

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

**Present:
Mr. Justice Zafar Ahmed**

ADMIRALTY SUIT NO. 35 OF 2015

IN THE MATTER OF:

South Atlantic Shipping Ltd., Owners of the vessel M.V. S. Atlantic.

..... Plaintiff

-VERSUS-

Honour Ship Management Ltd. and others.

.....Defendants

Ms. Tania Rahman, Advocate

..... For the plaintiff

Mr. Mohammad Ashraf Uddin Bhuiyan, Advocate

.....For the defendant No. 4

Heard on: 09.11.2025 and 17.11.2025

Judgment on: 19.11.2025

1. The plaintiff has filed the instant Admiralty Suit praying for, among other things;
 - (i) a decree declaring that the plaintiff is entitled to exercise the lien on the cargo of the 4th defendant and/or sub-freight due to the 3rd defendant from the 4th defendant under the charterparty dated 08.01.2015;
 - (ii) permanent injunction restraining the 4th defendant and 6th defendant bank from paying any sums under the charterparty dated 08.01.2015 to the 3rd defendant without first paying freight of USD 409,912 to the plaintiff under the charterparty

dated 02.02.2015, the sum due under the previous charterparty amounting to USD 38,500; and

(iii) damages for detention in the sum of USD 274,887.33 and demurrage for USD 147,864.73 as of 20.05.2015, total USD 871,164.06.

2. During pendency of the suit, the plaintiff received 80% of the freight amount to the tune of USD 448,110.38 on 25.08.2015. The plaint and the prayer portion (ii), so far as it relates to the freight, were amended. In the amended prayer portion (iia), the plaintiff prayed for a direction upon the 4th defendant to make payment of 20% of the remaining freight in USD due under the charterparty dated 08.01.2015 directly to the plaintiff.

Identity of the parties:

3. Plaintiff is South Atlantic Shipping Ltd., based in Liberia. They were the owners of the vessel M.V. S. Atlantic (the vessel).

1st defendant is Honour Ship Management Ltd. (Honour), a company based in British Virgin Islands.

2nd defendant is Wideocean Maritime Ptd. Ltd. (Wideocean), a company based in Singapore.

3rd defendant is Sagar Ship Management Pte. Ltd. (Sagar), a company based in Singapore.

4th defendant is Bangladesh Chemical Industries Corporation (BCIC), based in Bangladesh.

5th defendant is Sonali Bank, a banking company based in Bangladesh.

6th defendant is Janata Bank Ltd., a banking company based in Bangladesh.

Contesting defendant(s):

4. 4th defendant BCIC contested the suit by filing written statement and additional written statement. 3rd defendant Sagar filed a power in the suit, but did not file written statement. Sagar did not contest the suit.

Plaintiff's case as stated in plaint and in additional statements:

5. The plaintiff let the vessel M.V. S. Atlantic to the 1st defendant Honour on a voyage charterparty dated 02.02.2015 (ext. 2) for shipment of prilled urea in bulk from Mesaieed, Qatar (port of loading) to the Mongla Port, Bangladesh (Port of discharge). The freight was fixed at USD 409,912.50 which included USD 38,500 due under a previous charterparty dated 17.10.2014 between the plaintiff and the 1st defendant. Freight was payable upon issuance of the bill of lading (B/L). 2nd defendant Wideocean guaranteed the payment of freight.
6. Clause 8 of the charterparty dated 02.02.2015 contained a lien clause permitting the plaintiff to have a lien on the cargo and on all sub-freights, demurrage, damages *etc.*
7. Earlier, on 08.01.2015, the 4th defendant BCIC as the importer and owner of the cargo entered into a charterparty contract with the 3rd

defendant Sagar (ext. 4). BCIC was the charterer and Sagar was shown as owner of the vessel under the said charterparty for a voyage from Mesaieed, Qatar to Mongla Port, Bangladesh to deliver cargo of granular/ prilled urea in bulk. Under clause 44 of the charterparty, freight was to be paid by letter of credit (L/C), 80% being payable upon commencement of discharge and the remaining 20% on completion of discharge. On 20.01.2015, the 6th defendant bank opened the L/C in favour of the 3rd defendant Sagar for USD 777,900.

