

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION**

ADMIRALTY SUIT NO.12 OF 2017

Jagdish Singh Bhadauria
of Mumbai, Indian Inhabitant, residing at House
No.B-2, Anmol Apartment, Rest Camp Road,
Devlali, Nasik - 422 401. Plaintiff

V/s.

1. Bharati - S (IMO 8122103)
(and her owners/managers and all other persons
concerned and/or interested in her), a motor vessel
registered in India, flying the flag of India together
with her hull, tackle, engines, machinery, boats,
bunkers, equipment, paraphernalia and all other
appurtenances at present lying in the port and
harbor of Mumbai within territorial waters of India
and within the Admiralty and Vice Admiralty
Jurisdiction

2. The Official Liquidator of Gol Offshore Limited
having office at 5th Floor, Bank of India building,
Mahatma Gandhi Road, Fort, Mumbai - 400 023. Defendants

Mr. Vikrant Shetty for plaintiff.

Ms. S. Priya a/w. Ms. Aparna Sinha for defendant (in liquidation).

**CORAM : K.R.SHRIRAM, J.
RESERVED ON : 27th JUNE 2019
PRONOUNCED ON : 5th JULY 2019**

JUDGMENT :

1 Plaintiff was a seafarer and worked as Chief Engineer on board
two vessels by the name Malaviya Thirty Three and Bharati - S, both owned
by Gol Offshore Limited, which is in liquidation.

2 According to plaintiff, the wages payable for his employment on Malaviya Thirty Three is from 31.10.2015 till 14.02.2016 at the rate of Rs.3,60,000/- per month (pro rata) and on Bharati - S for the period of 17.02.2017 till 07.04.2017 at the rate of Rs.3,70,500/- per month (pro rata). The total amount that was payable, according to plaintiff, for Malaviya Thirty Three is Rs.12,65,406/- and for Bharati - S is Rs.6,05,379/-. For Malaviya Thirty Three, plaintiff has been paid a sum of Rs.7,75,772/-, which leaves a balance of Rs.4,89,634/-. For Bharati - S, no amount has been paid. In addition to these amounts, plaintiff is also claiming wages under the provisions of Section 129 of the Merchant Shipping Act, 1958 (the MS Act) for delayed payment. Interest at 12% p.a. on the amount payable as per the contract is also claimed. No interest is claimed on the amount claimed under the provisions of the MS Act.

3 Plaintiff had obtained an order of arrest of defendant vessel - Bharati - S on 20.04.2017. The court fees payable has not been paid in view of the undertaking given by plaintiff that the amount of court fees payable can be deducted from the decretal amount. Mr. Shetty agrees that even if the Court is inclined to dismiss the suit, plaintiff will still be liable to pay the court fees.

4 Pursuant to orders passed by this Court, both the vessels have been sold. The sale proceeds of Malaviya Thirty Three is with the

Prothonotary and Senior Master, High Court, Bombay and the sale proceeds of Bharati - S is with the Official Liquidator of this Court.

5 Written statement has been filed by the Official Liquidator, defendant no.2. Issues were settled on 27th July 2018 and the same read as under :

1. Heard both the counsel. The following issues are settled :

I S S U E S

1) Whether the Plaintiff proves that the Plaintiff had entered into two contracts of employment dated 30th October 2015 and 17th February 2017 and was appointed onboard the vessel Malaviya Thirty Three and Defendant vessel no. 1 respectively as Chief Engineer?

2) Whether the Plaintiff proves that under these two Contracts, the Plaintiff has not been paid wages aggregating to INR 15,82,013/- and has a maritime claim and lien on the Defendant vessel?

3) Whether the Plaintiff proves that he is entitled to interest on the principal sum claimed, whether at the rate of 12% per annum, and whether for the period from the date the wages became due till payment / realisation?

4) Whether the Plaintiff proves that he is entitled to an order and decree for the sum of INR 18,03,260/- together with further interest at the rate of 12% per annum on the principal amount of INR 15,82,013/- from the date of institution of the suit till payment / realization, together with costs and poundage?

5) What decree? What order?

6 Plaintiff himself stepped into the box as his sole witness. No evidence was led for defendants.

7 Ms. Priya appearing for defendant no.2, the Official Liquidator, in fairness agreed that (a) the employment contract of plaintiff, which was with one BHN Offshore Services Private Limited, is not disputed, (b) the fact

that plaintiff worked on board Malaviya Thirty Three and Bharati - S for the period claimed is also not disputed, and (c) plaintiff will be entitled to claim his wages as maritime lien on defendant no.1 vessel as only Bharati - S was arrested. Therefore, there is no dispute on the sum of Rs.4,89,634/- for Malaviya Thirty Three and Rs.6,05,379 for Bharati - S payable to plaintiff and a decree can straight away be drawn for these amounts.

