

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

**ADMIRALTY SUIT NO.56 OF 2018
WITH
NOTICE OF MOTION NO.2493 OF 2018
WITH
NOTICE OF MOTION NO.2405 OF 2018
IN
ADMIRALTY SUIT NO.56 OF 2018**

Sarfuddin S. Davar Adult, Indian Inhabitant, holding Indian Passport No.Z2201918 and having CDC No.A80515 and residing at Kharawad, House No.109-Ward 3 Near Masjid Street, Nani Daman, Daman 396210 (UT)	)))))	Plaintiff
V/s.		
1. M.V. Don Jose a vessel flying the St. Vincent and Grenadines flag, IMO No.7911430, alongwith all her hull, engines, gears, machinery, tackles, apparels and paraphernalia, presently lying at Mumbai Port P & V Anchorage, in the territorial waters of India, within the Admiralty jurisdiction of this Hon'ble Court	)))))))	
2. Halani International Limited a company incorporated under the relevant laws of India, having their office at 205-206 Meera Hari Niwas, Nr. Telephone Exchange, Mhada, Andheri (W), Mumbai – 400 053	)))))	
3. M/s. Halani Shipping Pvt. Ltd. a company incorporated under the relevant laws of India, having their office at 205-206 Meera Hari Niwas, Nr. Telephone Exchange, Mhada, Andheri (W), Mumbai – 400 053	)))))	
4. OCEANCONNECT Marine UK Ltd. a company incorporated under the laws of England and Wales, having its registered office at 50 Berkeley Street, London, W1J 8HD	)))))	Defendants

Ms. Sutapa Saha for plaintiff.

Mr. Bernardo Reis i/b. Mr. Prashant Dingrani for defendant nos.1 and 3.

Mr. Anuj Dhowan i/b. Bose and Mitra and Company for defendant no.4.

CORAM : K.R.SHRIRAM, J.

DATE : 15th JANUARY 2020

JUDGMENT :

1 This is a suit filed by plaintiff seeking a decree in the sum of USD 22200, travel allowances of USD 300, legal expenses of Rs.5,00,000/- and Sheriff's poundage together with interest at the rate of 15% p.a. on the principal amount of USD 22200 from the date of the suit until payment/realisation.

2 The counsel for defendant no.4, who was added later pursuant to an order dated 4th December 2018, states that he has no objection if decree, as prayed for by plaintiff, is granted. Defendant no.2, though served, has not entered appearance. Defendant nos.1 and 3 are represented. On 11th November 2019, the following order came to be passed :

- 1. Nobody has entered appearance for defendant no.2.*
- 2. As regards defendant nos.1, 3 and 4, no written statement has been filed.*
- 3. Defendant no.4 waives service of writ of summons.*
- 4. Written statement to be filed and copy served by 25th November 2019.*
- 5. I am giving such a tight schedule because the parties had more than one year to file the written statement.*
- 6. Stand over to 25th November 2019 at 3.00 p.m. for ex-parte decree against defendant no.2/directions.*

3 On 25th November 2019, the counsel for defendant nos.1 and 3 stated that her instructions were to settle the matter and requested the matter be stood over by two weeks. The two weeks expired on or about 9th December 2019. Ms. Saha, counsel for plaintiff states that no acceptable offer has come forth and therefore, she has no option but to go on with the matter.

4 No written statement of defendant nos.1, 2 and 3 is on record and suit, therefore, will proceed ex-parte. The indisputable fact is there is no defence to the claim.

5 Plaintiff has also filed an affidavit in lieu of examination in chief affirmed on 6th December 2019, which Ms. Saha states has been served upon defendant nos.1 and 3 on 6th December 2019 itself.

Name : Sarfuddin S. Davar (PW-1)

Age : 64 years

Occupation : Seaman

Address : Kharawad, House No.109 - Ward 3, Near Masjid Street,
Nani Daman, Daman 396210 (UT)

on S.A.

Examination-in-chief by Ms. Saha for plaintiff.

I say that I have affirmed an affidavit dated 6th December 2019 in lieu of examination in chief and also identify my signature.

P.C.: The affidavit is taken on record and marked **Exhibit P-1**. Plaintiff has also tendered a compilation of six documents, copies whereof also have been served on defendant nos.1 and 3 on 6th December 2019. No statement of admission and denial is filed.