8. On 26.02.2015, the Shipping Agent on behalf of the Master of the vessel issued the B/L (ext. 6) wherein it was stated that “*freight payable as per charterparty dated 02/Feb/2015*”. The owners of the cargo (prilled urea in bulk, 32,999.895 mts) covered by the B/L was the 4th defendant BCIC.
9. The 1st defendant Honour and the 2nd defendant Wideocean did not pay 80% of the freight to the plaintiff after issuance of the B/L. Despite non-payment of the freight, the vessel sailed from Qatar. Upon her arrival at Mongla Port, Bangladesh, the plaintiff detained the vessel for non-payment of freight and issued two notices of lien on 08.05.2015 and 15.05.2015 (ext. 11) on the defendant Nos. 1 to 4 (Honour, Wideocean, Sagar and BCIC).
10. The plaint was admitted for hearing on 04.06.2015. On the same day, *i.e.* on 04.06.2015, the plaintiff obtained an injunction from this Court restraining the 4th defendant BCIC and the 6th defendant bank from

making any payments to the 3rd defendant Sagar or any other defendants until payment of freight and other sums to the plaintiff. On 05.07.2015, the plaintiff, 3rd defendant Sagar and the 4th defendant BCIC entered into a settlement agreement (ext. 9) which was accepted by this Court on 08.07.2015 and the injunction order was modified accordingly. The cargo discharge commenced. Finally, as per instructions of the 4th defendant BCIC, the 3rd defendant Sagar made a payment of USD 448,110.38 to the plaintiff on 25.08.2015.

Case of 4th defendant BCIC:

11. The 4th defendant had no contractual relationship with the plaintiff and as such, they are not liable to pay the plaintiff.

Issues:

12. On 24.08.2017, the following issues were framed:
 - i. Is the suit maintainable in its present form and manner?
 - ii. Does the plaintiff has cause of action?
 - iii. Whether the plaintiff is entitled to exercise the lien on the cargo of the defendant No. 4, BCIC and/or the sub-freight due to the defendant No. 3, Sagar from defendant No. 4, BCIC under the Charter party dated 8 January 2015?
 - iv. Whether the plaintiff is entitled to get relief as prayed for?
 - v. Whether the plaintiff is entitled to get any other relief as per law and principles?

Witnesses:

13. Plaintiff examined Mr. Arif Al Azad as sole witness (PW1). Documents tendered in evidence by the PW1 were marked as exhibit Nos. 1-16. He was cross-examined by the 4th defendant.

14. 4th defendant BCIC examined their Manager Purchase Mr. Mohammad Abdus Salam (DW1). He tendered in evidence letter of authority as exhibit-A. The DW1 did not produce any other documentary evidence. He was cross-examined by the plaintiff.

Analysis of relevant facts:

15. Facts are not disputed. It is accepted that the plaintiff was the owner of the vessel M.V. S. Atlantic. The 1st defendant Honour was the head charterer of the vessel under the voyage charterparty dated 02.02.2015. In the 'Notice of Lien and Bill of Lading Freight Payment Demand' dated 15.05.2015 (ext. 11) issued by the plaintiff, the 3rd defendant Sagar was mentioned as the sub-charterer of the vessel. One year later, the plaintiff in their 'Notice of Lien' dated 17.05.2016 (ext.16) described the 1st defendant Honour as the head charterer, the 2nd defendant Wideocean as sub-charterer, the 3rd defendant Sagar as the sub-sub-charterer, and the 4th defendant BCIC as the sub-sub-sub-charterer (end charterer) of the vessel under the respective voyage charterparties. It would be seen that these facts *e.g.* who is the sub or sub-sub charterer, for the purpose of determination of liability, will not make any difference. It is accepted that the 4th defendant BCIC was the owners of the cargo and later on became the holder of the B/L.

Clause 8 (lien clause) under head voyage charterparty dated 02.02.2015:

16. The head charterparty on a fixture recap dated 02.02.2015 between the plaintiff (vessel owners) and the 1st defendant Honour (head charterer) incorporated the terms of earlier voyage charterparty dated 17.10.2014 between the parties on “Gencon” terms. Clause 8 of the said charterparty contains the ‘lien clause’ as follows:

“8. Lien Clause

The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, dead freight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same”.

Claim for demurrage:

17. Once the vessel exceeds laytime, the charterer is in breach of contract. It was held in *The Spalmatori* [1964] A.C. 868 that demurrage constitutes the daily rate of liquidated damages payable for that breach, relating to the detention of the vessel after the expiry of the lay days. Lord Guest said in the reported case, “*demurrage is the agreed damages to be paid for delay if the ship is delayed in loading or discharging beyond the agreed period*”.
18. It is stated at para 14 of the plaint that at present the vessel is in open sea position outside the port of Mongla resulting the lay days to expire and the vessel went to demurrage. It is further stated that till 20.05.2015 the total time lost was 21 days 22.43 hour against which demurrage stands at USD 147,864.73. The plaint was filed and admitted for hearing on 04.06.2015. No further statement was made in

the additional statements filed by the plaintiff as to the claim for demurrage. No documentary evidence has been produced before the Court in support of the claim for demurrage. The PW1, in his oral evidence, did not state factual matrix giving rise to the claim. Therefore, I hold that the plaintiff has failed to prove their claim for demurrage on a balance of probability.

