

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ADMIRALTY & VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.51 OF 2014

1) Captain Pradip Kumar De	)	
2) Shiomangal Singh	)	
3) Hitesh Kishor	)....Plaintiffs	
V/s.		

1) M.V.Sulawesi-II	)	
2) M/s.Jaisu Shipping Private Limited	)....Defendants	

Mr.Manoj Khatri a/w Mr.Arnab Ghosh, Ms.Alvia Crasta and Mr.Kumar Kothari i/by Manoj Khatri for plaintiffs.
None for defendants.

CORAM : K.R.SHRIRAM,J
DATE : 29.6.2018

P.C.:-

1 Plaintiffs have filed this suit for unpaid wages. During the course of the trial, the claim of plaintiff no.3 was paid by the owners of defendant no.1 and therefore, to that extent, the suit came to be settled. The suit as of now is only regarding the claim of plaintiff nos.1 & 2.

2 Plaintiff no.1 was engaged by one Kalba Marine Services Pvt. Ltd.-the agent of defendant no.1 pursuant to an Employment Contract dated 8.2.2013 (Exh.P1/3). Plaintiff was engaged as master of defendant no.1 vessel for gross salary of Rs.2,70,000/- per

month. The Employment Contract was for a period of 2 months (+/- 1 month) commencing from date of joining the vessel at the port of engagement, i.e., Mumbai. It is plaintiff no.1's case that he joined the vessel on 8.2.2013 and signed off, on 26.3.2013 (46 days).

3 Plaintiff no.2 was engaged on board 1st defendant vessel as 3rd Engineer pursuant to contract dated 28.10.2012 (Exh.P2/10) entered into between plaintiff no.2 and one Golden Marine Services Pvt. Ltd. who was the crewing agent of the vessel. Plaintiff no.2 was engaged at a lumpsum wage of Rs.50,000/- per month for a period of 4 months + 1 month from the date of joining the vessel. It is the case of plaintiff no.2 that he joined the vessel on 31.10.2012 and was signed off on 16.3.2013 but has not been paid wages for the period from 1.12.2012 till he signed off.(105 days).

4 As the wages were not paid, plaintiff no.1 and plaintiff no.2 (collectively plaintiffs) had no option but to file this suit and move for arrest of defendant no.1 vessel alleging that their claim for wages is a maritime claim and they are entitled to move an action in *rem* against defendant no.1 vessel and for an order of arrest of defendant no.1 vessel. When the suit was filed, defendant no.1 vessel was already under arrest in another suit. On 24.11.2014 when plaintiff moved for

arrest of defendant no.1 vessel, the counsel for defendant no.1 stated that defendant no.1 will deposit sum of Rs.8,00,000/- with the Prothonotary & Senior Master so that defendant no.1 vessel need not be arrested in this suit also. Mr.Khatri for plaintiff states that accordingly an amount of Rs.8,00,000/- was deposited, as recorded in the order dated 16.12.2014. That amount is still with the Prothonotary & Senior Master who has invested the same in a fixed deposit with a nationalized bank.

5 Defendant no.1 filed written statement. Defendant no.2 though on one or two occasions appeared through an advocate, never filed any written statement and never appeared thereafter. The defences taken by defendant no.1 are as under :-

(i) No privity of contract between defendant no.1 and its owners and the plaintiff and hence there is no cause of action ;

(ii) Plaintiffs' remedy lies against one Miller Dredging and/or defendant no.2 and not against defendant no.1 vessel and its owners ;

(iii) Assuming while denying plaintiff did in fact serve on board defendant no.1 vessel, there are no documents to corroborate and/or prove the same ;

(iv) Plaintiffs' claim cannot be a maritime lien.

6 The issues came to be settled on 4.8.2015 and the same read as under :-

(i) Whether the plaintiffs prove their claim in the suit against both the Defendants ?

(ii) Can the plaintiffs maintain an action in rem against the Defendant Vessel ?

(iii) Whether the plaintiffs prove the liability of both the Defendants for unpaid wages ?

(iv) Whether the plaintiffs prove that their outstanding dues have not been cleared till date ?

(v) Whether the Defendant No.1 is owned by PT (Persero) Pengurukan Indonesia ?

(vi) Whether the Defendant No.1 proves that the Maritime lien of Plaintiff Nos.1 and 2 expired on 15th March, 2014 and 26th March, 2014 ?