All six documents are received in evidence and marked **Exhibit P-2 to Exhibit P-7**, respectively.

6 Ms. Saha prays that the document at serial no.3, which is a Continuous Discharge Certificate (CDC), be returned to plaintiff since that is required for him for getting a job on board ships.

7 Prothonotary and Senior Master, High Court, Bombay is directed to return the original CDC upon plaintiff filing a photocopy thereof duly certified as true copy by the Advocate on record.

8 I asked Mr. Reis whether he would like to cross examine the witness. Mr. Reis, in fairness, declined and stated that the claim is undisputed and wages have not been paid.

9 The document at serial no.6, which is Exhibit P-7, is an order passed by the Government of India, Ministry of Shipping, in which it is recorded that balance of wages of the seafarers are pending. The claim of plaintiff filed with the Shipping Master, Government of India, is at Exhibit P-5. In that, plaintiff is claiming a sum of USD 22500 (total wages of USD 22200 + travel allowances of USD 300). Therefore, to that extent, certainly there is an admission of liability because defendant no.3, which is the owner of defendant no.1, has also not challenged the order passed by the Shipping Master in any legal proceedings.

10 What remains is interest at the rate of 15% p.a. on the principal amount of USD 22200 and costs.

11 Plaintiff, in this suit, has claimed Rs.5 lakhs as costs but in the affidavit in lieu of examination in chief, plaintiff is claiming a sum of Rs.10,51,950/-. The amount has gone up because it is stated in the affidavit in support that pursuant to order dated 4th December 2018 passed by this Court, the Forward Seamen's Union of India (Union), on behalf of plaintiff made a payment of Rs.5 lakhs to the account of Sheriff of Mumbai by way

of NEFT on 13th December 2018 towards cost and expenses of publication and sale of the vessel, which plaintiff has to pay back to the Union. Ms. Saha states that an attempt was made by this Court to sell the vessel but as the bid received was far lesser than the valuation indicated, the Court did not accept the offers and the sale did not take place. Ms. Saha states and rightly so, that had only defendant no.3 furnished security, plaintiff would not have had to incur this cost of advertising the sale including valuation and conducting the sale of the vessel.

12 Here is a case where a man works on board defendant no.1 vessel owned by defendant no.3. Defendant no.3 does not dispute that plaintiff has worked on board defendant no.1 vessel and that they have not paid his wages. Mr. Reis, counsel on instructions from Mr. Prem Modiramani states that Mr. Bambani, who is the main representative of defendant no.3, travels in a Mercedes Benz and he stated that on a specific query raised by the Court. Mr. Modiramani or Mr. Bambani are not Directors of defendant no.3 but Mr. Bambani's sister and father are Directors. Mr. Bambani has been appearing in this Court in many matters and there are few contempt proceedings also pending against him for breach of undertakings given to this Court. It is rather unfortunate that Mr. Bambani and defendant no.3 are so heartless that they do not think it is necessary to pay the wages of a crew member but continue to live a life of luxury.

13 Plaintiff will also be entitled to interest at the rate of 15% p.a. on USD 22200 from the date of the suit until payment/realisation. As far as costs are concerned, plaintiff has led evidence in paragraph 17 of Exhibit P-1

for costs. That has not been disputed. Therefore, plaintiff will be entitled to costs of Rs.5,00,000/-.

14 As far as Rs.5 lakhs deposited by the Union is concerned, certainly it does not form part of the original claim but the fact is that amount was paid pursuant to an order passed by this Court for sale of defendant no.1 vessel. In my view, defendant no.3 should pay this amount of Rs.5 lakhs to plaintiff/Union.

15 In the circumstances, suit stands decreed in terms of prayer clause – (a) and in addition, for Rs.5 lakhs as mentioned in paragraph 13 above against defendant nos.1, 2 and 3. For ease of reference, prayer clause – (a) reads as under :

(a) that defendant nos.1, 2 and 3 jointly and/or severally be ordered, directed and decreed to pay to plaintiff USD 22000 being the total outstanding wages payable to plaintiff by defendant nos.1, 2 and 3 under the two Employment Agreements, together with USD 300 towards traveling allowance alongwith interest on the principal amount of outstanding wages USD 22200 at the rate of 15% p.a. from the date of filing of the suit till payment or realization plus costs as per the particulars of claim at Exhibit J.

16 All interim applications also stand disposed.

(K.R. SHRIRAM, J.)