

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
INTERIM APPLICATION NO.3013 OF 2022
IN
ADMIRALTY SUIT NO.63 OF 2018**

Sushil Kaushik 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 : 20th AUGUST, 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.75,68,342/- 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, 1958. 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.75,68,342/- 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, was served with the Writ of Summons. An Affidavit of Service is filed by Mr. Ramesh Yadav, Bailiff attached to the Office of the Sheriff of Mumbai. The Defendant No.2 did not file Written Statement. Thereupon, by an order dated 22nd November, 2019 the Suit was ordered to be transferred to the list of undefended Suit as against Defendant No.2. By an order dated 29th November, 2019, the Suit came to be dismissed as withdrawn qua Defendant No.3.

4. In the meanwhile, Defendant No.1 Vessel was arrested by an order dated 22nd September, 2017. 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.	Name of Crew Member	Plaintiff No	Claim (In Rs.)	Particulars of Documents	
				Seafarer Employment agreement with date	Seafarers Article of Agreement with date
1	Mr. Sushil Kaushik	1	2,97,817/-	Original agreement dated 04/02/2016	Original Article dated 04/02/2016
2	Mr. Amit Dilip Dhore	2	2,06,080/-	Original agreement dated 13/07/2016	Not produced
3	Mr. Shabbir Hussain Ansari	3	7,78,400/-	Original agreement dated 02/01/2017	Original Article dated 02/01/2017
4	Mr. Kundan Kumar	4	7,08,400/-	Original agreement dated 02/01/2017 and 06/04/2017	Original Article dated 02/01/2017 and 06/04/2017
5	Mr. Virender Singh	5	73,920/-	Original agreement dated 14/04/2017	Original Article dated 14/04/2017

6	Mr. Manjeet Singh	6	1,14,240/-	Original agreement dated 06/04/2017	Original Article dated 06/04/2017
7	Mr. Kamaldeep Singh	7	6,82,080/-	Original agreement dated 03/04/2017	
8	Mr. Veeramany Chellappan	8	5,63,360/-	Original agreement dated 13/07/2016	Original Article dated 14/07/2016
9	Antony Valiyakariyil Antony	9	2,80,000/-	Original agreement dated 19/10/2016	Original Article dated 20/10/2016
10	Bhism Kumar Dwivedi	10	8,03,040/-	Original agreement dated 19/10/2016	Original Article dated 20/10/2016
11	Narendra Singh	11	6,02,765/-	Original agreement dated 19/04/2016	Original Article dated 19/04/2016
12	Rajeev Biswas	12	7,28,000/-	Original agreement dated 22/02/2017	Original Article dated 22/02/2017
13	Manas Kumar Das	13	6,49,600/-	Original agreement dated 02/01/2017 and 08/04/2017	Original Article dated 02/01/2017
14	Pradeep Kumar Kumaresan	14	80,640/-	Original agreement dated 02/01/2017	Original Article dated 20/01/2017
	Total		65,68,342/-		
Notarized True copies of relevant extract of the Continuous Discharge Certificates (CDC) of Plaintiff No. 1 to Plaintiff No. 14 (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 14 are annexed at Exhibits F-1 to F-14 (pages 215 to 252) 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 E-1 to E-14 (pages 192 to 214 of the Complaint).

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, Seafarers 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 G to the Complaint) 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 Master of PFS Courage is appended below :

