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

ADMIRALTY SUIT NO. 15 of 2025.

IN THE MATTER OF:
Metrocem Cement Limited
... Plaintiff.
VERSUS
M.V. HAJI KAYES, M-7691 and others.
... Defendants.

Mr. Mohiuddin Abdul Kadir, Advocate with
Ms. Zinia Amin, Advocate with
Mr. Noor Mohammad Mazumder, Advocate
…For the plaintiff.
Mr. Saqeb Mahbub, Advocate with
Mr. Mohammad Parvez Rana, Adv. with
Mr. Abu Bakar Siddique, Advocate
…For the defendant Nos. 1-5.
Mr. Razu Howlader Palash, Advocate with
Mr. Md. Saddam Hossain, Advocate
…for the defendant No. 6.

Heard on: 19.07.2026 and 20.07.2026
And
Order on: The 20th July, 2026

Present:
Justice Sikder Mahmudur Razi

In the instant Admiralty Suit, three applications have been filed by the parties. The first application has been filed by defendant Nos. 1–5 seeking rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, read with section 3 of the Admiralty Court Act, 2000. The second application has been filed by defendant No. 6 seeking to strike out his name from the instant suit. The third application has also been filed by defendant Nos. 1–5 seeking their transposition as pro forma defendants, in addition to their application for rejection of the plaint.

The assertions made in the application for rejection of the plaint, in brief, are that the instant suit is barred by limitation and, moreover, lacks maritime character.

On the question of limitation, Mr. Saqeb Mahbub appearing with Mr. Abu Bakar Siddique representing defendant Nos. 1–5 argues that the instant suit was initially instituted on the allegation of mis-delivery of the cargo in question, which occurred on 25.10.2021, whereas the suit was instituted only on 10.04.2025. It has been further argued that, under Articles 30 and 31 of the First Schedule to the Limitation Act, a suit for mis-delivery of cargo is required to be instituted within one year from the date of discharge, or from the date on which the goods ought to have been delivered, or when the loss or injury occurs. According to the learned advocates, the instant suit having been instituted beyond the prescribed period is hopelessly barred by limitation.

It has further been argued that, by way of subsequent amendment of the plaint, the plaintiff has introduced an altogether different cause of action by treating the transaction as a ‘loan’. Even on that footing, according to the learned advocates, the suit is barred by limitation since, under Article 115 of the First Schedule to the Limitation Act, 1908 a suit founded on such a contract is required to be instituted within three years from the date of breach of the contract. It has been further argued that the period of limitation in that case expired on 25.10.2024 and, therefore, on that count as well, the suit is hopelessly barred by limitation.

The second limb of the arguments advanced by the learned advocates representing the defendant Nos. 1–5 are that, although the suit as originally instituted for mis-delivery of the cargo in question which attracts section 3(2)(g) of the Admiralty Court Act, 2000, the subsequent amendment of the plaint has fundamentally altered the nature of the claim by treating the transaction as a 'loan'. As a result, the suit has lost its maritime character and no longer falls within any of the categories of maritime claims enumerated in section 3(2) of the Admiralty Court Act, 2000.

On the other hand, Mr. Mohiuddin Abdul Kadir, learned Advocate appearing on behalf of the plaintiff, submits that the plea of limitation is barred by the principle of *res judicata*. According to him, when the plaintiff's application for amendment of the plaint was allowed, a similar application for rejection of the plaint on the ground of limitation was already pending before the Court. While allowing the amendment, the Court observed that, in view of the amendment of the plaint, the said application for rejection of the plaint mainly on the ground of limitation has no leg to stand. Therefore, it is contended that the defendants are precluded from raising the same plea of limitation once again.

