

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1819 OF 2021

IN

COMMERCIAL SUIT NO. 840 OF 2017

Capt. Gavin Sequeira & 36 Ors. ... Applicants/Plaintiffs.
vs.
M. V. Malaviya 36 ... Respondent/Defendant

Mr. Shyam Kapadia a/w. Mr. Pabitra Dutta i/b. M/s. Bose & Mitra & Co. for the Applicants/Plaintiffs.

Mr. Prathamesh Kamat for Official Liquidator.

CORAM : A. K. MENON, J.

DATED : 21st JUNE, 2022

P.C. :

1. By this interim application the applicants claim a summary judgment in terms of prayer clause (a) and seek a decree for a sum of Rs.5,57,75,683/-. The applicant also claims interest @ 18% p.a. It is not in dispute that the Liquidator has filed an affidavit. Last of these affidavits is dated 4th March, 2022 sets out admissible amount of the net salaries computed after examination of the accounts with the help of Chartered Accountants appointed by the Official Liquidator pursuant to an order dated 20th October,

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2021. The Liquidator has set out in Exhibit D to the said affidavit the names of the 36 claimants, address, rank, total amount due and the amounts admitted. There is a dispute as to the amounts deducted and retained by the company in liquidation.

2. Mr. Kamat today states that salary slip itself discloses that certain amounts disclosed as and by way of sample shown in Vol II Page 285 Mr. Gavin L. Sequeira, Master of the vessel. He therefore submits that further inquiries will have to be made to ascertain the nature of these deduction / retention. Mr. Kamath is confident that these are not Tax Deducted at Source. However he seeks time to ascertain the exact nature of these retained amounts. In the meantime he submits to a decree in terms of the amount that is computed in Exhibit D.

3. Plaintiffs therefore seek to proceed on that basis to claim a sum of Rs. 3,46,49,157/- with liberty to apply after seeking inspection of the records of the company to the extent it concerns the plaintiffs claim and to ascertain why these amounts are deducted / retained. Accordingly I pass the following order :

(i) Interim Application is made absolute in terms of prayer clause (b) to the extent of Rs. 3,46,49,157/- along with interest @ 6% till date of winding up.

- (ii) The plaintiff shall file undertakings to repay the amounts received by them to pay back amount received from the Gard P & I Club.
- (iii) The Liquidator is directed to file a report on the state of the account with full particulars as to the accounting package used by the company in liquidation and if necessary employ suitable forensic experts to make the account package accessible by the Chartered Accountant already appointed M/s. S. M. Pradhan & Co. who may be re-engaged by the liquidator for that purpose. Report to be filed within eight weeks from today.
- (iv) Interim Application disposed in the above terms with liberty to apply.
- (v) All rights of the plaintiffs are kept open.

(A. K. MENON, J.)