

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.1323 OF 2022
IN
ADMIRALTY SUIT NO.24 OF 2018**

Manoj Kumar and Ors. ... Applicants/Plaintiffs
Versus
M.V.PFS Brave 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 Brave – Defendant Vessel for a sum of Rs.1,11,59,876/- 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 Brave. 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.1,11,59,876/- 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. By an order dated 29th November, 2019, the Suit came to be dismissed as withdrawn qua Defendant No.3. The Defendant No.2, the then registered owner of the Defendant No.1 Vessel, upon being served with the warrant arrest, entered appearance. By an order dated 5th September, 2019 this Court granted 30 days time to file written statement. Defendant No.2 has not filed written statement.

4. During the pendency of the Suit, Defendant Nos.4 to 6 came to be impleaded as party Defendants to the Suit. Defendant No.4 – Port Trust has filed a Written Statement, primarily, contending that it has a claim for statutory dues of Rs.1,16,801/- along with the taxes thereon against the Defendant No.1 Vessel.

5. Defendant No.5 – Argosy Shipping Agency Pvt. Ltd. also claimed a sum

of Rs.7,10,885/- towards the services rendered to the Defendant No.1 Vessel such as Port dues, manning operations, mechanical, anchorages, etc.

6. 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.

7. 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.

8. 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.

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

Sr. No.	Name of Crew Member	Plaintiff No.	Claim (In Rs.)	Particulars of Documents	
				Seafarer Employment contract with date	Seafarers Article of Agreement with date

1	Manoj Kumar	1	14,30,160/-	Original Contract dated 03/04/2017	Original Article dated 04/04/2017
2	Shashi Prakash Singh	2	11,55,220/-	Original Contract dated 04/05/2017	True Copy (Advocate) of Original Article dated 04/05/2017
3	Shijo Thomas	3	2,43,866/-	Original contract dated 03/04/2017	Original Article dated 04/04/2017
4	Mohammad Obaydullah Mondal	4	10,32,500/-	Original Contract dated 23/03/2017	Original Article dated 23/03/2017
5	Ritunjay Kumar Sinha	5	19,49,360/-	Original Contract dated 04/05/2017	Original Article dated 04/05/2017
6	Riazudeen Kareem	6	15,52,880/-	Original Contract dated 07/03/2017	Original Article dated 08/03/2017
7	Arya Singh	7	12,09,500/-	Original contract dated	Original Article dated 14/12/2016 and

				14/12/2016 and 27/03/2017	29/03/2017
8	Anish Mayank	8	3,77,600/-	Original Contract dated 15/12/2017	Original Article dated 14/12/2016
9	Mahadev Namdev Aroskar	9	3,60,517/-	Original Contract dated 23/01/2017	Original Article dated 24/01/2017
10	Manoj Kumar Girish Pandey	10	2,17,710/-	Original Contract dated 03/04/2017	Notarized true copy of Original Article dated 05/04/2017
11	Sachin Kumar	11	2,22,823/-	Original Contract dated 14/12/2016	Original Article dated 14/12/2016
12	Subhash Dyandeo Wankhede	12	2,17,710/-	Original Contract dated 03/04/2017	Original Article dated 05/04/2017
13	Bamban Kumar	13	2,37,180/-	Original Contract	Original Article dated 23/03/2017

				dated 23/03/2017	
14	Bhandari Jagdish Singh	14	3,13,290/-	Original Contract dated 07/03/2017	Original Article dated 07/03/2017
15	Haridasan Ernhikkal	15	6,39,560/-	Original Contract dated 06/02/2017	Original Article dated 07/02/2017
	Total Claim		1,11,59,876/-		
Notarized True copies of relevant extract of the Continuous Discharge Certificates (CDC) of Plaintiff No. 1 to Plaintiff No. 15 (This document containing Signed on and Signed off on Defendant No. 1 Vessel and Identification of the Plaintiffs)					

10. 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 15 are annexed at Exhibits G-1 to G-15 (pages 199 to 237) 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 F-1 to F-15 (pages 180 to 198 of the Plaintiff).

11. 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.

