

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
ADMIRALTY SUIT NO. 35 OF 2014

Captain Banarasi Dass ...Plaintiff
vs.
M.V. SULAWESI & Anr. ...Defendants

Mr.Abhishek Khare and Mr.Kumar Gaikwad i/b. M/s.Khare Legal Chamebrs for
Plaintiff.
None for Defendants.

CORAM : S.C. GUPTE, J.

20 APRIL 2015

P.C. :

The Plaintiff has filed the present suit to recover unpaid wages. By an order dated 22 December 2014, this Court set down the suit for exparte decree. None appears for the Defendants.

2 The Plaintiff has filed an affidavit of documents dated 9 June 2014 together with a compilation of original documents. The Plaintiff has also filed his affidavit of evidence in lieu of examination-in-chief. Learned Counsel for the Plaintiff tenders the Plaintiff as the only witness in the suit in support of the Plaintiff's case.

Examination-in-chief of Plaintiff (PW-1) :

Name : Banarasi Dass
Age : 70 years
Occupation : Retired (LT.CDR) (Navy)
Address : H.No.1308,
 Sector -21,
 Panchkula,Chandigarh
 PIN 134 112

3 (The affidavit of evidence dated 9 June 2014 is shown to the Plaintiff). This is my affidavit. I identify my signature on the affidavit and affirm its contents.

4 (The affidavit of evidence dated 9 June 2014 is taken on record as the examination-in-chief of the Plaintiff. The documents at Serial Nos.1 to 7 of the compilation of documents are admitted on record and marked in evidence as **Exhibits P-1 to P-7.**) The Plaintiff closes his case.

5 The Plaintiff was employed as the master on board the Defendant No.1 vessel with effect from 13 December 2012. The Plaintiff was hired under a written contract for his services as master on board the vessel by Defendant No.2, who was a bare board charterer in respect of Defendant No.1 vessel. The written contract in relation to the Plaintiff's employment as master of the vessel was retained by Defendant No.2 and not made available to the Plaintiff. The Plaintiff worked on Defendant No.1 as its master between 13 December 2012 to 15 March 2013 at a contractual salary of Rs.2,75,000/- per month. The Plaintiff's claim is for unpaid wages. The Plaintiff has stepped into the witness box and testified to his engagement on board the Defendant No.1 vessel as its master from 13 December 2012 to 15 March 2013. The Plaintiff has produced the evidence of the original office copy retained by the Plaintiff of a letter addressed by the Plaintiff to Mr.Dinesh Kewalramani, Director of Defendant No.2. By this letter, the Plaintiff has requested for sorting out the immigration clearance and alternatively, signing off or transferring him to any other vessel of Defendant No.2. The Plaintiff has deposed to the circumstances under which Defendant No.2 failed and neglected to provide a copy of the contract to the Plaintiff. The Plaintiff's affidavit of declaration dated 30 September 2013 is on record as Exhibit P-2. The Plaintiff has deposed to the terms of the contract including the wages in the sum of Rs.2,75,000/- per month. The Plaintiff has also produced temporary deck entry permit granted by Defendant No.2 to the Plaintiff for the period during which the Plaintiff worked on board the Defendant No.1 vessel, when the vessel carried out the work of dredging at the Mumbai port. The Plaintiff has deposed to the non-payment of his wages whilst on board the Defendant No.1 vessel from 13 December 2012 to 15 March 2013. The Plaintiff has produced the relevant extract of his passport showing the stamp of immigration evidencing his signing off from the subject vessel on 15 March 2013. The Plaintiff has also produced his

Continuous Discharge Certificate evidencing his engagement during the period of his services rendered on board the Defendant No.1 vessel. The various messages addressed by the Plaintiff to Defendant No.2 in respect of his unpaid wages have been referred to the plaint. The texts of these messages are produced by the Plaintiff in evidence. The Plaintiff has given a detailed break up of his unpaid wages for the period from 13 December 2012 to 15 March 2013.

6 On these facts, the Plaintiff has clearly made out a case of entitlement to his wages for the contract period, namely, dated 13 December 2012 to 15 March 2013. This Court, in an order dated 4 December 2014 passed in case of **Captain Mela Ram Bhoparia vs. M.V. Sulawesi-II and others** concerning the same vessel, but involving another captain, who had worked on board the vessel, gave a decree to that Plaintiff holding such unpaid wages as giving rise to a maritime lien against the vessel.

7 Accordingly, all three issues framed in the suit on 8 July 2014 are answered in favour of the Plaintiff. The Plaintiff has duly proved that he was employed as master on board the Defendant No.1 vessel between 13.12.2012 to 15.3.2013 and that his unpaid wages for the period amounting to Rs.10,36,833/- together with interest constitute a maritime claim against the Defendant No.1 vessel. The Plaintiff is, accordingly, entitled to a decree in the sum of Rs.10,36,833/- together with interest at the rate of 12% per annum from the date of the suit till payment or realization. The Plaintiff is also entitled to costs which are quantified at Rs.50,000/-. Out of the total amount claimed by the Plaintiff, a sum of Rs.4,35,845/- has already been received by the Plaintiff. Accordingly, the Plaintiff's claim is decreed for a sum of Rs.6,00,988/- together with interest thereon at the rate of 12% per annum from the date of the suit till payment or realization and costs of Rs.50,000/-

8 The Prothonotary & Senior Master of this Court is directed to make over the sum held by the Prothonotary & Senior Master to the credit of the suit to the Plaintiff in satisfaction of the decretal amount.

(S.C. Gupte, J.)