Claim for damages for detention:

19. It is often the case that the effect of a charterer's breach of charterparty is to detain the vessel and prevent her from earning freight. The breach which gives rise to such detention and a right to damages may concern any aspect of the charterer's performance of a voyage charterparty. As a fundamental part of a claim for damages, the shipowner must establish that the detention of the vessel was caused by the charterer's breach [*The Count* (2006) [2008] 1 Lloyd's Rep. 72].

Causation and proof of loss for detention:

20. It is observed at para 12.195 in 'Carver on Charterparties', South Asian Edition, 2020 that in order to recover substantial damages for the detention, the burden is upon the shipowner to show that, but for the detention, the vessel would have been put to profitable use and that the shipowner has therefore suffered a loss. [*The Ferdinand Retzlaff* [1972] 2 Lloyd's Re. 20 at 125, 128]. It must also provide reasonable proof of the amount of the loss [*The MTM Hong Kong*

[2016] 1 Lloyd's Rep. 197]. However, a merchant ship is, by her nature, a profit-earning chattel and the shipowner will therefore usually establish a *prima facie* loss by proving that the vessel was detained in a non-profit earning state by the charterer's breach of contract [*The Mass Glory* [2002] 2 Lloyd's Rep. 244]. Substantial damages will then be awarded for the loss unless the charterer establishes that the vessel could not have been used as a profit-earning chattel, even if she had not been so detained [*The Timna* [1971] 2 Lloyd's Rep. 91].

Measure of damages for detention:

21. It is stated at para 12.196 in 'Carver on Charterparties' (*supra*) that in general, subject to any contrary provision in the charterparty (the classic example being the demurrage clause in a voyage charter), damages for detention, representing the loss of earning capacity during the period of loss of use, are to be calculated by reference to the market rate of freight or hire prevailing during that period (*The Mass Glory*) less (i) any expenses which would have been incurred in earning such freight or hire [*The Hebridean Coast* [1961] A.C. 545], and (ii) any sums derived from substitute employment or other mitigating benefits [*The Noel Bay* [1989] 1 Lloyd's Rep. 361]. In *The Noel Bay*, the charterer's failure to nominate a load port and subsequent conduct amounted to a repudiation of the voyage charter and the vessel was delayed for several days waiting for orders before

the repudiation was accepted by the shipowner, so that there was an accrued right to damages for delay by the time that the contract was terminated; but, on the facts, the shipowner suffered no loss from the detention.

22. It is stated at para 11 of the plaint that due to non-payment of freight by Honour (1st defendant), the plaintiff informed the charterer that the vessel was detained and remained under detention from 12.03.2015 until 15.04.2015 when she arrived into the territorial waters of Bangladesh. It is further stated that the amount of damages for detention is USD 247,887.33. PW1 tendered in evidence ‘detention invoice No. 5’ dated 08.05.2015 (ext. 9) issued by the plaintiff which was addressed to the head charterer (1st defendant Honour) claiming USD 247,887.33 for detention for the period from 12.03.2015 to 15.04.2015. The plaintiff did not adduce evidence to prove, but for the detention, the vessel would have been put to profitable use and that they had therefore suffered a loss (*The Ferdinand Retzlaff*). Accordingly, I have no hesitation to hold that the plaintiff has *prima facie* failed to establish their claim for damages for detention.

Claim for freight:

23. In the head charterparty dated 02.02.2015, it is stated, “FREIGHT: LUMPSUM USD 429,000 FIOST BSS 1/1”. It is also stated, ‘FULL FREIGHT DEEMED EARNED UPON COMPLETION OF LOADING & SIGNING/ RELEASING OF BILLS OF LADING DISCOUNTLESS AND

NON RETURNABLE VESSEL AND/OR CARGO LOST OR NOT LOST”.

24. In the sub/sub-sub charterparty dated 08.01.2015 between the 3rd defendant Sagar and the 4th defendant BCIC, it is stated, “80% FREIGHT TO BE PAID WITHIN 24 HOURS AFTER COMMENCEMENT OF DISCHARGE AT CHITTAGONG PORT. 20% BALANCE FREIGHT TO BE PAID ON COMPLETION OF DISCHARGE AND RIGHT & TRUE DELIVERY OF CARGO I.E. BAGGED UREA UPON ADJUSTMENT OF C&F VALUE OF DAMAGE CARGO, SHORTAGE OF CARGO, LOAD PORT DESPATCH AND AP/OAP (ADDITIONAL PREMIUM/ OVERAGED PREMIUM), IF ANY”. I have already mentioned that it is stated in the bill of lading, “Freight payable as per CHARTERPARTY DATED: 02/Feb/2025”.

