SWAROOP SHARAD PHADKE Digitally signed by SWAROOP SHARAD PHADKE Date: 2022.09.07 19:08:59 +0530

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

INTERIM APPLICATION (L) NO.12369 OF 2022
IN
ADMIRALTY SUIT NO.43 OF 2019

Ajit Kumar ... Applicant/Plaintiff
Versus
M.V.PFS Supplier and Ors. ... Defendants

Mr. Abhishek Khare with Mr. R.P.Shirole i/by Khare Legal Chamber, for Plaintiffs.

CORAM : N.J.JAMADAR, J.

DATE : 20th AUGUST, 2022

P.C.:

1. The Plaintiff has preferred this Application under Order XIIIA and/or Order XII Rule 6 of the of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015 (the Code of 1908), for a summary judgment without recording oral evidence in favour of the Plaintiff against the sale proceeds of M.V.PFS Supplier – Defendant Vessel for a sum of Rs.5,29,596/- along with further interest and hardship claim as well as the legal expenses.

2. The material averments in the plaint can be summerized as under :

2.1 The Defendant Vessel was flying an Indian flag. PFS Shipping India Limited – Defendant No.2 was the registered owner of PFS Supplier. The Plaintiff was employed as a Junior Officer to serve on board the Defendant No.1 Vessel under

Employment Agreement dated 22nd April, 2016 and Article of Agreement dated 22nd April, 2016. the Plaintiff served on board the Defendant No.1 Vessel from 30th April, 2016 to 8th November, 2016. The Plaintiff further avers that an amount of Rs.5,29,596/- is outstanding towards the wages. The Plaintiff avers that under Section 129(1) of the Merchant Shipping Act, 1958 the wages of Sea Farers were required to be paid by Defendant No.2 within four days of discharge. Hence, the Suit. The Plaintiffs, inter alia, sought the arrest of the Defendant No.1 Vessel.

3. By an order dated 29th November, 2019, the Suit came to be dismissed as withdrawn qua Defendant No.3.

4. The Writ of Summons could not be served on Defendant No.2 as the postal envelope containing writ of summons was returned unserved with the remark 'left'. An Affidavit of Service to that effect has been filed by Mr. Rajmukar Tiwari, Bailiff, attached to the Office of the Sheriff of Mumbai. Likewise, the Interim Application has not been served on the Defendant No.2. The postal envelope containing the Interim Application also came to be returned unserved with the remark 'left'. An Affidavit of service has been filed on behalf of the Plaintiffs on 26th April, 2022.

5. It would be contextually relevant to note that the Defendant No.2 entered appearances in companion suits. In Commercial Admiralty Suit No.19 of 2018, a statement was made on behalf of the Defendant No.2 that the Defendant No.2

does not wish to file Written Statement for itself, or in the capacity of the then registered owner of the Defendant No.1 Vessel. In any event, the suit is instituted in rem against the Defendant No.1 vessel. Therefore, non-appearance of Defendant No.2 – the registered owner of the Defendant No.1 Vessel, does not constitute an impediment in proceeding against the sale proceeds of Defendant No.1 Vessel in rem.

6. In the meanwhile, Defendant No.1 Vessel was arrested by an order dated 22nd September, 2017 passed by this Court in ADMS(L) 513 of 2017. Eventually, the Defendant No.1 Vessel was ordered to be sold and the sale was confirmed by an order dated 12th February, 2018. The sale consideration of Rs.4,30,00,000/- after deducting the Sheriff's expenses came to be deposited in this Court.

7. The Plaintiff has taken out this Application with the assertion that the liability to pay the crew wages is an admitted liability and there is no real prospect of Defendant Nos.1 and 2 succeeding in defending the claim. In the Application, the Plaintiff furnished particulars of the claim of each of the Applicants in a tabulated format.

8. Pursuant to the directions of this Court, the Court Commissioner has verified the original Agreements in respect of the crew members. Post verification, this Application was taken up for hearing.

9. The Commissioner's Report records, inter alia, as under :

Sr.No.	Name of Crew Member	Pltf No	Claim (In Rs.)	Particulars of Documents	
				Seafarer Employment Contract with date	Seafarers Article of Agreement with date
1	Ajit Kumar	1	5,29,596/-	Original contract dated 22/04/2016	Original Article dated 22/04/2016
	Total		5,29,596/-		
Notarized True copies of relevant extract of the Continuous Discharge Certificate (CDC) of Plaintiff (this document containing signed on and singed off on Defendant No.1 Vessel and identification of the Plaintiff).					

10. The Plaintiff's claim of having rendered services on board the Defendant No.1 Vessel finds support in the Employment Agreement (Exhibit A), Sea Farers Articles of Agreement (Exhibit B), duly verified by the Court Commissioner. The Article of Agreement (Exhibit B) contains an endorsement under the signature of Master of the Defendant No.1 Vessel that the Plaintiff had 'signed on' the ship on 30th April, 2016 and 'signed off' from the ship on 8th November, 2016.

11. In the light of the aforesaid material of unimpeachable character, the learned Counsel for the Plaintiff submitted that the claim of the Plaintiff is incontrovertible and the Defendant Nos.1 and 2 have no real prospect of successfully defending the claim of the Plaintiff.

12. I am persuaded to agree with the aforesaid submissions. The fact that the Plaintiff had rendered services on board the Defendant No.1 Vessel, is established beyond the pale of controversy by the aforesaid documents namely the Employment

Agreement and Sea-farers Articles of Agreements.

13. In view of the provisions contained in Section 2(1)(g) read with Section 9(1)(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the claim of the crew for wages constitutes a maritime lien. It also ranks first in the order of inter se priority of claimants having maritime lien. It is trite law that crew can proceed in rem against the Vessel and/or sale proceeds of the Vessel, where it is sold consequent to arrest, to enforce their maritime claims for wages.

14. In the light of the aforesaid position in law and overwhelming material to substantiate the claim of the Plaintiff that he did render the services as crew member, on board the Defendant No.1 Vessel, there is no realistic prospect of the Defendant Nos.1 and 2 successfully defending the claim of the Plaintiff. In the backdrop of the nature of the claim, there does not seem to be any compelling reason not to dispose of the Suit before recording oral evidence.

15. For the foregoing reasons, I do not find any impediment in passing the summary judgment in favour of Plaintiff and against the sale proceeds of Defendant No.1 Vessel.

16. Hence, the following order :

ORDER

(i) The Interim Application stands allowed.

(ii) There shall be a summary judgment in favour of the Plaintiff for the sum

indicated in the 4th column of the Commissioner's report extracted above aggregating to Rs.5,29,596/- and against the sale proceeds of the Defendant No.1 Vessel, along with further interest @ 12% p.a. from the date of "sign off" till payment and/or realization.

(iii) The Plaintiff is entitled to costs quantified at Rs.25,000/-.

(iv) Subject to and upon determination of priorities, the decreetal amount be disbursed to the Plaintiff.

(v) The Plaintiff is entitled to refund of Court Fees, if any, as per rules.

(vi) The Suit also stands disposed.

(vii) Decree be drawn in the aforesaid terms.

(N.J.JAMADAR, J.)