

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
INTERIM APPLICATION (L) NO.9506 OF 2022
IN
ADMIRALTY SUIT NO.20 OF 2018**

Manoj Kumar 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), 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.39,29,244/- 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.24,29,244/- 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 By an order dated 29th November, 2019, the Suit came to be dismissed as withdrawn qua Defendant No.3.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. Writ of Summons was served on Defendant No.2. An Affidavit of service dated 6th June, 2018 was filed by Mr. Tiwari, Bailiff attached to the Office of the Sheriff of Mumbai. The Defendant No.2 has, however, not filed Written Statement.

4. During the pendency of the Suit, Defendant Nos.4 and 5 came to be pleaded as party Defendants to the Suit. Defendant No.4 – Port Trust has filed a Written Statement, contending primarily that it has a claim for statutory dues of

Rs.1,32,554/- against the Defendant No.1 Vessel and is also entitled to recover taxes thereon.

5. Defendant No.5 – Argosy Shipping Agency Pvt. Ltd. also claimed a sum of Rs.12,18,292/- 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	9,30,963/-	Original Agreement dated 22/11/2016	Original Article dated 29/11/2016
2	Shashi Prakash Singh	2	8,66,120/-	Original Agreement dated 15/07/2016	Original Not produced (notarized copy is verified on 2 nd May, 2022 and is already kept in earlier compilation
3	Mohammad Obaydullah Mondal	3	1,73,460/-	Original contract dated 07/09/2016	Original Article dated 07/09/2016
4	Arya Singh	4	3,62,579/-	Original agreement dated 16/06/2016	Original Article dated 16/06/2016
5	Vijay Singh	5	96,122/-	Original Agreement dated 01/06/2016	Original Article dated 02/06/2016
	Total Claim		24,29,244/-		

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 5 are annexed at Exhibits E-1 to E-5 (pages 83 to 96) 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-5 (pages 76 to 82 of the Plaint).

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.

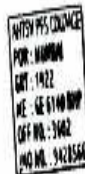
12. I am persuaded to agree with the aforesaid submissions. The fact that the Plaintiffs had rendered services on board the Defendant No.1 Vessel, in varying capacities, is established beyond the pale of controversy by the aforesaid documents namely the Employment Agreements, Sea-farers Articles of Agreements, Continuous Discharge Certificates and Passports. To add to this, crew salary claim as per Section 129 of the Merchant Shipping Act, 1958 (Exhibit 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 Master of PFS Courage is appended below :

18/9/13 Exhibit - 'f'

UPDATED CREW SALARY CLAIM AS PER SEC 129 OF MERCHANT SHIPPING ACT												
CREWLIST												
VESSEL NAME :- M.V. PFS COURAGE					PREVIOUS CONTRACT PENDING WAGES							
No.	NAME	RANK	CDC No.	P.P NO	DATE OF JOINING	DATE OF SIGN OFF	ADVANCE RECEIVE D RS	WAGES NOT PAID SINCE	WAGES PER DAY/MONTH RS	NO OF DAYS	BALANCE OF WAGES	WAGES + 18% INTEREST
1	MANOJ KUMAR	MASTER	MUM89965	36125613	01.12.2016	11.02.2017	87048/-	Feb-2017	12000/-	73	Rs 7,73,962/-	Rs 9,20,953/-
2	SHASHI PAKH SINGH	CHIEF	CL49889	13805586	15.07.2016	03.01.2017	6,50,000/-	Jan-2017	8000/-	173	Rs 7,34,000/-	Rs 8,68,120/-
3	MUHAMMAD QI AYDILLAH MONDIL	ROOF	MUM165101	12619647	08.09.2016	01.12.2016	5,52,000/-	Sep-2016	8200/-	85	Rs 1,45,000/-	Rs 1,73,450/-
4	ARYA SINGH	ITO	MUM147487	13911830	17.06.2016	20.10.2016	3,22,728/-	Jun-2016	9000/-	126	Rs 3,07,271/-	Rs 3,62,579/-
5	VITAY SINGH	COOK	MUM135016	M5266699	02.06.2016	01.12.2016	2,55,000/-	Jun-2016	52450/M	181	Rs 31060/-	Rs 36,122/-
TOTAL :-											Rs 21,06,683/-	Rs 24,02,204/-

[Signature]
MASTER

PFS COURAGE



True copy
of
Advocate

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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 F) 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 putforth by the Defendant Nos.4 and 5, by filing written statements, it would be 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 summary 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 F, under the caption “Balance of Wages” extracted above, aggregating to the sum of Rs.20,56,683/- 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) 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.)