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

Admiralty Suit No. 24 of 2021

Kuwait Oil Tanker Company S.A.K
....Plaintiff
-Versus-

LCT Shakti Sanchar and others
....Defendants

Mr. Mohammed Forrukh Rahman, Advocate
... For the plaintiff
None
...For the defendants

The 27th November of 2025

Present:
Mr. Justice Zafar Ahmed

The matter has appeared in the daily cause list for 'admission hearing' of the plaint. The only question before me is whether I should admit the plaint and pass necessary order for issuance of summons or reject the plaint as being barred by limitation.

Kuwait Oil Tanker Company S.A.K., based in Kuwait, has filed the instant admiralty suit through their constituted attorney under Sections 3(2)(d) and 3(2)(e) of the Admiralty Court Act, 2000 of Bangladesh for recovery of loss and damages in relation to the incident arising out of a collision between the vessel MT Burgan (IMO No. 9656022), flag: Kuwait owned by the plaintiff as registered owner and MV Eastaway Jamuna (IMO No. 9348998, previously known as MV X-Press Mahananda). The plaintiff has prayed for a decree for USD 30,00,000 equivalent to BDT 25,44,00,000.00.

The collision occurred on 14.06.2019. It is stated in the plaint that the claim of the plaintiff relates to damages in respect of loss of or damage to, property only and the cause of action arose on 14.06.2019 *i.e.* on the date of collision.

Under Section 8 of the Maritime Conventions Act, 1911, the period of limitation to commence legal proceedings to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, any property on board her etc. caused by collision was 2(two) years. The Act, 1911 was a piece of British legislation enacted during the colonial era. At that time the Indian sub-continent including the present Bangladesh was a part of the British colony. After independence of Bangladesh in 1971, the legislature did not make the Act, 1911 as part of our domestic statute law. Be that as it may, the Appellate Division in ***Inland Water Transport Corporation vs. M/s. Seres Shipping Corporated and ors***., 36 DLR (AD) 82 (decided on 13.06.1983) recognized the Act, 1911 and applied Section 8 of the Act in admiralty jurisdiction in Bangladesh in a collision case. In England, Section 8 and other sections of the Act, 1911 have been repealed by the Merchant Shipping Act, 1995.

Article 36 of the Limitation Act, 1908 prescribes for limitation of 2(two) years to suits "for compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not therein specially provided for". Referring to Article 36, the then Dhaka High Court held in ***India General Navigation and Railway Co. Ltd. vs. Akram and ors***., 12 DLR 49 (decided on 13.04.1959), "*This Article is a general Article. It refers to actions which may be taken on account of the commission of some act which is in itself unlawful "malfeasance", or being the improper performance of some lawful act, "misfeasance", or the omission of some act which a person is by law bound to do, "nonfeasance". It is a general Article for suits for compensation and omissions commonly known as torts, that is wrongs independent of contract and which are not provided for by other Articles. Thus Article 36 refers to actions on torts or such wrongs as are distinguishable from breaches of contract*". It was further held in the reported case that Article 36 applies to a suit to recover damages for the loss of a ship caused by collision.

Section 8 of the Maritime Conventions Act, 1911 was alive when the same was applied by our Appellate Division in 1983 in *Bangladesh Inland Water Transport Corporation*. Now, Section 8 does not exist anymore in England. In my view, due to repeal of Section 8, the same has lost its relevancy and applicability. Therefore, I have decided to apply Article 36 of the Limitation Act for the purpose of governing the period of limitation in a suit for damages caused by collision. Since the period of limitation under both Section 8 and Article 36 is 2 years, none of the present parties or future parties would be prejudiced.

Section 6 of the Admiralty Court Act, 2000 states, "*An action or a suit.....shall be instituted by a plaint drawn, subscribed and verified according to the Code of Civil Procedure, 1908...*". Identical provision is contained in Rule 3 of the Admiralty Rules, 1912 in respect of 'institution of suits'.

