship, and the present defendants who became the registered owner on 31.07.2017 had no liability for the bunker debt at the time of supply. Thus, the statutory conditions of Section 4(4) of the Admiralty Court Act, 2000 are not

satisfied. The result is that the vessel cannot be arrested *in rem* against the defendants, and no jurisdiction *in rem* can attach to enforce the claim.

8.3 In this regard, it would be apposite to reproduce some relevant paragraphs from the judgment passed in the case of *Socar Turkey Petrol Enerji Dagitim Sav. Ve. Tic. A.S. Vs. MV Amoy Fortune, reported in 2018(4) Bom CR 848: MANU/MH/1140/2018*. Although the said judgment was rendered in the context of vacating an order of arrest, the discussions made therein are nevertheless relevant for a proper appreciation of the underlying issues involved in the present suit. Those paragraphs are as follows:

> *8. Apart from the judgment in the case of M.T. VALOR (Supra),the provisions of Article 3 of the International Convention on Arrest of Ships, 1999 (arrest convention) makes the position free from any doubt whatsoever. As held by the Apex Court in Chrisomar Corporation vs. MJR Steels Pvt. Ltd. MANU/SC/1173/2017 (paragraphs 30 and 31);*
>
> > *"Although India is not a signatory to the International Convention on Arrest of Ships 1999, yet following M.V. ELIZABETH this Convention becomes part of our National law and must therefore be followed by this Court."*
>
> *The said Convention provides in Article 3 as follows:-*
>
> > *"Article 3: Exercise of Right of Arrest:*
> >
> > *(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:*

> *(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected".*

9. The above provision makes it clear that arrest of any ship is permissible if the person who owned the ship at the time when maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected. Thus liability of the owner of the ship is a pre-requisite to commencing an action in rem for arrest of that ship. Same is the position under the new Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. In the present case, there is no privity of contract between plaintiff and the owner of the ship and no liability of the owner in contract or otherwise towards plaintiff.

10. In the recent judgment, in m.v. Geowave Commander (Supra), the Apex Court had occasion to consider the provisions of the arrest Convention and the right of arrest set out in Article 3 thereof and applied the said provisions in considering whether plaintiff therein had a sustainable cause of action for arrest of a vessel which was owned by a third party and not the person against whom plaintiff has a maritime claim. The Apex Court held that this was not permissible. Paragraphs 50, 51 and 70 read as under:

> *50. Mr. Naphade, learned Senior Advocate while relying on the judgment in M.V. Elisabeth & Ors. had referred to the expanding jurisdiction of a maritime claim. However, the observations made in the said judgment reproduced hereinabove in para 21 would show that the arrest of the ship is regarded as a mere procedure to obtain security to satisfy the judgment. To that extent it is distinguished from a right in personam to proceed against the owner but there*

has to be a liability of the ship owner and in that eventuality the legal proceedings commenced in rem would become a personal action in personam against the defendant when he enters appearance. There cannot be a detention of a ship as a security and guarantee arising from its owner for a claim which is in respect of a non-owner or a charterer of the ship.

51. On turning to the provisions of the Convention, a maritime claim is specified as relating to use or hire of a ship whether contained in a charter party or otherwise [clause (f)]. Insofar as clause (l) is concerned they relate inter alia to services rendered to the ship. The question, however, is - which is the ship in question? Such an order of detention can be in respect of a ship where there is identity of the owner against whom the claim in personam lies and the owner of the ship. It cannot be used to arrest a ship of a third party or a non-owner.

xxxxx

70. The appellants have neither any agreement with the owners of the respondent vessel nor any claim against the respondent vessel but their claim is on account of their own vessels hired by the charterer of the respondent vessel. There is no claim against the owners of the respondent vessel.

11. It is not necessary to consider the documents produced by applicant, as on plaintiff's pleaded case itself and the documents relied upon by them, it is apparent that there is no privity of contract between plaintiff and the owners of defendant vessel.