(vii) Whether the Defendant No.1 proves that the Defendant vessel was on Bareboat Charter to Miller Dredging Company ?

(viii) Whether the Defendant No.1 proves that the Charter party with Miller Dredging Company expired on 22nd July, 2013 ?

(ix) Whether the Defendant No.1 proves that they are the registered owner of the Defendant Vessel ?

(x) Whether the Plaintiffs are entitled to a decree for a sum of Rs.7,14,214/- along with interest thereon @ 12% p.a. from the date of filing of the suit till payment and/or realization as interest for delayed payment amounting to

Rs.68,763.38 from the Defendants ?

(xi) What order and Decree ?

7 Plaintiffs led evidence of the 1st plaintiff (PW-1) and the 2nd plaintiff (PW-2). Both the plaintiffs were cross-examined. Defendant no.1 though had filed in the registry an affidavit of one Vashdev Dhalamal and some documents through the said Dhalamal, he did not ever step into the box for taking his evidence on record or marking of documents or made himself available for cross-examination. Therefore, effectively, defendant did not lead any evidence.

8 The documents at Exh.P1/3, Exh.P1/4, Exh.P1/5 and Exh.P1/6 were filed by plaintiff no.1 and documents at Exh.P2/10 to P2/13 came to be filed through the plaintiff no.2.

9 Exh.P1/3 which is the Employment Contract of plaintiff no.1 shows that the plaintiff no.1 was employed to work on board the defendant no.1 vessel as master at a monthly remuneration of Rs.2,70,000/- for a period of 2 months from the date of joining the vessel. Exh.P1/4 is the Continuous Discharge Certificate (CDC) issued by the Government of India to plaintiff no.1. CDC of plaintiff no.1

shows that the date and place of engagement of plaintiff on defendant no.1 vessel was 8.2.2013 at Mumbai and the date and place of discharge is 26.3.2013 at Mumbai. It also shows rank of plaintiff no.1 as master of defendant no.1 vessel. This has been confirmed by the Captain who took over from the plaintiff no.1. The succeeding master has also certified that the wages of plaintiff no.1 for the period of his employment, i.e., 8.2.2013 to 26.3.2013 for 46 days has not been paid. This has also been confirmed by the agents of Defendant no.1 at Exh.P1/6 vide their letter dated 26.3.2013. The agents have also confirmed that plaintiff is entitled to outstanding wages of Rs.4,67,547/-. It is the case of plaintiff no.1 that this amount has not been paid.

10 In the cross-examination of plaintiff no.1, there is nothing to even suggest that plaintiff no.1 was never on board the defendant no.1 vessel as master. The entire cross-examination has proceeded on the basis that owners of defendant no.1 vessel were not liable to pay wages of plaintiff no.1, but there is no challenge to the case of plaintiff no.1 that he was employed on board the defendant no.1 vessel as master for the period 8.2.2013 to 26.3.2013 or he was not paid his wages for the duration of his employment.

11 So far as plaintiff no.2 is concerned, the Employment Contract at Exh.P2/10 does show that he was being employed for a period of 4 months from the date of joining the vessel for a lumpsum contract wage of Rs.50,000/- per month. It is the case of plaintiff No.2 that he was working on board defendant no.1 vessel as 3rd Engineer for the period 31.10.2012 to 16.3.2013. Reliance is placed on his CDC which is at Exh.P2/11. It is the case of plaintiff no.2 that he has not been paid wages for the period 1.12.2012 to 16.3.2013. The CDC of plaintiff no.2 however, indicates that his date and place of engagement on board defendant no.1 vessel was from 23.1.2013 at Mumbai and date and place of discharge from defendant no.1 vessel was 16.3.2013 at Mumbai. CDC does not indicate that plaintiff no.2 was on board defendant no.1 vessel from 31.10.2012 and in any event from 1.12.2012 for which he is claiming unpaid wages. In the cross-examination of PW-2 it is not even suggested that plaintiff no.2 was never on board defendant no.1 vessel for the period he is claiming to be or he ever worked on defendant no.1 vessel. The cross-examination contained only 4 questions and the stand of defendant no.1 was Plaintiff no.2 was employed by Defendant no.2 and therefore, defendant no.1 is not liable.