Refuting the submissions of Mr. Saqeb Mahbub and Mr. Abu Bakar Siddique, learned advocates on the question of limitation arising out of the subsequent amendment of the plaint, Mr. Mohiuddin Abdul Kadir, learned Advocate for the plaintiff, submits that the contention advanced on behalf of defendant Nos. 1–5 does not represent the correct proposition of law or fact. According to him, where the transaction is treated as a loan, the period of limitation of three years is to be reckoned from the date of repudiation of the claim. In the instant case, the correspondence exchanged between the parties demonstrates that the last communication was made on 15.10.2024. Treating the said date as the date of repudiation, the instant suit has been instituted well within the prescribed period of limitation.

With regard to the maritime character of the suit, Mr. Mohiuddin Abdul Kadir further submits that, notwithstanding the subsequent amendment of the plaint, the suit has not lost its maritime character. According to him, the claim still relates to the loss of and damage to the cargo arising out of its carriage by ship and, therefore, squarely falls within the ambit of section 3(2)(g) of the Admiralty Court Act, 2000. On the question of *res judicata*, Mr. Mohiuddin Abdul Kadir, learned Advocate for the plaintiff, has placed reliance in the case of *Haidar Matubbar and Others vs. Shamsu Sheikh and Others* reported in LEX/BDHC/0663/2025, in the case of *Janata Bank vs. Abdus Salam* reported in 1 ADC (2004) 406 and in the case of *Md. Ainuddin Munshi and Others vs. Mahtabuddin Shah Chowdhury and Others* reported in 6 BCR (1986) (AD) 32.

In respect of his submissions on Article 115 of the Limitation Act *i.e.* as to the period of limitation the learned Advocate Mr. Kadir further relies on the decision of *Messers Abdur Rahman Abdul Goni vs- Messers Mackinnon Mackenzie & Co*, reported in 10 DLR (1958) 213 wherein it had been held that, "where the liability of the ship-owner does not arise under the bill of landing but, apart from it, by implication, under the principles of the English Common Law, the special limitation of one year provided by Article III of the Rules relating to the bills of lading, set out in the Schedule to the Carraige of Goods by Sea (Act XXVI of 1925) does not apply but Article 115 of the First Schedule to the Limitation act governs the case."

Mr. Siddique in reply to such submissions of Mr. Kadir has cited a decision of the Indian Supreme Court namely *Jaipur Development Authority vs. Ravi Soni and others* reported in 2026 SCC Online Raj 3546 and thereby submits that if an application for rejection of plaint is filed on different grounds that will not attract the principle of *res-judicata* and still the court can adjudicate the same on merit.

I have heard the learned Advocates for the respective parties, perused the application for rejection of plaint as well as the written objection filed against the said application.

It appears that the plaint was initially filed alleging mis-delivery of the cargo in question by defendant Nos. 1–5, which clearly attracted the provisions of section 3(2)(g) of the Admiralty Court Act, 2000. Subsequently, when defendant Nos. 1–5 filed an application for rejection of the plaint on the ground of limitation, the plaintiff filed an application for amendment of the plaint, substantially altering the nature of the claim. By the said amendment application, which was subsequently allowed by this Court, the plaintiff sought to treat the transaction as a ‘loan’ instead of a claim founded solely on the alleged mis-delivery of the cargo. The following statements were added in the Fresh Plaint which are as follows:

> *6(A). That it is stated that on 29.05.2022 at 2:13 PM, Defendant No. 6 sent an email to the Plaintiff, requesting that an official letter be sent to their management on the Plaintiff Company's letterhead, regarding the transaction of cement raw materials between Madina Cement Industries Ltd. (MCIL) and Metrocem (the Plaintiff) as a loan up to the present date.*

6(B). That it is stated that thereafter, on 29.05.2022 at 2:21 PM, after checking the records, the Plaintiff replied to the email of Defendant No. 6 and informed that there were no longer any pending loan issues with Madina Cement Industries Ltd. All previous settlements regarding the loan of raw materials, including clinker, gypsum, slag, limestone, and fly ash, had already been completed.

6(C) That it is stated that thereafter, on 31.12.2022 at 8:51 AM, the plaintiff sent another email to defendant no. 6, explaining that the previous email dated 29.05.2022 at 2:21 PM, was sent only because the cement clinker had been given to Madina Cement through Robina Resources, and not directly by the plaintiff. The plaintiff further requested the return of the same quantity of 2,960 MT of clinker, which has not been returned to the plaintiff.

