

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

ADMIRALTY SUIT NO.19 OF 2018

Mrityunjay K. Singh and Ors.Plaintiffs

Vs.

M.V. PFS Courage and Ors.Defendants

None for plaintiffs.

Ms. Apoorva Yadav a/w. Mr. Preston Dias i/b. Pan India Legal for defendant no.2.

Mr. Nimay Dave a/w. Ms. Tripti Sharma i/b. Bose and Mitra and Company for defendant no.3.

CORAM : K.R.SHRIRAM, J.

DATE : 6th NOVEMBER 2019

PC.:

1 Mr. Dave states that defendant no.3 had taken out an interim application no.1 of 2019 for rejection of plaint under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure and in the alternative, strike off the name of defendant no.3 under the provisions of Order I Rule 10 of the Code of Civil Procedure, as being improperly joined as defendant by plaintiffs. Mr. Dave states that this application was taken out in view of the provisions of Section 230 of the Contract Act and according to Mr. Dave it is settled law that an agent of a disclosed principal cannot be liable.

2 Though the said interim application is not listed today, Mr. Dave in fairness, on instructions, stated that the reliefs sought in this interim application can be framed as issues in the suit and dealt with appropriately at the appropriate stage. Mr. Dave, therefore, keeping open the rights and

contentions of defendant no.3, seeks leave to withdraw the interim application.

3 Interim application no.1 of 2019 dismissed as withdrawn with the liberty as prayed for.

4 Ms. Yadav states that defendant no.2 does not wish to file any written statement for itself or as the owners of defendant no.1 vessel.

5 Therefore, the following issues, as regards plaintiffs and defendant no.3, after hearing Mr. Dave and after considering the plaint and written statement, are framed :

ISSUES

(1) Whether defendant no.3 proves that the plaint as against defendant no.3 has to be rejected for non disclosure of cause of action?

(2) Whether defendant no.3 proves that plaintiffs have no cause of action against defendant no.3?

(3) If answer to issue no.2 is in the negative, whether plaintiffs prove that they were employed on the first defendant vessel for the periods alleged in the plaint?

(4) Whether plaintiffs prove that they are entitled to receive the amounts as mentioned in Exhibit "F" to the plaint, hardship claim of Rs.10 lakhs and in what proportion, cost of Rs.10 lakhs with interest thereon at 18% p.a. and for what period?

(5) What Decree? What Order?

6 On or before 16th November 2019 plaintiffs and defendant no.3 shall file their respective affidavit of documents and serve a copy thereof upon the other side, failing which parties will not be permitted to rely on any document, copy whereof is not annexed to the plaint and/or written statement and mentioned in the list of documents annexed to the plaint and/or written statement. This will not, however, prevent a party from confronting a witness of another party with any document.

7 On or before 22nd November 2019 inspection to be completed. If inspection is not given, such party will not be permitted to rely on such document. On or before 27th November 2019 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

8 Plaintiffs shall file their list of witnesses, affidavit in lieu of examination in chief of atleast three of the witnesses alongwith compilation of documents and serve a copy thereof upon defendants by 7th December 2019.

9 Suit be listed on 12th December 2019 at 3.00 p.m. for marking of documents/recording of evidence on which date witnesses shall remain present in Court.

10 As regards defendant nos.1 and 2 though, they have not filed their written statements and no issues are settled as regards them, they are not precluded from cross-examining the witness/es of plaintiffs or defendant no.3. However, it is also clarified that defendant nos.1 and 2 would not be entitled to lead any evidence of their own, nor can their cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of plaintiffs' or defendant no.3's case. In no circumstances, should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of defendant nos.1 and 2's case either directly or in the form of suggestions put to plaintiffs' or defendant no.3's witness/es.

(K.R. SHRIRAM, J.)