12. M.T. Valor (Supra) correctly lays down the test of what is a reasonably arguable best case in Admiralty matters in paragraph

11 of the judgment. The Court held, in paragraph 11, that whilst considering whether plaintiff has a reasonably arguable best case;

> *"11. ... there is nothing in law to require the Court to restrict the inquiry to only the averments made in the plaint and material produced therewith and not look at the defence. ... it does not mean that only plaintiff's material should be looked at. There is a great danger in allowing plaintiff in all cases to have the vessel arrested on unilateral assertions. It may be that plaintiff suppresses important documents, which are themselves indisputable. ..." "... The requirements of the standard of 'reasonably arguable case' are satisfied if on the basis of the material before the Court, whether brought by plaintiff or defendant, plaintiff can be said to have a case to go to trial with"*

13. In Wallace Pharmaceuticals Pvt. Ltd. vs. Bunga Bidara MANU/MH/1574/2013 this Court in paragraph 22 referred to the order vacating the arrest and observed:

> *"In the matter of an admiralty action to arrest a ship, it cannot be mere averments that would support the action. It must be supported by documentary evidence to show that the goods were in fact shipped to maintain action against the vessel".*

8.4 One of the arguments of Mr. Hossain, is that the sale of the vessel is a sham transaction and submitted that, upon a full-fledged trial, the plaintiff would be able to substantiate such allegation. This submission might have merited consideration had Mr. Hossain been able to demonstrate that the bunkers were in fact ordered by the owner of the

vessel and not by the charterer. The plaintiff not only failed to place any such materials before the court rather it appears that, the plaint itself does not name any specific owner, rather the plaintiff drafted the plaint in an open-ended method by mentioning in paragraph no.3 of the plaint "…on request of the owners/managers". Further in paragraph 5 and 7 of the plaint it has been stated that invoices, debit notes were issued addressing "the vessel and/or her master and/or her owners and/or her managers and/or charterers." This Court holds that no plaint founded on vague, indefinite or omnibus assertions should be permitted to proceed in the exercise of Admiralty jurisdiction. Admiralty jurisdiction is a special and statutory jurisdiction, the assumption of which depends strictly upon the existence of a cognizable maritime claim arising out of specific transactions, occurrences and events having a direct nexus with the vessel sought to be proceeded against. An admiralty action, particularly one followed by the arrest and detention of a vessel, entails serious civil and commercial consequences, including interference with navigation, trade and third-party rights. Such extraordinary jurisdiction, therefore, cannot be invoked on the basis of imprecise pleadings or sweeping allegations lacking material particulars. Any attempt to invite this Court to assume Admiralty jurisdiction on the strength of vague or indefinite statements, without clearly disclosing the nature of the maritime claim, the cause of action, the offending party and the jurisdictional facts, amounts to misleading the Court into exercising jurisdiction and constitutes an abuse of the process of the Court.

8.5 As pointed out earlier, in Bangladesh, law does not recognize a traditional maritime lien for fuel or other "necessaries." The decisions of the High Court Division [reported in 19 MLR (HCD) 20] and the Appellate Division [reported in 21 BLC (AD) 40] in *Kyung Hae Maritime Co. Ltd. vs. M.V. BF Glory (Ex-Kunai)* lay down, in a coherent and consistent manner, the controlling principles governing admiralty jurisdiction in Bangladesh, particularly in relation to the maintainability of actions *in rem* and actions *in personam*.

Upon a careful examination of the facts of the said judgment, the court found that the plaintiff had supplied bunkers, necessaries, repair services and ship management services not at the instance of the registered owner of the vessel, but under the authority of the charterer and ship manager, namely Kysco Shipping Co. Ltd. The courts emphasized that liability for such services must follow the party who actually incurred the debt. Mere use or operation of the vessel by a charterer under a lease or ship management agreement does not shift that liability to the registered owner, nor does it expose the vessel itself to arrest in the absence of a maritime lien.

The High Court Division categorically held that claims for bunkers, necessaries and repairs do not, by their nature, create a maritime lien under Bangladeshi admiralty law. As a consequence, such claims cannot be enforced through an action in rem against the vessel or against its true owner. The court further clarified that a demise or lease

charter, even though it places the vessel in the possession and control of the charterer, does not amount to beneficial ownership of all shares of the ship. Therefore, debts incurred by a charterer cannot be fastened upon the vessel or the registered owner merely because the vessel was employed in the charterer's business.