In the instant suit, the plaint was verified on 13.06.2021. The requisite Court fee of BDT 1,00,000 was paid on 14.06.2021 and the suit was registered on 14.06.2021. Thereafter, the learned Advocate of the plaintiff put in a 'mention slip' in mid July, 2025 in the Court to come up the matter in the daily cause list for 'admission hearing'. Accordingly, the matter appeared in the daily cause list for the first time on 23.07.2025 for admission hearing. A question was raised whether the suit is barred by limitation. The learned Advocate took several adjournments to satisfy me that the suit is not barred by limitation.

Under Article 36 of the Limitation Act, the time from which the period of limitation begins to run is when the malfeasance, misfeasance or nonfeasance takes place. The most relevant and important question is from when does the period of limitation stop running? Is it from the date of verification of the plaint or from the date of register of the suit or from the date of institution or admission of the plaint? Let me first begin with the relevant statute law and rules.

Sections 26(1), 27, Order IV rule 1, Order IV rule 2, Order V rule 1 and Order VII rule 9 of the **Code of Civil Procedure**, 1908 (in short, the '**CPC**') are relevant. The relevant portions of those are reproduced below:

> "**26. Institution of suits**- (1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed
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> **27. Summons to defendants**- Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.
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> **Order IV, Rule 1. Suit to be commenced by plaint-** (1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint together, with as many true copies of the plaint as there are defendants for service of summons upon such defendants.
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> **Order IV, Rule 2. Register of suits-** The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

Order V, Rule 1. Summons- (1) When a suit has been duly instituted a summons shall be issued by the officer of the Court appointed in this behalf to the defendant within five working days from the date of filing the suit to appear and answer the claim on a day to be therein specified:

Order VII, Rule 9. **Procedure of admitting plaint. Concisement statements-** (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, <u>if the plaint is admitted</u>, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Rules 47, 49, 50, 51, 55(1) and 55(3) of the **Civil Rules and Orders** (in short, the '**CRO**'), volume- I are also relevant. The relevant portions of the rules are quoted below:

"**47**. Ordinarily the Sheristadar or in his absence the officer acting as a Sheristadar shall be authorised to receive plaints.

49. (**1**) Immediately on receipt of a plaint, a serial (consecutive) number shall be marked on it to indicate the sequence of filing, the same number being simultaneously noted on the attached slip of paper. The slip shall then be detached, stamped and made over to the person presenting the plaint, then and there. These numbers shall be quoted in all papers that may be filed hereafter in connection with the plaints so long as they are not registered.

(**2**) All such plaints shall be entered at once in the prescribed register No. (R) 12-A called the Filing Register in the order in which they have been filed.

50. All plaints presented must, on being received be registered (*i.e.*, entered in the Register of Suits) in the same order as they appear in the Filing Register, irrespective of their possible rejection (under Or. 7, r. 11) or return (for amendment or presentation to proper Court).

51. Every plaint shall ordinarily be registered on the day it is received and should it be found impossible, for any reason, to register it within 24 hours of its receipt, the fact shall be reported to the presiding Judge of the Court concerned.

55. (**1**) On presentation or receipt of a plaint, the Sheristadar of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining, among other things-

55. (**3**) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reason. It will then be for the Judge to deal with the matter".

Sections 3 and 4 of the **Limitation Act** are also relevant. Those are reproduced below:

"**3. Dismissal of suits, etc., instituted, etc., after period of limitation**- Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation- A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where Court is closed when period expires- Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens".

The provisions contained in Section 5 of the Limitation Act as to condonation of delay and extension of period do not apply to suits instituted after expiration of the period of limitation.

It appears from the above-discussed various provisions of law that the concerned office of the Court first receives the plaint (rule 47 of CRO), then the plaint is registered and numbered (O. IV, rule 2 of CPC, rules 49-51 of CRO), then the concerned office examines the plaint as to some particulars (rule 55(1) of CRO), thereafter the plaint is presented before the presiding Judge for admission or return or rejection (rule 55(3) of CRO, O. VII, rule 9 of CPC). If the plaint is admitted, summons shall be issued (Section 27, O. V, rule 1 of CPC.