6(D). That it is stated that on 26.05.2022, Mr. Monirul Islam, on behalf of Madina Maritime Ltd. (defendant no. 5) issued a letter to Madina Cement Industries Ltd. (defendant no. 6), informing them about the clinker, gypsum, limestone, and slag loan transactions with various factories including plaintiff company related to Madina Cement for the month of May 2022. Both the defendant nos. 5 and 6 were under the beneficial ownership of the same parent entity, the Madina Group.

6(E). That it is stated that on 15.10.2024, Mr. Monirul Islam, on behalf of Madina Maritime Ltd. (defendant no. 5), issued a letter *to Madina Cement Industries Ltd. (defendant no. 6), informing them about the clinker, gypsum, limestone, and slag loan transactions with various factories related to Madina Cement for the month of September 2024, which included the plaintiff company. It was stated therein that the plaintiff is owed 2,960 metric tons of clinker from defendant no. 6.*

6(F). That the principal defendants neither denied of taking the cargo of the plaintiff, or said that they will not return the cargo, nor did they ever show any proof that they have already returned the cargo to the plaintiff and it is only on 16.04.25 that in reply to legal notice dated 05.03.25 that the defendants lawyer denied liability to return the cement clinker.

6(G). That it is stated that the principal defendant nos. 1 to 5 mis-delivered the cargo to defendant no. 6 without obtaining any authority from the plaintiff. Furthermore, defendant no. 5. by letter dated 15.10.2024, stating in loan transactions with various factories related to Madina Cement for the month of September 2024 that the plaintiff is owed 2,960 metric tons of clinker from defendant no. 6. However, such loan was forcibly taken by the defendant no.2 without any express or implied authority of the plaintiff and the defendants has not delivered till date.

6(H). That it is stated that after filing the instant plaint, subsequently the plaintiff received a letter from defendant no. 6 and came to know that without returning the cargo which the defendants said was taken on loan and would be returned, the

> *beneficial owners of the principal defendant nos. 1, 3, 5 and 6 sold the principal defendant no. 6 Company to another party without returning the cargoes to the plaintiff or compensating the plaintiff with respect to the mis-delivered cargoes and deceived the plaintiff.*

Upon going through the statements subsequently introduced into the plaint by way of amendment, it appears that the suit, as it now stands, concerns a transaction which the plaintiff has sought to characterize as a 'loan'.

It appears from those statements of the plaint that, by an email dated 29.05.2022, it was alleged that defendant No. 6 requested the plaintiff to treat the transaction as a loan. The plaintiff, however, refused the said proposal by stating that "…there were no longer any pending loan issues..." Subsequently, by another email dated 31.12.2022, the plaintiff took a position different from its earlier stand and explained that the previous email had been sent only because the cement clinker had been supplied to Madina Cement through Robina Resources and not directly by the plaintiff. In the same email, the plaintiff requested the return of an equivalent quantity of cement clinker, alleging that the same had not been returned.

A reading of the subsequent paragraphs of the amended plaint, including paragraph 10 relating to the cause of action, reveals that the plaintiff has simultaneously relied upon two distinct and inconsistent foundations of its claim. On the one hand, the plaintiff has treated the dispute as one arising out of the mis-delivery of cargo, while on the other hand, it has characterized the very same transaction as a loan.

If the first limb of the plaintiff's case, namely, mis-delivery of cargo, is taken into consideration, the claim undoubtedly falls within the ambit of section 3(2)(g) of the Admiralty Court Act, 2000. However, on the face of the plaint itself, such a claim appears to be barred by limitation under Articles 30 and 31 of the First Schedule to the Limitation Act.

It is true that this Court had, on an earlier occasion, allowed the plaintiff to amend the plaint. However, the amendment has brought about a substantial and fundamental shift in the nature of the claim, transforming it from one founded on the alleged mis-delivery of cargo into one essentially based on a loan transaction. Consequently, the legal character of the suit has undergone a significant change, which directly affects the subject-matter jurisdiction of the Admiralty Court.

