

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.3011 OF 2022
IN
ADMIRALTY SUIT NO.19 OF 2018**

Mrityunjay K. Singh and Ors. ... Applicants/Plaintiffs
Versus
M.V.PFS Courage and Ors. ... Defendants

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

CORAM : N.J.JAMADAR, J.

DATE : 11th OCTOBER, 2022

P.C.:

1. The Plaintiffs have preferred this Application under Order XIII A and/or Order XII Rule 6 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 Plaintiffs against the sale proceeds of M.V.PFS Courage – Defendant Vessel for a sum of Rs.91,13,607/- 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 Courage. Defendant No.3 was the Manager of the Defendant No.1 Vessel. The Plaintiffs were employed as crew

members, in various capacities, on board the Defendant No.1 Vessel by the Defendant No.3 in accordance with the provisions of the Merchant Shipping Act. Defendant Nos.2 and 3 had agreed to pay wages to the Plaintiffs in cash. As Defendant Nos.2 and 3 committed default in payment of wages and also failed to supply the essentials and make provisions for the necessities, the Plaintiffs were constrained to institute a Suit for recovery of the arrears of wages to the tune of Rs.91,13,607/- along with interest, hardship claim and legal expenses. The Plaintiffs annexed copies of the Articles of Agreements, Continuous Discharge Certificates and Passports to substantiate their claims. The Plaintiffs, inter alia, sought the arrest of the Defendant No.1 Vessel.

3. The Defendant No.2, the then registered owner of the Defendant No.1 Vessel, has been duly served with the writ of summons and an Affidavit of service has been filed by Mr. Rajkumar Tiwari, Bailiff attached to the Office of the Sheriff of Mumbai. Defendant No.2 appeared. On 6th November, 2019 a statement was made on behalf of Defendant No.2 that the Defendant No.2 does not wish to file any written statement for itself or in its capacity as registered owner of Defendant No.1. As against Defendant No.3, the Suit came to be dismissed as withdrawn by an order dated 29th November, 2019.

4. In the meanwhile, Defendant No.1 Vessel was arrested by an order dated 22nd September, 2017 passed by this Court in ADMS(L) No.514 of 2017 (ADMS No.20 of 2018. By a subsequent order dated 4th July, 2018, the Defendant No.1 Vessel

was ordered to be sold. The sale was confirmed by an order dated 19th July, 2018. The sale consideration of Rs.5,50,00,000/- after deducting the Sheriff's expenses came to be deposited in this Court.

5. The Plaintiffs have 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 Plaintiffs have furnished particulars of the claim of each of the Applicants in a tabulated format.

6. Defendant No.2 has been served with the instant Application and an Affidavit of Service came to be filed on 26th April, 2022. Thereafter, 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.

7. 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	Mr. Mrityunjay K. Singh	1	3,93,333/-	Original contract dated 22/06/2016	Original Article dated 23/06/2018
2	Mr. Francis Xavier K.	2	11,77,050/-	Original Contract dated 19/05/2017	Original Article dated

					20/05/2017
3	Mr. Salam Ismail Jalgaonkar	3	1,06,593/-	Original contract dated 02/01/2017 with Original Form of Contract of Apprenticeship to Sea Service	Original Article dated 02/01/2017
4	Mr. Manjit Singh	4	89,680/-	Original contract dated 13/02/2017	Original Article dated 13/02/2017
5	Mr. Niranjan Kumar	5	29,20,500/-	Original contract dated 18/04/2017	Original Article dated 18/04/2017
6	Mr.Iyyappan Ramakrishnan	6	3,48,100/-	Original contract dated 05/04/2017	Original Article dated 05/04/2017
7	Mr. Ashraaf Ahmad Siddique	7	2,66,138/- And 1,54,659/-	Original Contract dated 19/05/2017	Original Article dated 20/05/2017
8	Mr. Karn Yadav	8	3,23,627/- And 2,38,874/-	Notarized copy of original contract dated 08/04/2017	Original Article dated 10/04/2017
9	Mr. Sanjay Kumar	9	10,95,040/-	Original contract dated 29/11/2016	Original Article dated 29/11/2016
	Total Claim		71,13,607/-		
Notarized True copies of relevant extract of the Continuous Discharge Certificates (CDC) of Plaintiff No. 1 to Plaintiff No. 9 (This document containing Signed on and signed off on Defendant No. 1 Vessel and Identification of the Plaintiffs)					