12. 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 H to the Plaintiff) 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 Brave is appended below :

Exhibit-74

UPDATED CREW SALARY CLAIM AS PER SEC 129 OF MERCHANT SHIPPING ACT

PFS

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CREWLIST												
REVISED WAGES TILL 31/08/2017												
No	NAME	RANK	CDC No.	P.P. NO.	DATE OF JOINING	DATE OF SIGN OFF	ADVANCE RECEIVED	WAGES NOT PAID DUE	WAGES PER DAY/MONTH RS	NO OF DAYS	BALANCE OF WAGES	WAGES + 10% INTEREST
1	MANOJ KUMAR	MASTER	MUM8996	3613618	04.04.2017	17.07.2017	NIL	Apr-2017	12000/-	161	Rs 12,12,000/-	Rs 14,30,160/-
2	SHASHI PRAKASH SINGH	CHIEF	CL4089	7803584	06.03.2017	STILL ON BOARD	NIL	May-2017	8300/-	119	Rs 9,76,200/-	Rs 11,15,220/-
3	BREDO THOMAS M	2ND OFF	MUM7478	6617976	05.04.2017	04.08.2017	NIL	Apr-2017	50,000/M	124	Rs 2,08,680/-	Rs 2,41,860/-
4	MOHAMMAD CHAYDULLAH MUNDAL	BOAT	MUM65510	7267947	24.03.2017	24.07.2017	NIL	Mar-2017	7000/-	125	Rs 8,75,000/-	Rs 10,32,500/-
5	REJUNY KUMAR SHINHA	CHIEF	CL3044	8382163	06.05.2016	STILL ON BOARD	NIL	May-2017	14,000/-	118	Rs 16,52,000/-	Rs 19,49,360/-
6	HAZUDDIN KARIEM	2ND ENG	M812296	2279469	08.03.2017	STILL ON BOARD	1,00,000/-	Mar-2017	8000 / D	177	Rs 12,16,000/-	Rs 15,32,000/-
7	ARYA BHOIR	CTO	MUM47407	1347180	24.03.2017 15.12.2016 08.03.2017	26.07.2017 08.03.2017	NIL	Dec-2016	5000 / D	121 34	Rs 6,05,000/- Rs 4,30,000/- TOTAL Rs 10,35,000/-	Rs 7,12,000/- Rs 4,95,600/- TOTAL Rs 12,07,600/-
8	ANIRHAYANK	2 nd Eng	MUM07112	81490124	11.12.2016	STILL ON BOARD	60,000/-	Dec-2016	10,000/M	228	Rs 3,20,000/-	Rs 3,77,600/-
9	MAHADEV MAHADEV ARBORER	AB	MUM819535	4835535	25.01.2017	04.04.2017	20,000/-	Feb-2017	9,800 / M	192	Rs 1,96,800/-	Rs 2,26,810/-
10	MANOJ KUMAR GURSHI PARDEY	AB	MUM136710	2287118	04.04.2017	04.08.2017	NIL	Apr-2017	45,000 / M	123	Rs 1,84,000/-	Rs 2,17,710/-
11	SACHIN KUMAR	AB	KOL10035	5401982	20.09.2016	STILL ON BOARD	27,000/-	Jan-2017	25,000 / M	219	Rs 1,88,835/-	Rs 2,22,823/-
12	SUNILASHVARY NAGESH KANIKUDE	CHIEF	MUM87908	11776744	04.04.2017	04.08.2017	NIL	Apr-2017	45,000 / M	123	Rs 1,84,500/-	Rs 2,17,710/-
13	BANDESH KUMAR	CHIEF	MUM180005	3330078	24.03.2017	04.08.2017	NIL	Mar-2017	45,000 / M	134	Rs 2,01,000/-	Rs 2,37,140/-
14	RHANDARI JAGDESH SINGH	COOK	MUM03709	1817463	08.03.2017	STILL ON BOARD	NIL	Apr-2017	45,000 / M	177	Rs 2,05,500/-	Rs 2,37,280/-
15	HAQIDULAN ERODEKICAL	CHIEF	MUM84380	6439098	10.03.2017	08.03.2017	2,82,000/-	Feb-2017	9900 / D	11	Rs 5,42,000/-	Rs 6,39,000/-
TOTAL											Rs 94,57,522/-	Rs 1,11,59,876/-

MASTERS PFS BRAVE
HQ No. : 1418550
OFF No. : 8300
GRT : 1022
NET : 647
BHP : 10740

MASTER
PFS BRAVE

TRUE COPY
KHARE GOAL CHAMBERS
ADVOCATE

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 in inter se priority of maritime lien holders. 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 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.

15. As far as the resistance put forth by the Defendant Nos.4 and 5, by filing written statements, it would suffice to note that the resistance is essentially in the nature of competing claim against Defendant No.1 Vessel for having rendered services to the Defendant No.1 Vessel, which also constitutes a maritime claim. Defendant Nos.4 and 5 are, therefore, required to substantiate their claims by filing suit or otherwise, and compete with the rest of the claimants against the sale proceeds of Defendant No.1 vessel for priority in payout. 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 summery judgment in favour of the Plaintiffs 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 each of the Plaintiffs for the sum indicated against the name of the respective Plaintiff in the second last column of Exhibit H, under the caption “Balance of Wages” extracted above, aggregating to the sum of Rs.94,57,522/- 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 19th September, 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.)