

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
INTERIM APPLICATION NO.3023 OF 2022
IN
ADMIRALTY SUIT NO.1 OF 2021**

Tejesh Gajanan Baing & 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.26,61,036/- 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. The Plaintiff No.1 had rendered services on board the Defendant No.1 Vessel from 3rd January, 2017 to 7th April, 2017; Plaintiff No.2 had rendered services on board the Defendant No.1

Vessel from 8th April, 2017 to 23rd June, 2017; Plaintiff No.3 had rendered services on board the Defendant No.1 Vessel from 8th April, 2017 to 21st May, 2017 and Plaintiff No.4 had rendered services on board the Defendant No.1 Vessel from 15th September, 2016 to 20th October, 2016. Defendant No.2 had agreed to pay wages to the Plaintiffs in cash. As Defendant No.2 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.26,61,036/- 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 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.

4. It would be contextually relevant to note that the Defendant No.2

entered appearances in companion suits. In Comm. Admiralty Suit Nos.19 of 2018, a statement was made on behalf of 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.

5. 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). Eventually, the Defendant No.1 Vessel was ordered to be sold and the sale was confirmed by an order dated 4th July, 2018. The sale consideration of Rs.5,50,00,000/- after deducting the Sheriff's expenses, came to be deposited in this Court.

6. 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.

7. 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.

8. 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	Tejesh Gajanan Baingh	1	2,02,962/-	Original contract dated 02/01/2017	Original Article dated 02/01/2017
2	Anil Kumar Singh	2	12,52,429/-	Original Contract dated 07/04/2017	Original Article dated 08/04/2017
3	Syed Rizwan Ahmed	3	4,60,892/-	Original Contract dated 07/04/2017	Original Article dated 08/04/2017
4	Thomas Baby Kainadathuparamban	4	6,04,753/-	Notarized copy of the original Contract dated 15/09/2016	Original Article dated 15/09/2016
		Total	25,21,036		
Notarized True copies of relevant extract of the Continuous Discharge Certificate (CDC) of Plaintiff Nos.1 to 4 (this document containing signed on and signed off on Defendant No.1 Vessel and identification of the Plaintiff).					

9. 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 4 are annexed at Exhibits F-1 to F-4 (pages 78 to 88) 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-4 (pages 71 to 77 of the Plaintiff).

10. The Article of Agreement (Exhibit B-1) in respect of the Plaintiff No.1 contains an endorsement of 'sign on' on 3rd January, 2017 and 'sign off' on 7th April, 2017 under the signature of the Master of the Defendant No.1 Vessel; in respect of Plaintiff No.2 the Master of the Vessel had certified the 'sign on' on 8th April, 2017 and 'sign off' on 23rd June, 2017; in respect of Plaintiff No.3 the Master of the vessel certified the date of 'sign on' on 8th April, 2017 and 'sign off' on 21st May, 2017 and in respect of Plaintiff No.4 these dates are 15th September, 2016 to 20th October, 2016 respectively.

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.

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 Plaintiffs that they did render the services as crew members, on different positions, 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 Plaintiffs. 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 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 in the 4th column of the Commissioner's report extracted above aggregating to Rs.25,21,036/- 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 decretal 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) The Plaintiffs are entitled to refund of Court Fees, if any, as per rules.

(vii) The Suit also stands disposed.

(viii) Decree be drawn in the aforesaid terms.

(N.J.JAMADAR, J.)