

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

**Admiralty Suit No. 60 of 2012**

Friends Multi Trade Company

Plaintiff

-Versus-

M.V. Hearty Falcon and others

Defendants

Mr. Garib Newaz, Senior Advocate

...For the plaintiff

Mr. Muhammad Ohiullah, Advocate

... For the defendant Nos. 1, 5 and 6

Heard on: 24.02.2025, 25.02.2025, 26.02.2025,  
03.03.2025, 05.03.2025 and 04.05.2025

Judgment on: 18.05.2025

**Present:**

**Mr. Justice Zafar Ahmed**

‘Friends Multi Trade Company’ as plaintiff filed the instant admiralty suit praying for a decree for BDT 2,48,40,644.40 equivalent to USD 30,1098.72 (based on the prevalent exchange rate at the time of filing of the suit) against the principal defendants jointly and severally together with *pendente lite* interest on the decretal amount from the date of filing of the suit till the date of realization @ 20% per annum and costs.

The case of the plaintiff as stated in the plaint, in short, is that the plaintiff company mainly carries out the business of supplying

various shipping materials including bunker supply of MGO and IFO fuels to different vessels in Bangladesh.

The 5<sup>th</sup> defendant (Falcon Shipping Co. Ltd. based in Vietnam) is the beneficial owner of the 1<sup>st</sup> defendant vessel, namely M.V. Hearty Falcon and also the vessels, namely M.V. Diamond Falcon and M.V. Lively Falcon and as such, the 1<sup>st</sup> defendant vessel is the sister vessel of M.V. Diamond Falcon and M.V. Lively Falcon (not impleaded in the suit as defendants).

The plaintiff supplied MGO-DMA to the 1<sup>st</sup> defendant vessel and M.V. Lively Falcon on 08.12.2011 and 05.01.2012 respectively. The 5<sup>th</sup> defendant paid the bills after delay of 73 and 75 days respectively causing the plaintiff to suffer loss of USD 1437 and USD 1628 respectively.

The plaintiff supplied MGO-DMA and IFO-180 cst to the vessel M.V. Diamond Falcon on 16.04.2012. The plaintiff submitted bills for an amount of (USD 69,444.81+198,956.91) = total USD 2,68,401.72 but till filing of the suit, the 5<sup>th</sup> defendant did not pay the bills and hence, the suit.

Defendant Nos. 1, 5 and 6 contested the suit by filing a joint written statement stating, *inter alia*, that the plaintiff has no *locus standi* to file the suit, there is no cause of action to file the suit and that the suit is bad for mis-joinder and non-joinder of parties.

The specific case of the defendants is that the plaintiff did not suffer any loss due to the delayed payment against the supply of MGO-DMA to the 1<sup>st</sup> defendant vessel and the vessel M.V. Lively Falcon and the plaintiff did not supply MGO-DMA and IFO-180 cst to the vessel M.V. Diamond Falcon for the amount as alleged.

The following issues were framed on 01.07.2014;

1. Is the suit maintainable under the Admiralty jurisdiction against the defendant nos. 1, 4, 5 and 6?
2. Does the plaintiff have any cause of action against the defendant nos. 1, 4, 5 and 6?
3. Is the suit bad for mis-joinder and non-joinder of parties?
4. Is the suit barred under the principles of estoppel, waiver and acquiescence?
5. Are the defendant nos.1, 4, 5 and 6 liable for the alleged claim of the plaintiff?
6. Is the plaintiff entitled to any decree against the defendants? If so, to what extent?

Plaintiff examined 3(three) witnesses (PW1 to PW3) and defendants examined 1(one) witness (DW1). The witnesses were cross-examined. The documents tendered in evidence by the plaintiff were marked as exhibit Nos. 1-10. The contesting defendants did not produce any documentary evidence.

The claim of the plaintiff is twofold. Firstly, it supplied bunker to the vessels M.V. Hearty Falcon (1<sup>st</sup> defendant) and M.V. Lively Falcon. Delayed payment of bills by the defendants caused financial loss to the plaintiff. Secondly, the plaintiff supplied bunker to the

vessel M.V. Diamond Falcon but the defendants did not pay the bills. Specific case of the plaintiff is that three vessels are sister vessels and they are beneficially owned by the 5<sup>th</sup> defendant.

During the course of argument, Mr. Muhammad Ohiullah, learned Advocate appearing for the defendant Nos. 1, 5 and 6, raised some points which do not touch upon the merit of the case but are related to procedural matter. Mr. Ohiullah submits that the breach of procedural law committed by the plaintiff goes to the root of the matter rendering the suit liable to be dismissed inasmuch as the defects were not cured by the plaintiff.