8 The only dispute raised by Ms. Priya is (a) on the amounts claimed under Section 129 of the MS Act, which according to Official Liquidator, plaintiff is not entitled to and (b) the interest claimed at 12% p.a.

9 Plaintiff is seeking a decree for wages under Section 129 of the MS Act - a sum of Rs.2,40,000/- for Malaviya Thirty Three and a sum of Rs.2,47,000/- for Bharati - S.

Is plaintiff entitled to approach this Court to claim these amounts under Section 129 of the MS Act?

10 Section 129 of the MS Act provides for time of payment of wages and Section 132 of the MS Act provides for the decision of questions by shipping masters. According to Mr. Shetty, if a seaman, which plaintiff is, is not paid his wages within the time prescribed under Section 129 of the MS Act, plaintiff is entitled to further payment of wages for the delayed

period and law provides that any sum payable under Section 129 may be recovered as wages. Mr. Shetty states that any dispute between the seaman and the master or owner or agent of a ship shall be, as provided in Section 132, submitted to the shipping master, who shall adjudicate the claim and pass an order and the amount payable under such an order can be claimed as wages.

11 Ms. Priya states that the claim cannot be allowed automatically but there are certain preconditions. According to Ms. Priya, those have not been met and therefore, plaintiff is not entitled to any claim under Section 129 of the MS Act. Ms. Priya also submits that jurisdiction to determine whether any wages is payable under Section 129 solely rests with the shipping master and not this Court. If the shipping master has passed any order legally and within his jurisdiction, then such an amount can be claimed as wages and if not paid, the route to be adopted by the seaman for recovering that amount is as provided under Section 132 sub section (3) of the MS Act.

12 Admittedly in this case, there is no order on record produced by plaintiff under Section 129 read with Section 132 for Malaviya Thirty Three. There is an order for Bharati - S though, which is at Exhibit P-10.

13 Before we proceed further, it will be useful to reproduce the provisions of Section 129 and Section 132 of the MS Act and the same read as under :

129. Time of payment of wages.—

(1) The master, owner or agent of every ship shall pay to every seaman his wages within four days after the seaman's discharge, and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him.

(2) If a master, owner or agent fails without reasonable cause to make payment at that time, he shall pay to the seaman such sum not exceeding the amount of two days' pay for each of the days commencing from the day of discharge during which payment is delayed as the shipping master may in each case decide, but the sum so payable shall not exceed ten days' double pay.

(3) Any sum payable under this section may be recovered as wages.

132. Decision of questions by shipping masters.—

(1) Where under the agreement with the crew any dispute arises at any port in India between the master, owner or agent of a ship and any of the crew of the ship, it shall be submitted to the shipping master,—

(a) where the amount in dispute does not exceed 1[three thousand rupees], at the instance of either party to the dispute;

(b) in any other case, if both parties to the dispute agree in writing to submit the dispute to the shipping master.

[(1- A) Any complaint of dispute received by the shipping master from an Indian seaman, on a vessel registered in a country other than India, in Indian territorial waters, with the master, owner or agent.]

(2) The shipping master shall hear and decide the dispute so submitted and an award made by him upon the submission shall be conclusive as to the rights of the parties, and any document purporting to be such submission or award shall be prima facie evidence thereof.

(3) An award made by a shipping master under this section may be enforced by 3[a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be,] in the same manner as an order for the payment of wages made by such Magistrate under this Act.

(4) Nothing in the Arbitration Act, 1940, shall apply to any matter submitted to a shipping master for decision under this section.

14 Under Section 129 (1) the seaman at the time of discharge is entitled to be paid one-fourth of the wages that is due on that date, which will be the minimum amount payable, and it is open to the owner to pay a higher amount or the entire amount payable, at the time of discharge. The balance 75% has to be paid within four days after the seaman's discharge. As the expression used is four days "after" the seaman's discharge, I would say the date of discharge will have to be excluded.

15 Under Section 129 (2), if the amount payable under Section 129 (1) is not paid without reasonable cause to make payment at that time, the seaman will be entitled to such sum not exceeding the amount of two days pay for each of the days commencing from the day of discharge during which payment is delayed but the amount payable shall not exceed 10 days double pay. Seaman does not get this amount automatically. He shall get only on the basis as the shipping master may in each case decide. As sub section (2) provides for "..... without reasonable cause to make payment at that time", the shipping master has to give show cause notice to the master or owner or agent, who has not paid the wages and based on the explanation given or cause shown by the master or owner or agent, the shipping master will decide that case and come to a conclusion as to the amount payable. That will be based on the reasonableness of the cause shown by owner, master or agent. The amount could be from nil to

maximum of 10 days double pay. Any amount so awarded by the shipping master under Section 129 (3) can be recovered as wages by the seaman. Therefore, to claim any amount as wages under Section 129, it has to be awarded by the shipping master.

