

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
INTERIM APPLICATION NO.3000 OF 2022
IN
ADMIRALTY SUIT NO.64 OF 2018**

Kaushal Narayan Prasad 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.77,40,042/- 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.77,40,042/- 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 dated 9th January, 2019 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. The suit came to be transferred to the list of undefended Suit by an order dated 22nd November, 2019. By an order dated 29th November, 2019, the Suit came to be dismissed as withdrawn qua Defendant No.3.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. No.	Name of Crew Member	Plaintiff No	Claim (In Rs.)	Particulars of Documents	
				Seafarer Employment Agreement with date	Seafarers Article of Agreement with date
1.	Kaushal Narayan Prasad	1	63,840/-	Original agreement dated 25/08/2016	Original Article dated 26/08/2016
2.	Shriram R. Yadav	2	1,42,546/-	Original agreement dated 30/06/2016	Original Article dated 29/06/2016
3.	Kaushal Kishore	3	3,78,451/-	Original agreement dated 31/08/2016	Original Article dated 31/08/2016
4.	Manoj Singh	4	10,39,581/-	Notarized True copy of Original agreement dated	Original Article dated 12/10/2016

				12/10/2016	
5.	Anil Ramarao Kulkarni	5	8,89,512/--	Original agreement dated 23/01/2017	Original Article dated 24/01/2017
6.	Praveen Kumar	6	4,40,369/--	Original agreement dated 12/10/2016	Original Article dated 12/10/2016
7.	Kundan Kumar	7	44,800/--	Original agreement dated 11/08/2016 & 17/02/2017	Original Article dated 11/08/2016 & 17/02/2017
8.	Sukanta Banerjee	8	1,25,440/--	Original agreement dated 10/04/2017	Original Article dated 11/04/2017
9.	Mariappan Goindasamy	9	3,13,600/--	Original agreement dated 29/06/2016	Not Produced
10.	Anil Kumar Konar	10	18,79,360/--	Original agreement dated 04/06/2016 AND Notarized true copy of Original agreement dated 12/10/2016	Original Article dated 12/10/2016
11.	Sembian Paul Jayapaul	11	8,27,680/--	Original agreement dated 02/11/2016	Not Produced
12.	Apurba Sen	12	3,96,620/--	True Copy (By Advocate) of original agreement dated 15/07/2016	Not Produced
13.	Bala Murugan Narayanchamy	13	1,98,240/--	Original agreement dated 11/08/2016	Original Article dated 11/08/2016
			67,40,042/--		
Notarized True copies of relevant extract of the Continuous Discharge Certificates (CDC) of Plaintiff No. 1 to Plaintiff No. 13 (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 3 are annexed at Exhibits E-1 to E-3 (pages 45 to 53) 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-3 (pages 45 to 47 of the Plaint).

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, 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 Plaint) is furnished by the Master of the Defendant No.1 Vessel. It indicates the date of joining, date of sign off,

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 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 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.

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 summery 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 Plaintiffs in the second last column of Exhibit H, under the caption “Balance of Wages” extracted above, aggregating to the sum of Rs.60,17,895/- 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.)