EXHIBIT-9

30/8/18

PFS

UPDATED CREW SALARY CLAIM													PFS	
CREW LIST														
REVISED WAGES														
No	NAME	RANK	CDC No	P.P NO	DATE OF JOINING	DATE OF SIGN OFF	WAGES NOT PAID SINCE	WAGES PER DAY/MONTH HRS	NOD on board	ADVANCED BVCD FROM PFS/VGO	ADVANCED BVCD FROM P&I	BALANCE OF WAGES	WAGES + 12% INTEREST	
1	SUSHIL KALSHNIK	CHENG	MUM19828	1-371/3948	04.02.2016	21.04.2016	Feb-2016	12,000/DAY	78	Rs. 6,69,703/-	NIL	Rs. 2,65,506.00	Rs. 2,97,817/-	
2	AMIT DILIP DHORE	MASTER	MUM4259	2-370/1930	14.07.2016	09.09.2016	Jul-2016	14,000/D 16,000/D	58	Rs. 6,90,000/-	NIL	Rs. 1,81,000.00	Rs. 2,06,000/-	
3	SHABBI HUSSAIN ANSARI	CHIEFF	MUM1016448	7-3364402	03.01.2017	08.04.2017	Jan-2017	7500/DAY	98	Rs. 25,000/-	NIL	Rs. 6,95,000.00	Rs. 7,78,000/-	
4	KUNDAN KUMAR	ROOF	MUM144551	8-1095516	01.01.2017 03.04.2017	17.02.2017 14.06.2017	Jan-2017	5,500/DAY	46+69+115	NIL	NIL	Rs. 6,32,500.00	Rs. 7,08,400/-	
5	VIRENDER SINGH	CHENG	MUM92221	H-5205112	14.04.2017	19.04.2017	Apr-2017	11,000/DAY	6	NIL	NIL	Rs. 66,000.00	Rs. 73,920/-	
6	MANJEET SINGH	A.D.	MUM193899	M-9297174	07.04.2017	15.06.2017	Apr-2017	45,000/M	68	NIL	NIL	Rs. 1,02,000.00	Rs. 1,14,240/-	
7	KAMALDEEP SINGH	2nd ENG	MUM135201	2229648	04.04.2017	29.06.2017	Apr-17	7,000/DAY	87	NIL	NIL	Rs. 6,09,000.00	Rs. 6,82,080/-	
8	Venkataram Chellappan	2nd ENG	MUM157691	GR160191	14.07.2016	01.12.2016	Jul-16	8000/DAY	141	Rs. 6,25,000/-	NIL	Rs. 5,03,000.00	Rs. 5,63,360/-	
9	Valakattayil Anandaraman	ETO	MUM102100	16102372	20.10.2016	03.01.2017	Nov-2016	5000/DAY	76	Rs. 1,30,000/-	NIL	Rs. 2,50,000	Rs. 2,80,000/-	
10	Bhism Kumar Dwivedi	CHENG	MUM92293	J2274016	20.10.2017	03.01.2018	Oct-2017	25555/M	76	Rs. 1,85,000/-	NIL	Rs. 7,17,000/-	Rs. 8,03,040/-	
11	Narendra singh	Master	MUM81997	H7002539	20.04.2016	14.07.2016	Apr-16	17000/D	86	Rs. 1,93,817	NIL	Rs. 5,38,183/-	Rs. 6,02,765/-	
12	Rajeev Biswas	CHENG	MS11913	Z2612541	22.02.2017	12.04.2017	Feb-2017	13000/D	53	NIL	NIL	Rs. 6,50,000/-	Rs. 7,28,000/-	
13	Munak Kumar Das	ETO	MUM166701	G9087528	03.03.2017 11.04.2017	07.05.2017 29.06.2017	Feb-2017	1,50,000/M	64+89+144	Rs. 1,50,000	NIL	Rs. 3,80,000/-	Rs. 4,49,600/-	
14	Praveen Kumar Kamaresan	TME	MUM252090	M9334399	03.01.2017	07.08.2017	Jan-17	10,000/M	316	NIL	NIL	Rs. 72,000/-	Rs. 80,640/-	
TOTAL												Rs. 58,64,940/-	Rs. 65,68,340/-	



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 G) 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. In any event the maritime lien of the crew members commands highest priority, as noted above. Hence, I do not find any impediment in passing a summary judgment in favour of the Plaintiffs and against the sale proceeds of Defendant No.1 Vessel.

14. Hence, the following order :

ORDER

- (i) The Interim Application stands allowed.
- (ii) There shall be a summary judgment in favour of each of the Plaintiffs for the sum indicated against the name of the respective Plaintiff in the second last column of Exhibit G, under the caption "Balance of Wages" extracted above, aggregating to the sum of Rs.58,64,591/- 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 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 as and when decreetal amount was received. 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.)