16 Coming to Section 132 of the MS Act, which also falls in the chapter "payment of wages", sub section (1) provides that where a dispute arises under the employment agreement with the crew at any port in India between the master, owner or agent of a ship and any of the crew of the ship, it shall be submitted to the shipping master where the amount in dispute is upto five lakh rupees or such higher amount not exceeding ten lakh rupees as the Central Government may, by notification, specify, at the instance of either party to the dispute. Admittedly in this case, no such notification of the Central Government increasing the amount beyond Rs.5 lakhs but under Rs.10 lakhs is produced. Under sub section (1) (b) of Section 132, in any other case, parties to the dispute may agree in writing to submit the dispute to the shipping master. Admittedly, there is no such agreement either. Under sub section (2), the shipping master shall hear and decide the dispute so submitted and an award made by him upon the submission shall be conclusive as to the rights of the parties and any document purporting to be such submission or award shall be *prima facie* evidence thereof. An award made by a shipping master under Section 132

may be enforced by a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, in the same manner as an order for the payment of wages made by such Magistrate under the MS Act.

17 Ms. Priya submitted that reading Section 129 and Section 132 of the MS Act together, the jurisdiction to award such additional wages is only with the shipping master and jurisdiction of the shipping master is limited to Rs.5 lakhs because there is no notification by the Central Government at the instance of either party to the dispute. Ms. Priya also submitted that in the present case for the claim of Malaviya Thirty Three, no award of the shipping master has been produced and as Section 129 provides that it is for the shipping master to decide and award the amount, on the failure of the master, owner or agent to show reasonable cause, this Court does not have jurisdiction to award that amount. As regards Bharati - S, Ms. Priya submitted that from Exhibit P-10, which is the order of the shipping master passed on 13.06.2017, the claim of plaintiff was for Rs.6,05,379/-, which is in excess of Rs.5 lakhs as provided under Section 132 (1) (a) of the MS Act and the order of the shipping master at Exhibit P-10 has been passed without jurisdiction. Therefore, the question of plaintiff claiming any amount of additional wages for Bharati - S also does not arise.

18 I am in agreement with the submissions of Ms. Priya because Section 129 expressly provides that it is for the shipping master to pass an order on the additional wages/double pay when he is not satisfied with the cause shown by the master or owner or agent. The extra wages are not under the contract of employment based on which plaintiff worked on board the two vessels. The amount that plaintiff is claiming is under the MS Act and under Section 129, the jurisdiction to determine that issue is with the shipping master. Section 132 also provides for the jurisdiction for which the shipping master may decide. It says five lakh rupees or such higher amount not exceeding ten lakh rupees, as the Central Government may, by notification, specify, at the instance of either party to the dispute and in any other case, if both parties to the dispute agree in writing to submit the dispute to the shipping master. There is no such agreement in writing and there is no notification from the Central Government issued at the instance of either party to the dispute. The jurisdiction of the shipping master, therefore, was restricted to the disputes upto Rs.5 lakhs. If it was beyond Rs.5 lakhs, the shipping master did not have jurisdiction.

19 Therefore, any claim for wages under Section 129 can be made only to the shipping master and if the shipping master passes an order within the limit of his jurisdiction, that could be enforced by a Judicial

Magistrate of the first class or a Metropolitan Magistrate as provided in Section 132 (3) as an order for payment of wages made by such Magistrate.

20 I have to also note that there are no averments in the plaint whatsoever as to how plaintiff claims he is entitled to the amounts as claimed under Section 129 of the MS Act. Plaintiff has mentioned these amounts only in the particulars of claim annexed to the plaint. Even in paragraph 19 of the plaint, plaintiff has stated that plaintiff is entitled to a judgment and decree for the sum of INR 18,03,260/- with further interest at the rate of 12% per annum on the principal amount INR 15,82,013/-. There are no averments as to how Section 129 of the MS Act is applicable in the present case.

21 Therefore, as the jurisdiction is not with this Court but only with the shipping master under Section 129 of the MS Act, I cannot determine the claim for Rs.2,40,000/- and Rs.2,47,000/- for Malaviya Thirty Three and Bharati - S, respectively, under Section 129 of the MS Act. Therefore, these claims are rejected.

22 As regards the claim for interest at 12% p.a., defendant company is in liquidation. There are many other creditors of the company. At the same time, plaintiff is a crew member, who has worked on board the vessels and who has not been paid his wages. In my view, plaintiff should be

given some interest and is hereby awarded interest at 6% p.a. As regards the period for which interest should be granted, the contract of employment does not provide for any interest. No demand also is made for interest before the suit was filed. Therefore, interest payable will be from the date of the suit, i.e., 19.04.2017 until 04.12.2017 when the owner Gol Offshore Limited was ordered to be wound up.

23 Plaintiff will also be entitled to costs in the sum of Rs.50,000/-.
Order accordingly.

24 All issues answered accordingly. Suit stands disposed.

25 Court fees payable to be ascertained and deducted from any payment out to plaintiff.

(K.R. SHRIRAM, J.)