Settlement Agreement dated 05.07.2015 (ext. 13):

25. During pendency of the suit, the plaintiff, 3rd defendant Sagar and 4th defendant BCIC entered into a settlement on 05.07.2015. Clauses 1-3 and 8 of the said settlement are relevant. Those are reproduced below:
- (1) The discharge will start as soon as practicably possible preferably tomorrow 6th of July, 2015.
 - (2) Payments of 80% of the freight will be made within 3 working days from the date of start of discharge.
 - (3) Payments to stevedore will be made to the owners [plaintiff] by Sagar.
 - (8) BCIC will only pay for the discharge for the present voyage.

This Court, by order dated 08.07.2015, accepted and endorsed the settlement.

26. At common law, the shipowner has a lien on the goods that it has carried in the vessel for the freight due upon them [*Wiltshire Iron Co.*

Ltd. vs. Great Western Railway Co (1871) L.R. 6 Q.B. 776]. The lien arises by operation of law (rather than by contract) which entitles the shipowner to retain the goods in its possession until the freight is paid. It is recalled that the plaintiff issued notices of lien to the parties. The 4th defendant BCIC is under an obligation at common law to pay the freight fixed under the head charterparty to the plaintiff [*Wehner vs. Dene Steam Shipping Co* [1905] 2 K.B. 92].

27. On 29.11.2015, this Court directed the 3rd defendant Sagar to pay USD 22,500 to the plaintiff to reimburse the stevedore’s fees paid by the plaintiff. It is stated in the additional statements filed by the plaintiff that on 25.08.2015, the plaintiff received USD 448,110.38 from the 3rd defendant Sagar as per instructions of the 4th defendant BCIC.
28. In the ‘Freight Invoice’ dated 29.05.2015 (ext.12) issued by the plaintiff to the 4th defendant BCIC, the plaintiff claimed freight in the sum of USD 409,92.500. The relevant portion of the said ‘Freight Invoice’ runs as follows:

“Re: M.V. “S. Atlantic” 1/2 SB 1 SP MESAIEED-1/2 SA 1 SP MONGLA, B 32,999.895 BULK UREA-SF ABT 48’ WOG, Chrtrs: Mssrs Honour Ship Management Ltd.-Nerine Chambers, Road Town, Tortola, British Virgin Island, CP DD: 2/2/2015

FREIGHT INVOICE

Lump sum Freight for 32999.895 mts FIOS BASIS 1/1	429.000,000 USD
LESS Total Address Commission 3.75%	016.087,500 usd
	412.912,500 USD
LESS OWNERS CONTRIBYTION to EXINS	003.000,000 USD

Balance OWNERS FAVOR 100% OF Frt + Dem.	409.912,500 USD
---	-----------------

WHICH PLS TRANSFER TO OWNERS BANK ADDRESS AS FOLLOWS:”

29. In the first part of prayer portion (ii) of the original plaint, the plaintiff prayed for freight due under the head charterparty dated 02.02.2015 to the tune of USD 409,912 and the sum of USD 38,500 due under the previous charterparty. The amount of freight mentioned in the head charterparty was “Lumpsum USD 429,000 FIOST BSS 1/1”. The plaintiff is not entitled to the sum of USD 38,500 due under the previous charterparty. The plaintiff is also not entitled to 20% of the remaining freight due under the charterparty dated 08.01.2025 as prayed for in prayer (iia) in the amended plaint.
30. The plaintiff is entitled to freight in the sum of USD 409,912 due under the head charterparty dated 02.02.2015 from the 4th defendant BCIC as per first part of prayer (ii) plus USD 22,500 from the 3rd defendant Sagar to reimburse the stevedore’s fees paid by the plaintiff as per order dated 29.11.2015; total being (409,912+22,500)= USD 432,412. Plaintiff had already received USD 448,110.38 on 25.08.2015. The plaintiff had received more than that to which they are entitled but still pursued the suit for freight and also for damages for detention and demurrage. Plaintiff did not produce any evidence for their claim for demurrage. The only piece of evidence ‘detention invoice No. 5’ dated 08.05.2015 (ext. 9) for claim for damages for

detention *ipso facto* does not lay the ground to establish causation and proof of loss. Hence, the suit is liable to be dismissed with costs.

31. In the result, the suit is dismissed with costs of BD 100,000 (One lac).