Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 3176 OF 2021
IN
COMM ADMIRALTY SUIT NO. 47 OF 2019

SANTOSH SUBHASH KULKARNI

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QBE UK Limited (formerly known as QBE Insurance (Europe) Limited & ors. ...Applicants

In the matter between

QBE UK Limited (formerly known as QBE Insurance (Europe) Limited & ors. ...Plaintiffs

Versus

Sale Proceeds of PFS Brave & anr. ...Defendants

Mr. Prathamesh Kamat, a/w Mr. Shantanu Joshi, Saurabh Patil, Arshi Carol, i/b Mr. Haresh Pratap, for the Plaintiffs.

CORAM: N. J. JAMADAR, J.
DATED : 20th JULY, 2022

ORDER:-

1. This commercial division admiralty suit is instituted for recovery of a sum of Rs.60,22,581.29 along with further interest at the rate of 18% p.a. for the payment made to the crew member and the necessities supplied to the crew member as on board PFS Brave.

2. PFS Brave (IMO 9428580) was sold by this Court by an order dated 4th July, 2018 in Admiralty Suit No.20 of 2018. The sale proceeds for the vessel PFS Brave (defendant no.1) are deposited with the Prothonotary and Senior Master of this Court. Defendant no.2 was the registered owner of PFS Brave, before it was sold by this Court in an auction. Defendant no.2 had employed plaintiff nos.2 to 9, as crew members, in various capacities, on board the vessel PFS Brave though its agent on VGG India Pvt. Ltd. Plaintiff no.1 is a P&I Club and a Financial Security Services Provider.

3. The vessel PFS Brave was abandoned by defendant no.2. Plaintiff nos.2 to 9 were not paid any salary. Nor any provision was supplied to plaintiff nos.2 to 9, on board the said vessel. Vide communication dated 14th August, 2017, the Deputy Nautical Adviser, Mercantile Marine Department (MMD), Mumbai, plaintiff no.1 was requested to discharge its application under Maritime Labour Convention (MLC) at the earliest. Defendant no.2, in turn, informed the Principal Officer, MMD, vide letter dated 14th August, 2017, that they were unable to arrange funds for releasing crew wages of all three vessles PFS Brave, PFS Courage and PFS Supplier.

4. Thus, plaintiff no.1 paid four months wages and entitlement to plaintiff nos.2 to 9 in its capacity as the financial security service provider under Marine Shipping (Maritime

Labour) Rules, 2016. Upon making the payment, plaintiff nos.2 to 9 executed the following documents.

(a) Receipt of the amounts received;

(b) Deed of Subrogation cum assignment;

(c) Deed of Release cum Indemnity;

(d) Power of Attorney to enable Application no.1 to prosecute a recovery action against the vessel and/or Defendant no.2;

5. Defendant no.2 also failed and neglected to provide the vessel with essential supplies, provisions and bunkers leaving the crew members on board without food, water and basic necessities. Upon the request and instructions of the Master/Officer in-charge of the vessel MV PFS Brave - defendant no.1 provided the vessel with victualing services, having regard to the bunkers, food, provisions, water etc. Invoices evidencing expenses incurred by the plaintiff no.1 are annexed to the plaint. Plaintiff no.1 is thus entitled to recover the said amount as the plaintiff is the maritime liens or maritime claim against defendant no.1. Hence the suit.

6. The plaintiff has taken out this application for summary judgment under Order XIII-A of the Code of Civil Procedure, 1908 as the liability is admitted and there is no real defence to the claim of the plaintiffs.

7. I have heard Mr. Kamat, the learned Counsel for the plaintiffs. Perused the averments in the plaint and the documents annexed thereto, averments in the application and the documents annexed thereto.

8. At the outset, Mr. Kamat, the learned Counsel for the plaintiffs – applicants submitted that at this stage the applicants seek the summary judgment and decree against the sale proceeds of PFS Brave, in rem. It was further submitted that the plaintiffs made an endeavour to serve defendant no.2, erstwhile registered owner of PFS Brave at its registered office as per the record maintained with Registrar of Companies as well as the alternate address. However, defendant no.2 could not have found at the registered address as well as the alternate address. An affidavit of service has been filed on 5th March, 2022. Nonetheless the plaintiffs having a maritime claim which entitled in law to proceed against the sale proceeds of PFS Brave, in rem. The submission appears well merited.

