



WEB COPY



C.S. No.672 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. No.672 of 2011

1. Avinash Mohandass
2. Selvam Rajasekar
3. Jagan Ganesan
4. Krishnamoorthy Yuvaraj

... Plaintiffs

Vs.

Owners and Parties Interested in the
Vessel MV GATI MAJESTIC now lying
at the Port of Visakhapatnam and
represented by its Master

... Defendant

Prayer: The plaint is filed under Order XLII Rule 1, 2 & 3 of the
O.S. Rules read with Order VII Rule 1 of C.P.C., praying to pass a
judgment and decree against the defendant on the following terms:-

a. For a sum of Rs.15,71,706/- with interest at the
rate of 24% p.a. from the date of this plaint till date of
realisation.



WEB COPY



C.S. No.672 of 2011

b. For arrest and sale of the defendant Vessel MV GATI MAJESTIC in as is where is condition, presently in Indian Waters at Port of Visakhapatnam, Andhra Pradesh.

c. For a direction to adjust the sale proceeds of the defendant Vessel MV GATI MAJESTIC against the suit claim, and

d. For costs of the suit.

For Plaintiff : Mr.G.Kalyan Jhabakh
for M/s.Surana & Surana

Sole Defendant : Set Ex-parte on 08.04.2024

JUDGMENT

This suit is filed by the plaintiffs seeking (a). for a sum of Rs.15,71,706/- with interest at the rate of 24% p.a. from the date of this plaint till date of realisation, (b). for arrest and sale of the defendant Vessel MV GATI MAJESTIC in as is where is condition, presently in Indian Waters at Port of Visakhapatnam, Andhra Pradesh, (c). for a direction to



C.S. No.672 of 2011

adjust the sale proceeds of the defendant Vessel MV GATI MAJESTIC against the suit claim, and (d). for costs of the suit.

2. The brief averments of the plaint;

2.1. The 1st plaintiff worked on board the defendant vessel MV GATI MAJESTIC as a Second Engineer from 11.06.2011 upto 12.08.2011.

The 2nd plaintiff worked on board the defendant vessel MV GATI MAJESTIC as a Fourth Engineer from 11.06.2011 upto 09.09.2011. The

3rd plaintiff worked on board the defendant vessel MV GATI MAJESTIC

as a Third Engineer from 09.03.2011 upto 12.06.2011. The 4th plaintiff

worked on board the defendant vessel MV GATI MAJESTIC as a Third

Engineer from 17.02.2011 to 29.06.2011.

2.2. The Owners of the Defendant vessel MV GATI MAJESTIC are

Gati Coast to Coast having their office at Laxmi towers II Floor, Dr

Radhakrishnan Salai, Mylapore, Chennai 600 004. The vessel MV GATI

MAJESTIC is flying an Indian flag. The owners of the defendant vessel



C.S. No.672 of 2011

MV GATI MAJESTIC appointed the respective plaintiffs to work on board the vessel MV GATI MAJESTIC by signing separate contracts of employment with the respective plaintiffs for the period of employment. The respective contracts of employment was entered into at Chennai where the owners of the defendant vessel are having their Corporate and Administrative office. Under the respective contracts, Madras Courts alone were vested with the Jurisdiction to decide any disputes, differences and or claims arising out of the contract of employment. The details of the respective contracts of employment entered into with the respective plaintiffs are as follows:

S. No.	Name	Designation	Contract Date	Monthly Wages Payable (Rs.)	Travelling Allowance (Rs.)	Wages due on the date of sign (Rs.)
1	Mr.Aviash Mohandas (1 st Plaintiff)	Second Engineer	09.06.2011	2,78,000/-	2,000.00	4,16,806.00
2	Mr.Selvam Rajasekar	Fourth Engineer	09.06.2011	1,50,000/-	2,000.00	3,52,000.00



C.S. No.672 of 2011

S. No.	Name	Designation	Contract Date	Monthly Wages Payable (Rs.)	Travelling Allowance (Rs.)	Wages due on the date of sign (Rs.)
	(2 nd Plaintiff)					
3	Mr.Jagan Ganesan (3 rd Plaintiff)	Third Engineer	08.03.2011	1,78,000/-	2,000.00	4,29,200.00
4	Mr. Krishna moorthi Yuvaraj (4 th Plaintiff)	Third Engineer	16.02.2011	1,89,000/-	2,000.00	3,73,700.00
Total						15,71,706.00

2.3. The first, second and fourth plaintiffs were signed on board the defendant vessel MV GATIMAJESTIC at Cochin Port and the Third plaintiff was signed on board the defendant vessel MV GATI MAJESTIC at Colombo Port. The first plaintiff was signed off from the defendant vessel at the Port of Kandia and remaining plaintiffs were signed off at the Port of Cochin. Under the respective contracts of employment, the owners of the defendant vessel have to pay 90% of the monthly wages every



C.S. No.672 of 2011

month on board the defendant vessel and the balance 10% will have to be paid alongwith the travel allowance of Rs.2.000/- after satisfactory completion of the contract.

2.4. The owners of the defendant vessel committed breach of the contract by not paying the wages to the respective plaintiffs on the due dates. The owners of the defendant vessel paid only the following part payments to each of the plaintiffs during the period of the contract that too after repeated reminders and demands.