In affirming these findings, the Appellate Division reinforced the statutory framework of the Admiralty Court Act, 2000, particularly sections 4(4) and 4(6). The Appellate Division reiterated that an action in rem, in respect of claims which do not give rise to a maritime lien, is maintainable only where, at the time the action is brought, the person liable in personam is also the beneficial owner of all the shares of the vessel or of a sister ship. In the absence of such beneficial ownership, the admiralty jurisdiction of the court cannot be invoked against the res. Consequently, the plaintiff's claims for bunkers, necessaries, repairs and ship management fees were held to be maintainable solely as actions in personam against the charterer, and not against the vessel or its registered owner.

However, the courts drew a clear and deliberate distinction in respect of crew wages. Recognizing the long-established and statutorily protected status of crew wages in admiralty law, the Appellate Division held that claims for wages of the crew stand on a higher footing and give rise to a maritime lien. Accordingly, even in the absence of any contractual relationship between the claimant and the registered owner,

an action *in rem* against the vessel and its owner is maintainable for realization of crew wages under section 4(6) of the Admiralty Court Act, 2000.

8.6 In essence, these decisions conclusively settle that while commercial claims arising out of bunkers, necessaries, repairs and ship management services supplied at the instance of a charterer are enforceable only *in personam* against the charterer, claims for crew wages enjoy statutory protection and remain enforceable *in rem* against the vessel and its true owner. The judgments thus harmonize Bangladeshi admiralty jurisprudence with orthodox international principles by strictly confining *in rem* actions to cases of maritime lien or statutory entitlement, and by preventing the unjust extension of liability to vessel owners for debts incurred by charterers.

8.7 In course of argument Mr. Hossain further submitted that since the defendants have submitted themselves to the jurisdiction of this court, therefore, they are now *estopped* from challenging the jurisdiction of this Court. But this argument of Mr. Hossain does not appear to be cogent in the light of the facts and circumstances of the instant suit. The issue of submission to jurisdiction has been elaborately discussed in the authoritative treatise/book *Admiralty Law and Practice*, Third Edition, by Toh Kian Sing, SC, at pages 409–413, under the heading "Submission to Jurisdiction". The essence of the said discussion, so far as it is applicable to the present case, is that- in

admiralty proceedings, submission to jurisdiction cannot be readily inferred from mere appearance, filing of power or vakalatnama, or from steps taken by the defendant solely for the purpose of protecting the res, vacating an order of arrest, furnishing security, or otherwise safeguarding its interests. Submission to jurisdiction must be clear, voluntary, and unequivocal, and can arise only where the conduct of the defendant is objectively inconsistent with the making and maintenance of a jurisdictional objection and is incapable of explanation on any ground other than acceptance of the Court's jurisdiction. Accordingly, the plea of *estoppel* on the ground of filing power or appearance is misconceived and is hereby rejected.

9. In sum, the plaint shows on its face that the claim is time-barred under Limitation Act, 1908. On a further assessment it also appears that *in rem* jurisdictional conditions of the Admiralty Act are not met, as the person liable *in personam* is not shown to have been the beneficial owner of the vessel.

However, since it appears on the face of the plaint that the suit is barred by limitation, the plaint ought to be rejected rather than returned. It is pertinent to note that a plaint is to be returned for want of jurisdiction or lack of *locus standi*, whereas where the suit is barred by limitation or involves extinguishment of the underlying right or liability, the plaint is liable to be rejected or the suit be dismissed.

In the result, the instant suit being barred by limitation the plaint of the suit is hereby rejected and the security Bank Guarantee being No. 0003230015 dated 08.05.2023 furnished by the defendants is hereby released and Southeast bank Limited, Agrabad Branch, Chattogram is hereby directed to return the same.

Communicate the order at once.

(Sikder Mahmudur Razi, J:)