

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ADMIRALTY & VICE ADMIRALTY JURISDICTION****ADMIRALTY SUIT NO. 42 OF 2014.**

The Director General of Shipping                      having its address    )  
at 9th Floor Beta Building, i-Think Techno Campus,                      )  
Kanjurmarg (East), Mumbai - 400 042                                      )... Plaintiff

VERSUS

1. SALE PROCEEDS OF THE VESSEL m.v.Kamal                      )  
XXXIII lying deposited with the Admiralty Registrar                      )  
High Court Bombay owned by Jaisu Shipping                      )  
Company Pvt. Ltd., India                                                              )  
  
2. JAISU SHIPPING COMPANY PVT LTD. having                      )  
their H.O. at Kewalramani House, Dinshaw Building                      )  
Road, Kandla Port, Gujarat, 370 210AND B- 1,                      )  
Common Wealth 181, Madame Cama Road,  
Opposite Air India Building, Mumbai 400 020                      )...Defendants

Mr. Amitava Majumdar a/w. Arjun Mital i/b. Bose & Mitra & Co. for the  
Plaintiff

None for the Defendant.

**CORAM: S.J. KATHAWALLA, J.**  
**DATE: 24TH AUGUST 2016.**

**ORAL JUDGMENT**

1. The present suit has been filed by the Plaintiff for the recovery of the outstanding Seamen's Welfare Fees payable for the Seamen engaged on the vessel to the Plaintiff and a decree for the payment of the sum of Rs. 38,500/- as unpaid Welfare fees, to the Plaintiff against the vessel m.v. Kamal XXIX.
2. The said Vessel came to be sold as per the order passed by this Court in Admiralty Suit No. 24 of 2014 dated 27th August 2013 as the owners of the said vessel, Jaisu Shipping Company Pvt. Ltd (Defendant No. 2) were unable to pay the wages of the crew members because of its financially unstable state.
3. The sale proceeds representing the said vessel are lying deposited with the Admiralty Registrar of this Hon'ble Court.
4. The Plaintiff is a statutory authority constituted under the Merchant Shipping Act, 1958 dealing with all aspects of merchant shipping in India. The Defendant No. 1 represents sale proceeds of the vessel m.v. Kamal XXXIII, a registered Indian Flagged Vessel under the Merchant Shipping Act, 1958 and was owned by Jaisu Shipping Company Pvt. Ltd., i.e. Defendant No. 2.
5. The Defendant No.2 has never entered appearance or taken any steps for the release of the Defendant No.1 Vessel. There are no other Defendants to the present suit and no Written Statement has been filed against the Plaintiff's claim. Accordingly the matter is to proceed ex parte.

6. The Plaintiff claims that the Plaintiff as a statutory authority levies annual fees on all owners of Indian vessels under the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 amended from time to time for the seamen engaged by the respective Owner for the purpose of providing amenities to seamen and for the welfare of said seamen.

7. It is further stated that the Defendant no. 2 has failed to pay the requisite annual fees under the said Rules for the period from the year 2006 till the date the said Vessel was sold by this Hon'ble Court on 27th August 2013. The Plaintiff has a claim for the outstanding annual fees under the said Rules for each of the seamen engaged by the Owner on the said Vessel at the rate of Rupees 250 /- per year until 29th August 2011 and thereafter at the revised fee of Rupees 500/- from 30th August 2011 till the date of sale of the Vessel.

8. It is further stated that save for the period of 2012-13, the Defendant No.2 failed to file the Articles of Agreement giving any information about the actual number of seamen employed on the Vessel for the relevant period has had to base the calculations for the fees for the years 2006-2012 on the basis of the number of seaman to be carried on board as per the Minimum Safe Manning Document issued by the Mercantile Marine Department on 28th July 2006 for the said Vessel which specifies the minimum crew required for the safe manning of that ship.

9. The outstanding fees due from the Defendant No. 2 forming the Plaintiff's claim in the present suit amounts to a total of Rs. 38,500/- along with interest @ 18% per annum.

10. The Plaintiff has led the evidence of witness, Mr. Ajay Kumar Singh, the Shipping Master of the Marine Mercantile Department to establish its claim. The Plaintiff filed an Affidavit of Examination-in-Chief of Mr. Ajay Kumar Singh for the Plaintiff dated 28th July 2015. The following documents were marked as Exhibits by this Court:

- i. **Exhibit P1:** Copy of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974
- ii. **Exhibit P2:** Copy of revised rules of the Merchant Shipping (Levy of Seamen's Welfare Fee) of the year 2004
- iii. **Exhibit P3:** Copy of revised rules of the Merchant Shipping (Levy of Seamen's Welfare Fee) of the year 2011
- iv. **Exhibit P4:** Copy of the Minimum Safe Manning Document issued on 28 July 2006
- v. **Exhibit P5:** Particulars of Claim

11. The witness in the Affidavit of Examination-in-Chief of the Plaintiff has affirmed the truth and correctness of the documents filed in the Affidavit of Documents which have been taken on record and marked.

12. I have perused the affidavit in evidence in lieu of Examination in Chief of the Plaintiff and the documents marked as Exhibits P1 to P4. These documents prove the Plaintiff's claim.

13. The Plaintiff is entitled to maintain an action *in rem* for the recovery of the unpaid annual Seaman's welfare fees under the said rules. I find that the Plaintiff has a claim for recovery of the unpaid annual Seaman's welfare fees is payable from the sale proceeds of the said Vessel and it entitled to claim of Rs. 38,500/- along with interest @ 18% per annum.

14. On the basis of the pleadings, the following issues came to be framed by the Court and are answered as follows:

| Sr.No. | ISSUES                                                                                                                                                                                       | ANSWERS      |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 1.     | Whether the Plaintiff proves that the Plaintiff is entitled to maintain this action against the Defendants and this Court has jurisdiction to decide the same in the admiralty jurisdiction? | Affirmative  |
| 2.     | Whether the Plaintiff proves that the dues as claimed by the Plaintiff are statutory dues?                                                                                                   | Affirmative  |
| 3.     | Whether the Plaintiff proves that the Plaintiff is entitled to a decree in the sum of Rs.38,500/- together with interest @ 18% p.a. from the date of the suit until payment/realisation?     | Affirmative. |
| 4.     | What decree? What order?                                                                                                                                                                     | As above     |

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

16. The suit is accordingly disposed of.

**(S.J. KATHAWALLA, J.)**