12 Mr.Khatri submitted that the documents at Exh..P2/12 and Exh.P2/13 indicate that plaintiff no.2 had not been paid wages for the period 1.12.2012 to 16.3.2013. Even though Plaintiff no.2 has not been cross-examined on his statement that he was on board defendant no.1 vessel from 31.10.2012 and has not been paid wages from 1.12.2012 to 16.3.2013, since the CDC does not show that he was on board defendant no.1 vessel before 23.1.2013, and there is no explanation for the gap between 31.10.2012 or 1.12.2012 to 23.1.2013 in the evidence or in the plaint, I am not inclined to accept the claim for wages upto 22.1.2013. Plaintiff no.2 will be entitled to unpaid wages only from 23.1.2013 upto 16.3.2013.

13 Defendants not having led any evidence to show that they were not liable to plaintiffs, I am not inclined to accept that plaintiffs are not entitled to their claim for wages from defendants.

14 Article 1(1) (m) of the International Convention Relating to the Arrest of Sea-Going Ships, 1952 states that 'wages of masters, officers or crew' amount to a maritime claim.

15 Article 1 (1) (o) of International Convention on Arrest of Ships, 1999 (Arrest Convention) reads as under :-

(1) "Maritime claim" means a claim arising out of one or more of the following :-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....
- (i)
- (j).....
- (k).....
- (l).....
- (m).....
- (n).....

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf".

.....

Therefore, plaintiffs' claim will be a maritime claim.

16 Though India is not a signatory to either convention, judicial intervention has tried to incorporate the provisions of both conventions for better maritime governance as suggested by the following cases :-

The Supreme Court in *M.V.Elizabeth & Ors. Vs. Harwan Investment & Trading*¹ observed that India had not adopted the

1 AIR 1993 SC 1014

various conventions, but opined that the provisions thereof having been made as a result of international unification and development of the maritime laws of the world should be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of any specific statutory provisions can be adopted by courts to complement national statutes on this subject.

The Supreme Court, in Liverpool and *London SP & I Association Limited V/s. MV Sea success I and Anr.*¹ stated that-

“M.V.Elizabeth is an authority for the proposition that the changing global scenario should be kept in mind having regard to the fact that there does not exist any primary act touching the subject and in absence of any domestic legislation to the contrary; if the 1952 Arrest Convention had been applied, although India was not a signatory thereto, there is obviously no reason as to why the 1999 Arrest Convention should not be applied.....”

The recently enacted The Admiralty Act, 2017 also provides under section 4 (1)(o) that -

“4(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any-

(a).....

(b).....

(c).....

¹ (2004) 9 SCC 512

(d).....
 (e).....
 (f).....
 (g).....
 (h).....
 (i).....
 (j).....
 (k).....
 (l).....
 (m).....
 (n).....

“(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958.”

.....

17 Whether plaintiffs could have moved for order of arrest does not arise in this case because plaintiffs never obtained order of arrest of the vessel. When plaintiffs, as noted in the order dated 24.11.2014 moved an application, defendants came forward and agreed to furnish security in the sum of Rs.8,00,000/-. No evidence is led by defendants why plaintiffs were not entitled to make application for arrest. There is nobody present to even argue that plaintiffs were not entitled to make an application for arrest. Therefore, I am not, for

a moment, considering it necessary to enter that arena.

18 In the circumstances, all the issues are answered as under :-

(i) to (iv) – Affirmative

(v) to (ix) – Negative

(x) to (xi) – As under

19 Plaintiff no.1 is entitled to a decree in the sum of Rs.4,81,047/- together with interest thereon @ 15% p.a. from 27.3.2013 until payment/realization. Plaintiff no.2 is entitled to a decree in the sum of Rs.91,667/- ^{1*} together with interest thereon at 15% p.a. from 17.3.2013 until payment/realization.

Plaintiffs are also entitled to costs in the sum of Rs.50,000/- each.

20 Before the amounts are disbursed to plaintiff nos.1 & 2, the court fees that was payable by all the 3 plaintiffs will have to be deducted and paid to the Treasury.

1* (January 2013 - 9 days x Rs.1,667 per day = Rs.15,000 plus |
February 2013- Rs.50,000 plus March-2013 – 16 days x Rs.1,667 per
day = Rs.26,672)

21 Suit accordingly, stands decreed. Drawn up decree
dispensed with.

22 All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)