It is true that the Admiralty jurisdiction in Bangladesh is a special statutory jurisdiction conferred by the Admiralty Court Act, 2000. Unlike ordinary civil courts, the Admiralty Court can entertain only those claims which fall strictly within the closed and exhaustive list of maritime claims specified in section 3(2) of the Act.

The suit, as it was originally framed, was one for wrongful delivery of the cargo, which, as observed earlier, constituted a recognized maritime claim under section 3(2)(g) of the Admiralty Court Act, 2000. Alternatively, as contended by Mr. Mohiuddin Abdul Kadir, learned Advocate for the plaintiff, the claim may also be brought within the ambit of section 3(2)(h) of the Act. However, by subsequently amending the plaint and treating the transaction as a ‘loan’, the plaintiff has, in the opinion of this Court, fundamentally altered the nature of its cause of action.

For a contract to be regarded as maritime so as to attract the Admiralty jurisdiction of this Court, there must exist a direct and substantial nexus between the contract and the operation, navigation, management, or carriage of goods by a ship. A pure and simple suit for recovery of a loan, or a claim founded upon a transaction which the plaintiff itself has chosen to characterize as a loan, does not, in the opinion of this Court, constitute a maritime claim within the meaning of section 3(2) of the Admiralty Court Act, 2000 and, therefore, does not attract the Admiralty jurisdiction of this Court.

In the case of *Brian Inacaster v MV Golden Gate*, reported in 12 BLD (HCD) 539: LEX/BDHC/0190/1992, the Court held that a claim for recovery of a loan has no nexus or proximity to a transaction involving the supply of necessaries and, therefore, falls outside the jurisdiction and ambit of the Admiralty Court. Although the factual matrix of the instant suit is different, the transaction involved has, by way of a subsequent amendment to the plaint, been characterized as a "loan". Consequently, the suit has been transformed from one for recovery of damages arising out of cargo loss into one essentially for recovery of money on the basis that the transaction constituted a loan.

Furthermore, our Apex Court, in *M/S Saleh Steel Industries Ltd v TSS 'Pacific Abeto'*, reported in 35 DLR (AD) 188, observed that liability arising under a general contract must be adjudicated by a court of ordinary civil jurisdiction and not by an Admiralty Court. Although there was initially no written contract in the instant case, the subsequent correspondence exchanged between the plaintiff and the defendants has been relied upon by the plaintiff as constituting a contractual arrangement between the parties.

Therefore, I am of the view that the application filed by defendant Nos. 1–5 has considerable merit. By recharacterizing the alleged wrongful delivery as a loan transaction, the plaintiff has effectively stripped the claim of its maritime character, since a generic loan does not fall within any of the specified heads of Admiralty jurisdiction under section 3(2) of the Admiralty Court Act, 2000. Consequently, the instant suit has, in essence, become a simple suit for recovery of money.

Accordingly, I hold that the application filed by defendant Nos. 1–5 succeeds, albeit in a modified form. Instead of rejecting the plaint outright, it would be just and proper to return the plaint to the plaintiff for presentation before the appropriate forum, if so advised.

Accordingly, the plaint of the instant suit is hereby returned to the plaintiff under Order VII Rule 10 of the Code of Civil Procedure. The interim order, if there by any, is hereby recalled and vacated.

If the plaintiff chooses to institute the suit before the competent Commercial Court or the ordinary Civil Court, the period during which the present proceeding remained pending before this Court shall not operate as a bar on the ground of limitation in the adjudication of the claim.

The Marshall of this court is hereby directed to return the Certificates of Registry of the vessel to the learned Advocate for the defendant Nos. 1-5.

As this Court has decided to return the plaint for presentation before the appropriate forum, the application for striking out filed by defendant No.

6 has become redundant. Likewise, the application for transposition has also become redundant and requires no further consideration.

(Sikder Mahmudur Razi, J:)