Summons shall be issued if the suit is duly instituted (Section 27 of CPC). Explanation appended to Section 3 of the Limitation Act states that a suit is instituted when the plaint is presented to the proper officer.

In ***V. Ramaswami Aiyar and ors. vs. Veerarayan Raja and ors.***, AIR 1941 Mad 711, it was held that when a plaint is presented to a Court having jurisdiction and that Court accepts the plaint as being in order it must be held that the suit has been instituted. Similar view was taken by the Supreme Court of Pakistan in ***Muhammad Siddique and another vs. Syed Zawar Hussain Abidi and ors.***, PLD1976 (SC) 572 wherein Muhammad Gul, J. held, "*A suit is instituted by the presentment of the plaint to a Court of competent jurisdiction. Therefore, the suit is instituted as soon as the plaint is presented and it is accepted by the presiding officer any defect notwithstanding*". This view was subsequently endorsed by the Supreme Court of Pakistan in ***Siddique Khan and ors. vs. Abdul Shakur Khan and another***, LEX/SCPK/0078/1983.

In England, clause (1) of rule 7.2 of the CPR states, "*Proceedings are started when the Court issues a claim form at the request of the claimant*". Clause (2) of rule 7.2 states, "*A claim form is issued on the date entered on the form by the Court*". While interpreting rule 7.2 of the CPR the Court of Appeal in ***Barnes vs. St. Helens Metropolitan Borough Council***, [2006] EWCA Civ 1372 =

[2007] 1 W.L.R. 879 observed that the Court staffs who receive the documents do not perform any judicial function and have no power to reject them. It was further observed that until an action has started there are no proceedings brought or otherwise, and it does not start until the Court has formally recorded that fact.

Section 26 of the CPC, Explanation to Section 3 of the Limitation Act, O. VII rule 9 of the CPC and rule 55(3) of the CRO read together make the point crystal clear that a suit is instituted by the presentation of a plaint to the presiding Judge of the concerned Court. The cases decided in India, Pakistan and England also support this view. Therefore, the period of limitation stops running when the plaint is presented before the presiding Judge for admission. Section 4 of the Limitation Act makes it clear that where the period of limitation expires on a day when the Court is closed, the suit may be instituted on the day that the Court re-opens. In ***Surendra Narayan Mustafi vs. Souravini Dasi***, 10 CWN 535 (decided on 12.03.1906), the Division Bench of the Calcutta High Court took similar view applying Section 10 of the General Clauses Act, 1897 which contains similar provisions to those of Section 4 of the Limitation Act. In *Barnes (supra),* the Court of Appeal of England also took the similar view.

In this case, the cause of action arose on 14.06.2019. The period of limitation is 2 years. The plaint was verified on 13.06.2021 and was registered on 14.06.2021. It was presented before the Admiralty Court for admission on 23.07.2025. Therefore, when the suit was instituted, it was barred by limitation and this Court must reject the plaint under O. VII rule 11(d) of the CPC.

The learned Advocate argues that the suit is instituted when the plaint is presented either before the Court or such officer as it appoints in this behalf as per O. IV, rule 1 of the CPC and as such the suit is deemed to be instituted on 13.06.2021 or on 14.06.2021.

In my view, the expression used in O. IV rule 1 of the CPC *"Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf"* has to be read together with other relevant laws. Once the laws are read together, the expression denotes only one meaning that the suit is instituted when the plaint is presented to the presiding Judge who has the authority to admit/reject/return it. Any other interpretation as indicated by the learned Advocate to the effect that "such officer" may include staff of the concerned office of the Court goes against the other provisions of the CPC, Limitation Act, CRO and case laws which I have already discussed.

The learned Advocate refers to the case of ***Begum Sultana Mazid and ors. vs. Syedul Islam,*** 10 MLR (AD) 186 wherein the Appellate Division held that the statutory period of 21 days for putting in deficit court fee is not mandatory rather the same is directory in nature as no consequence is provided in the law in case of failure to put in deficit court fee within the statutory period. The Appellate Division further held that the law has not curtailed the power of the Court to extend time, in an exceptional case, to deposit the deficit court fee. In *Siddique Khan (supra),* the Supreme Court of Pakistan observed that the validity of limitation is not affected by deficient court fee.