8. The Plaintiffs claim of having rendered services on board the Defendant No.1 Vessel finds support in the respective Employment Agreements and Sea-farers Articles of Agreements duly verified by the Court Commissioner. The claim of the

respective Plaintiffs is further substantiated by the true copies of Continuous Discharge Certificates (CDCs) and Passports. Continuous Discharge Certificates of Plaintiff Nos.1 to 9 are annexed at Exhibits E-1 to E-9 (pages 135 to 152) of the plaint. The entries in the Continuous Discharge Certificates reflecting the dates of 'sign in' and 'sign off', lend support to the claims of the respective Plaintiffs as regards the services rendered on board the Defendant No.1 Vessel. The claim of the respective Plaintiffs is further substantiated by the true copies of the Passports Exhibits D-1 to D-9 (pages 118 to 134 of the Plaint).

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

10. I am persuaded to agree with the aforesaid submissions. The fact that the Plaintiffs had rendered services on board the Defendant No.1 Vessel, in varying capacities, is established beyond the pale of controversy by the aforesaid documents namely the Employment Agreements, Sea-farers Articles of Agreements, Continuous Discharge Certificates and Passports. To add to this, crew salary claim as per Section 129 of the Merchant Shipping Act, 1958 (Exhibit F to the Plaint) is furnished by the Master of the Defendant No.1 Vessel. It indicates the date of joining, date of sign off, wages per day/month, advance, if any, paid and the period since which the wages are

due. Interest is charged @ 18% p.a. on unpaid wages. A scanned copy of the certificate issued by the Masters of PFS Courage is appended below :

UPDATED CREW SALARY CLAIM AS PER SEC 128 OF MERCHANT SHIPPING ACT												
CREW LIST - VESSEL NAME - MV PFS COURAGE												
PENDING WAGES PRESENT CONTRACT AS ON 30.09.2017												
S. NO.	NAME	RANK	CDC NO.	PP NO.	DATE OF JOINING	DATE OF SIGN OFF	ADV REC'D	WAGES NOT PAID SINCE	WAGES PER DAY/MONTH (RS)	NO. OF DAYS	BALANCE OF WAGES (RS)	WAGES +18% INTEREST (RS)
1	MRITYUNJAY K SINGH	MASTER	CL 55518	4696419	29.09.2017	STILL ONBOARD	NIL	29.09.2017	1,00,000 MONTH	100	3,35,333.00	3,90,303.00
2	FRANCIS XAVIER K	C/O	MUM 117889	1856071	21.05.2017	STILL ONBOARD	NIL	21.05.2017	7,500 DAY	133	9,07,620.00	11,77,050.00
3	SALAM J	D/CAPT	MUM 254247	83363063	09.01.2017	09.10.2017	NIL	09.01.2017	10,000 MONTH	271	90,333.00	1,00,583.00
4	MANJIT SINGH	D/CAPT	MUM 290271	80730280	14.02.2017	STILL ONBOARD	NIL	14.02.2017	10,000 MONTH	228	78,000.00	86,000.00
5	NIHARAN KUMAR	DE	MUM 09880	06164706	10.04.2017	STILL ONBOARD	NIL	10.04.2017	15,000 DAY	165	24,75,000.00	29,20,000.00
6	VIYYAPPAN R	DE	MUM 207878	19670121	07.04.2017	09.10.2017	NIL	07.04.2017	60,000 MONTH	177	2,26,000.00	3,46,100.00
7	ASIRAF AHMAD SIDDIQUE	OILER	MUM 179083	86501456	21.05.2017	STILL ONBOARD	NIL	21.05.2017	60,563 MONTH	139	2,26,648.00	2,66,130.00
8	KARN YADAV	COOK	CH101630	80005102	03.01.2017	07.04.2017	30,000 MONTH	06.04.2017	50,000 MONTH	95	1,30,000.00	1,54,850.00
9	SANJAY KUMAR	2 ND ENG	MUM 01280	25043897	11.04.2017	STILL ONBOARD	NIL	11.04.2017	47,000 MONTH	174	2,74,280.00	3,23,627.00
					12.01.2016	08.03.2017	1,85,000 MONTH	08.04.2017	52,742 MONTH	208	2,02,498.00	2,38,874.00
					01.12.2016	27.03.2017	2,50,000 MONTH	01.01.2017	8000 DAY	116	9,25,000.00	10,80,040.00
TOTAL											62,38,478.00	71,13,594.00