9. The claim of the plaintiffs that defendant no.2 had obtained the vessel PFS Brave finds support in the letter dated 14th August, 2017 (Exhibit-O) addressed by the Director of PFS

Shipping (India) Limited to the principal Officer MMD, wherein it was categorically stated that on account of the circumstances enumerated therein, defendant no.2 was unable to arrange events for payment to crew for all its three vessles PFS Brave, PFS Courage and PFS Supplier. A communication dated 14th August, 2017 (Exhibit-N) by Deputy Nautical Advisor, MMD, Mumbai, indicates that plaintiff no.1 called upon to execute its application under Maritime Labour Convention at the earliest as the omission on the part of the owner of PFS Brave was to be credited as, “abandonment entered MLC”.

10. The fact that plaintiff no.1 was the insurer in respect of seafarer repatriation cost and liabilities qua PFS Brave under Maritime Labour Convention, is evidenced by the certificate (Exhibit-K) issued by British Marine, as evidence of insurance or financial security. The period of insurance was from 20th February, 2017 to 20th February, 2018. The plaintiff nos.2 to 9’s claim that they were employed by defendant no.2 and were on board the vessel PFS Brave is substantiated by the copies of contract of employment (Exhibit-C to Exhibit-J respectively). Plaintiff no.1 claimed to have paid the wages to the crew for the period of four months from the particulars set out in paragraph 6(g) of the application. The payment of wages and subrogation are evidenced by the copies of Deed of Subrogation (Exhibit-P to Exhibit-W). Plaintiff no.1's claim that it had also supplied provisions to the crew on the vessel – PFS Brave, finds support in the copies of the invoices raised by Khakhra Marine Transport, Bharat Petroleum Corporation, Mumbai, and Seatime Marine Suppliers (Exhibit-X to Exhibit-BB).

11. The material on record thus indicates that plaintiff no.1 has paid the wages and incurred the expenses for sustenance of the crew, made provisions for the supply of the essentials to the vessles and also incurred the repatriation expenses, in its capacity as a financial security service provider under Maritime Labour Convention and Marine Shipping (Maritime Labour) Rules, 2016. The claims of plaintiff nos.2 to 9, thus stand subrogated under Rule 12(17) of the Marine Shipping (Maritime Labour) Rules, 2016, which reads as under:

> "**12(17)** If the providers of financial security has made any payment to seafarers in accordance with the provisions of these rules, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the right which the seafarers would have enjoyed."

12. In the case at hand, there is also material to show that plaintiff nos.2 to 9 have duly executed the Subrogation-cum-Assignment Deed in favour of plaintiff no.1 for the payment made by plaintiff no.1 towards wages and repatriation expenses.

13. It would be contextually relevant to note that in the case at hand, there does not seem to be much controversy as regards the abandonment of the vessle PFS Brave as in the communication dated 14th August, 2017. Defendant no.2 had clearly acknowledged that the company was unable to make payment to the crew and on account of the finding constrained in which the company found itself, they were arranging functions for the operation of three vessles. The inability of the company to make payment to crew was stated to be on account of the following facts:

> "(a) Vessels are idle and no revenue is generated.
>
> (b) Company (PFS)/Group has also exhausted all the resources.
>
> (c) Banks are unwilling to support us at this point of time."

14. Moreover, there is a communication dated 14th August, 2017 by the Deputy Nautical Advisor, MMD, Mumbai to the plaintiffs wherein also the necessity of making payment of wages to the crew and supply the provisions and bunkers to the vessel, in the context of prism abandonment by defendant no.2 was highlighted.

15. In the aforesaid view of the matter, it seems that the first defendant vessel has no real prospect in suspension in successfully defending the claim of the plaintiffs. Nor there is any other impediment in passing a summary judgment against the sale proceeds of the PFS Brave – defendant no.1.

16. Hence, there shall be a summary judgment and decree in the sum of Rs.56,22,581.29 in favour of plaintiff no.1 with interest at the rate of 12% p.a. from the date of the suit till realisation as against the sale proceeds of the vessel PFS Brave – defendant no.1.

17. The suit qua defendant no.1, thus, stands decreed and disposed of.

18. Decree be drawn up accordingly.

19. Since the writ of summons has not been serviced on defendant no.2, the suit be kept in pending qua defendant no.2. The plaintiff to take steps to serve defendant no.2.

20. Priorities, however, shall be determined in accordance with law.

21. Interim application No.3176 of 2021 stands disposed, in the aforesaid terms.

[N. J. JAMADAR, J.]