First objection raised by Mr. Ohiullah is that the burden lies on the plaintiff to prove that the 1<sup>st</sup> defendant vessel is the sister vessel of the other two vessels and that those vessels are owned by the same registered owner but the plaintiff did not file any document before the Court to substantiate the claim. Mr. Ohiullah refers to the cases of ***HRC Shipping Ltd. vs. MV X-Press Manaslu, MV X-Press Resolve and ors.*** 58 DLR 185, ***HRC Shipping Ltd. vs. MV Lady Fatima and MV Dali and ors.*** 60 DLR 494 which was affirmed by the Appellate Division in *HRC Shipping Ltd.* reported in 14 BLC (AD) 115, ***Acquila Voyager Maritime GMBH & Co KG vs. M.V. Jin Ace and ors.*** 1 CLR 1 and ***Glander International Bunkering Dmcc. vs. Altus Exertus (IMO. 7909463)*** decided by the High Court of Gujrat on 18.02.2019.

In reply, Mr. Garib Newaz, learned Advocate appearing for the plaintiff, submits that the defendants in their written statement did not specifically deny this fact as required under Order VIII, rule 5 of the Code of Civil Procedure, 1908 (in short, the ‘CPC’) and as such, this fact is taken to be admitted by the defendants. Mr. Garib Newaz refers to some case laws in support of his argument.

Second objection is that the claim of the plaintiff arose out of supply of bunker to three vessels but only one vessel (M.V. Hearty Falcon) has been impleaded in the suit as defendant No. 1 and the rest two vessels (M.V. Lively Falcon and M.V. Diamond Falcon) have not been made parties in the suit although they are necessary parties and in whose absence no effective decree can be passed at all and as such, the suit is liable to be dismissed. Reliance is placed on ***Barada Sundari Paul and ors. vs. The Assistant Custodian, Enemy Property, Comill and ors.*** 15 BLD (AD) 95, ***Fulbaria Adarsha Market Dokandar Malik Samity vs. Fulbaria Adarsha Market Khatigrastha Dokandar Kallyan Samabaya Samity and ors.*** 53 DLR 220 and ***Moreshar Yadaorao Mahajan vs. Vynkatesh Sitaram Bhedi (D) Tr.Lrs*** (Civil Appeal Nos. 5755-5756 of 2011) decided by the Supreme Court of India on 27.09.2022.

In reply, Mr. Garib Newaz referred to Order I, rule 9 and Order I, rule 13 of the CPC and submits that since the defendants did not raise the issue of non-joinder of parties earlier, they cannot raise the

issue at this stage under Order I rule 13. Mr. Garib Newaz further points out that under Order I rule 9, the suit shall not be defeated for the alleged non-joinder of parties.

Third objection relates to competency of the plaintiff to file the suit and presentation and verification of the plaint and competency of plaintiff witnesses (PW). Mr. Ohiullah refers to the plaint, deposition of PWs, letter of authority (ext. 1) and other documentary evidence tendered in evidence by the PW1 as well as various provisions of the CPC and submits that the suit was instituted in the name of wrong plaintiff, the plaint has not been verified and presented in accordance with the law and as such, the same cannot be treated as a plaint. Learned Advocate further submits that the witnesses are not competent to give evidence in the case.

Third objection is taken up first for adjudication.

Section 6 of the Admiralty Court Act, 2000 and Rule 3 of the Admiralty Rules, 1912 are fairly specific and self-contained in prescribing the manner of institution of admiralty suits. Section 6 and Rule 3 state that admiralty suit shall be instituted by a plaint drawn up, subscribed and verified according to the provisions of the CPC. Let us examine the relevant provisions of the CPC.

The plaint shall contain the name, description and place of residence of the plaintiff (Order VII, rule 1). The plaint has to be signed by the party. However, due to absence or for other good

reason, if the plaintiff is unable to sign the plaint, it may be signed by any person duly authorized by the plaintiff to sign the same or to sue on his behalf (Order VI, rule 14). Plaint has to be verified by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case (Order VI, rule 15).

The plaintiff of the instant suit has been described in the plaint as “Friends Multi Trade Company having its Corporate Office situated.....” The plaintiff is represented by its authorized person, namely “Mohd. Nazmul Islam”, Executive (Accounts) who verified the plaint on 05.08.2012. The plaint is silent as to whether the “plaintiff company” is a body established by or registered under the law. The name of the chairman or managing director or partners or managing partners of the “plaintiff company” has not been mentioned in the plaint.

The authorized person “Mohd. Nazmul Islam” did not depose before the Court as witness. PW1 is Monir Ahmed Khan. He deposed before the Court by dint of a printed letter of authority dated 23.02.2017 (ext. 1) signed by Md. Yasin Chowdhury as proprietor of “Friend Multi Trade Company” issued on the letterhead of the plaintiff company. It appears from ext. 1 that PW1 was an employee of “FMC Dockyard Limited.” However, PW1 did not produce his letter of appointment or any document to show that he was an employee of Friends Multi Trade Company. During cross-

examination, PW1 admitted that the signature of the attorney (PW1) appearing in the letter of authority dated 23.07.2017 (ext. 1) was not same as that given by him on the deposition sheet. PW1 was suggested during cross-examination that since he was not an employee of Friends Multi Trade Company, he had no authority to depose in the case and the entire deposition given by him was liable to be expunged.

PW2 is Uttam Ghosh who deposed that he was serving as DGM of FMC Group of Companies but he did not produce any document regarding his employment in the company. He further deposed that Md. Yasin Chowdhury was the owner of “Friends Multi Trade Company” and managing director of “FMC Dockyard Limited”. PW2 was suggested during cross-examination that he was not the DGM of the company but an outsider and hence, his entire deposition was liable to be expunged. PW2 replied, “It is not a fact.”