AHTSV PFS COURAGE
POR : MUMBAI
GRIT : 1922
ME : GE 8140 BHP
OFF NO. : 3802
IMO NO : 9428568

MASTER
PFS COURAGE

TRUE COPY
SHARE LOCAL CHARTERING
AD-COATS

11. 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 in 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.

12. In the light of the aforesaid position in law and overwhelming material to substantiate the claim of the Plaintiffs that they did render the services as crew members, on different positions, on board the Defendant No.1 Vessel, which is encapsulated in the Master's Certificate (Exhibit H) extracted above, there is no realistic prospect of the Defendant Nos.1 and 2 successfully defending the claim of the Plaintiffs. Since the Defendant No.2 chose not to contest the claim of the crew members, there does not seem to be any compelling reason not to dispose of the Suit before recording oral evidence.

13. Mr. Khare, learned Counsel for the Plaintiffs submitted that in the intervening period, Plaintiff Nos.1 to 8 have collectively received a sum of Rs.34,82,804/- by way of advance from QBE UK Limited (formerly known as QBE Insurance (Europe) Limited (P&I) against their total dues of Rs.51,00,478/- till date. Whereas, Plaintiff No.9 has not received any amount from QBE UK Limited and the claim of Plaintiff No.9 stands at Rs.9,28,000/-. Since the Plaintiff Nos.1 to 8 have already received advance from QBE UK Limited, the said amount is required to be deducted from the wages payable to the Defendant Nos.1 to 8.

14. For the foregoing reasons, I do not find any impediment in passing the summary judgment in favour of Plaintiff Nos.1 to 8 and 9 for the aforesaid amounts

and against the sale proceeds of Defendant No.1 Vessel.

15. Hence, the following order :

ORDER

- (i) The Interim Application stands allowed.
- (ii) There shall be a summary judgment in favour of Plaintiff Nos.1 to 8 for the sum of Rs.16,17,674/- and in favour of Plaintiff No.9 for the sum of Rs.9,28,000/- 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) Each of the Plaintiffs is entitled to costs quantified at Rs.25,000/-.
- (iv) Subject to and upon determination of priorities, the decreetal amounts be disbursed to the respective Plaintiffs through their Advocates for onwards remittance to the respective Plaintiffs, who are Sea-farers.
- (v) It is, however, made clear that the Plaintiffs will pay the income tax and other statutory dues directly and that the Advocates for the Plaintiffs shall, in no manner, be liable / responsible for deducting the income tax at source or the service tax etc.
- (vi) By an order dated 15th November, 2017, the Plaintiffs were allowed to pay the court fees at the time of disbursement of the decreetal amounts. The Prothonotary and Senior Master should ensure that the court fee amount is deducted from the amount payable to the Plaintiffs before paying any money to the Plaintiffs.

- (vii) The Suit also stands disposed.
- (viii) Decree be drawn in the aforesaid terms.

(N.J.JAMADAR, J.)