The law has not given any power to the Court to accept and admit a plaint which is barred by limitation. Therefore, the case of *Begum Sultana Mazid (supra)* is of no assistance to the plaintiff.

During the course of 'admission' hearing of the plaint, the learned Advocate filed an application under Section 151 of the CPC invoking the inherent jurisdiction of this Court to admit the plaint. It is stated in the said application that after the collision, the plaintiff and the owners of MV X-PRESS MAHANANDA ("XPM") entered into a Collision Jurisdiction Agreement ("CJA") whereby it was contractually agreed that all claims arising from the collision between them, including limitation of liability, should be determined exclusively by the Court of England in accordance with English law and practice. Pursuant to the said CJA, proceedings were initiated before the Admiralty Court of England and Wales (Case No. AD-2023-000021) by the owners of XPM against the plaintiff to resolve inter-se claims under English law. The proceedings before the

Admiralty Court of England and Wales have now concluded and a judgment was delivered on 26 March 2025 (Neutral Citation: [2025] EWHC 721 (Admiralty)).

Referring to the statements made in the application filed under Section 151, the learned Advocate submits that comity is the principle of mutual respect between Courts, vital for preventing conflicting judgments. The plaintiff was bound by a CJA to litigate in the UK. The learned Advocate refers to ***Modi Entertainment Network vs. W.S.G. Cricket Pte. Ltd.*** (2003) 4 SCC 341, wherein the Supreme Court of India affirmed that Court should respect foreign proceedings based on valid forum agreements, unless they are oppressive. The learned Advocate submits that waiting for the UK Court to conclude the proceedings was an act of respecting this principle.

I cannot accept the submissions of the learned Advocate for two reasons. Firstly, prior to admission of the suit, this Court, in my view, has no scope or authority to consider the application filed under Section 151. Secondly, the plaintiff could have presented the plaint to the Court within the prescribed period of limitation and after admission, could have prayed for stay of the proceedings under Section 10 of the CPC. The plaintiff did not choose the path prescribed by law. In ***Debendra Chandra Dev Nath vs. Bharat Chandra Singha and ors.***, 19 DLR (1967) 514, Murshed, C.J. observed:

> "The law of limitations, as I read it, and, as it has been held by consistent legal decisions, is a law which is designed to impose a quietus on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Legal yardsticks have, therefore, been formulated, specifying the time which is allowable for taking recourse to legal reliefs. Therefore, the main purpose of the Limitation Act is to guillotine cases which seek reliefs at a point of time which is beyond the period specified thereunder. The same principle is applied to all other kinds of provisions with regard to limitation in various different statutes".

The rules of limitation are founded on consideration of public policy and the provisions of the Act dealing with the limitation are required to be interpreted with the approach which advances the cause of public policy and not otherwise [***Tara Wanti vs. State of Haryana***, AIR 1995 P&H 32 (34, 35) (DB)]. The intention of the provisions of the law of limitation is not to give a right where there is none but to impose a bar after the specified period authorising a litigant to enforce his existing right within the period of limitation (***Hari Raj vs. Sanchalak Panchayat Raj, Lucknow***, AIR 1968 ALL 246) . The object of limitation laws is to compel a litigant to be diligent in seeking remedies in a Court of law and put a bar on the stale claims. The law assists the vigilant and not those who sleep over their rights. It is also acknowledged position of law that law of limitation only bars a remedy and does not take away the rights of the Courts to adjudicate the *lis* according to law and does not revive the rights of the parties unless permitted under a particular statute.

A statute of limitation being a statute of peace and justice, cannot be used to induce injustice. The law of limitation is not meant to be an aid to unconscionable conduct, though if a claim is clearly barred, the Court must unhesitatingly dismiss the suit.

I have already decided that the suit has been instituted after expiry of the prescribed period of limitation. Accordingly, the plaint is not admitted and the same is rejected summarily as being barred by limitation.

Office is directed to communicate the judgment and order to the principal defendants at the cost of the office.