PW3 is Shahab Uddin Ahmed. He was the Revenue Officer at Chattogram Customs House during the relevant period.

Order XXIX, rule 1 of the CPC deals with subscription and verification of pleadings in suits by or against corporations. ‘Corporation’ means a body established by or registered under a law.

In this case, the letter of authority dated 23.02.2017 (ext. 1), trade licences issued by Chattogram City Corporation, income tax certificates (ext. 2 series) and other documents tendered in evidence



by PW1 establish the fact that the plaintiff “Friends Multi Trade Company” was a proprietorship concern and Md. Yasin Chowdhury was its sole proprietor, but these facts were not stated in the plaint. The plaintiff ‘company’ is neither a body established by nor registered under a law and as such does not come within the ambit of Order XXIX. An unregistered body cannot sue or be sued as a corporation but all its members must be impleaded (AIR 1925 All. 337, ILR 14 Mad. 362, ILR 22 Bom. 729, ILR 46 Bom. 132). Therefore, in the instant case, the plaintiff ‘company’ being a proprietorship concern cannot sue in its own name. The suit ought to have been filed in the name of its proprietor who is a natural person. I note that the vokalatnama appears to have been signed by Md. Yasin Chowdhury identifying himself as proprietor of ‘Friends Multi Trade Company’ but his name was not given in the vokalatnama or in the plaint. Neither the person who signed and verified the plaint nor the proprietor of the plaintiff ‘company’ appeared before the Court. The letter of authority authorizing the person to verify the plaint and to present it before the Court was not produced before the Court. Signature of PW1 appearing in the letter of authority (ext. 1) issued by the proprietor does not match with that of PW1 given on the deposition sheet. No explanation whatsoever has been given regarding these anomalies. I have no hesitation to hold that the suit was filed in

the name of wrong person and the plaint was not duly signed, verified and subscribed.

The defects mentioned in the preceding paragraph are mere irregularities and can be remedied at any stage of the proceedings. Where a suit is instituted in the name of the wrong person as plaintiff, the Court may, at any stage of the proceedings, order any other person to be substituted or added as plaintiff or order that the name of the wrong plaintiff, who is improperly joined, be struck out and the name of any person who ought to have been joined as plaintiff be added [Order I, rules 10(1) and 10(2) of CPC].

The words “in the name of wrong person as plaintiff” mentioned in Order I, rule 1(1) include suits instituted by persons who had no right to do so (*Laxmikumar vs. Krishnaram*, A 1954 MB 156). Necessary party has to be brought on record. A necessary party is one who is bound by the result of the action and in whose absence the question cannot be effectually and completely settled unless he is a party [1992 (2) SCR 1]. Thus, the general rule that the suit cannot be dismissed on the ground of non-joinder of proper parties does not apply in the case of non-joinder of necessary parties. In *Abbas Khaleeli & ors. vs. Saifuddin Valika and ors.*, PLD 1969 kar. 692 the High Court of the then West Pakistan observed, *inter alia*, that the description of the plaintiffs was totally erroneous. No evidence had yet been recorded in the suit. It was held that the relevant provisions

of the CPC are of an ameliorative nature, and not of a penal nature. Therefore, the plaintiff should be allowed an opportunity to cure the defects and the suit should not be dismissed. The Court further held that when the plaintiff is given an opportunity in the trial Court to cure the defects in the plaint, but he fails to do so the suit will have to be dismissed.

The plaint of the instant suit was admitted for hearing on 06.08.2012. PWs were examined and cross-examined on 05.06.2017, 09.10.2017, 06.11.2017, 30.11.2017, 11.02.2018, 20.03.2018, 07.05.2018, 08.05.2018, 02.07.2018 respectively. The argument of the instant suit commenced on 24.02.2025 and continued on 25.02.2025, 26.02.2025, 03.03.2025 and concluded on 05.03.2025. During the course of argument, the defects were pointed out by the learned Advocate of defendants as well as by this Court to the learned Advocate of the plaintiff. 04.05.2025 was fixed for delivery of judgment. The learned Advocate failed to take steps to cure the defects. The judgment was deferred. Again no step was taken. Earlier, the plaintiff side took several adjournments to cure the defects. Today, when the matter was taken up for delivery of judgment, no step was taken by way of filing an application to cure the defects. The Court cannot allow adjournment for an indefinite period of time to give an opportunity to the party to cure formal defects although the suit was admitted for hearing on 06.08.2012.

Accordingly, this Court is left without any option but to dismiss the suit. Since I have decided to dismiss the suit on the grounds that the plaintiff as described in the plaint is not authorized by law to sue in its own name and as such, the suit was filed in the name of wrong plaintiff, the verification of the plaint was not done in accordance with law and thus, the plaint was not subscribed and presented as per the mandatory provisions of the CPC, I refrain from dwelling upon the merit of the case and other objections raised by the learned Advocate of the defendants.

Accordingly, it is ordered that the suit is dismissed.