- (a) First Plaintiff - Received amount : Rs.1,58,455/- on 08.08.2011
- (b) Second Plaintiff - Received amount : Rs 85,500/- on 08.08.2011
- (c) Third Plaintiff - Received amount : Rs.1.26,000/- in the month
s of May 2011
- (d) Fourth Plaintiff - Received amount : Rs.1,70,000/- in the month
of July 2011

2.5 After giving credit for all the payments received from the



C.S. No.672 of 2011

WEB COPY

owners, still there remains a balance of Rs.15,71,706/- still due and payable to the plaintiffs by the owners of the defendant vessel as stated supra. The plaintiffs were signed off by the owners of the defendant vessel without settling the balance wages due to each of the plaintiffs. The plaintiffs sent several reminders by way of telephone calls, E-mails and personal visits demanding payment of their wages. The owners of the defendant vessel promised to make the payment but till date they have not settled the wages of the plaintiff. The last such promise was made on 13.09.2011 by their E- mail addressed to all the plaintiffs by which they have promised to pay the wages at the earliest before the end of September 2011. The owners failed to keep up even their final promise. The first plaintiff sent a reminder on 26.09.2011 demanding payment for which the owners of the defendant vessel sent a reply once again confirming that the wages will be paid before the end of September 2011. None of the promises were kept by the defendant vessel.



C.S. No.672 of 2011

WEB COPY

2.6. The Owners of the Defendant vessel towards part payment of the wages payable to each of the plaintiffs, issued a cheque for Rs.1,00,000/- all dated 01.10.2011 in favour of each of the plaintiffs. All the four cheques were also returned dishonoured for insufficiency of funds in the bank account of the owners of the defendant vessel. The plaintiffs were made to run from pillar to post by the owners of the defendant vessel for the recovery of their wages. In spite of the best efforts to recover their wages without intervention of this Court and despite giving several opportunities to the owners, the plaintiff's attempts all went in vain. The plaintiffs now understand that the owners of the defendant vessel are facing financial crisis and are indebted to various creditors and there is total mismanagement. The owners of the defendant have already sold one of their vessels MV GATI I and they are now attempting to alienate/encumber their other ships as well as their other assets both movable and immovable thereby depriving the legitimate right of their



C.S. No.672 of 2011

creditors for a security to recover their dues. All their assets have been mortgaged with various financial institution and they do not own any unencumbered asset to secure the claim of the plaintiffs.

2.7. During the course of their employment, all the plaintiffs worked on board the defendant Vessel MV GATI MAJESTIC as dutiful officers to the satisfaction of the owners of the defendant Vessel. The family of all the plaintiffs are totally dependent on the wages of the plaintiffs for their survival. Even though, the plaintiffs are entitled to claim compensation as per the provisions of the Merchant Shipping Act for the breach of contract committed by the owners of the defendant Vessel, the plaintiffs are not claiming the compensation and are restricting their claim only to their wages. The plaintiffs being crew, have a maritime lien over the defendant vessel MV GATI MAJESTIC for non payment of their wages and their claim ranks ahead of all other creditors.

2.8. As on date, the owners of the defendant vessel have to pay a



C.S. No.672 of 2011

total sum of Rs.15,71,706/- (Rupees Fifteen lakhs seventy one thousand seven hundred and six only) to the Plaintiffs as per the tabular column mentioned supra. The owners of the defendant vessel have failed and neglected to pay the said sum of Rs.15,71,706/- and hence this Admiralty Suit.

2.9. The defendant vessel MV GATI MAJESTIC arrived at the Port of Visakhapatnam for discharging the cargo on 11.10.2011 and has commenced discharge of cargo and is likely to sail away from the Port of Visakhapatnam on 13.10.2011 after discharging the cargo without payment of the wages to the plaintiffs. If the defendant vessel is allowed to sail away, the plaintiffs will not have any security to recover their wages from the owners of the defendant vessel.

2.10. Clause-17 of the respective Contracts of employment states as follows:

“Any disputes, differences and or claims arising out of



C.S. No.672 of 2011

this agreement shall be referred to the sole Arbitrator to be appointed by the Company in terms of the Arbitration and Conciliation Act 1996 and award given by the arbitrator will be final and binding on both the parties. The venue of Arbitration will be at Madras. The Madras Court alone shall have jurisdiction to try and decide the matter arising out of this agreement.”

2.11. Even though there is an Arbitration clause in the contract, the right to institute an Admiralty suit for the plaintiffs is not statutorily curtailed/barred as the power to grant an order of arrest of a vessel is vested only with an Admiralty Court. The plaintiffs have a maritime lien and it can be enforced by an action in rem only by an Admiralty Court. The respective contract of employment were entered into at Chennai. The owners of the defendant vessel are also having their Administrative office only at Chennai. Hence this Court alone has got the Jurisdiction to grant the relief sought for by the plaintiffs.



C.S. No.672 of 2011

2.12. Unless the Defendant vessel is ordered to be arrested by the orders of this Court, the plaintiffs will be put to irreparable loss and hardship. The balance of convenience is in favour of the plaintiffs for grant of an order of arrest of the defendant vessel. Moreover, the plaintiff has a maritime lien for the services rendered. With a view to enforce the maritime lien, the plaintiffs are entitled for an order of arrest of the defendant Vessel. Hence, it is just and necessary that the defendant Vessel MV GATI MAJESTIC be ordered to be arrested and sold by orders of this Court, if the owners of the defendant vessel fail to pay the wages.

3. It is the case of the year 2011. Since no written statement was filed by the defendant, the sole defendant was set-exparte by this Court on 07.03.2022.

4. In order to substantiate their claim, the 4th plaintiff filed his proof affidavit for chief examination and he has reiterated the averments made in the plaint in his proof affidavit. The 4th plaintiff was examined as P.W.1



C.S. No.672 of 2011

WEB COPY

and also marked 19 documents as Ex.P.1 to Ex.P.19 in which, Ex.P.1 is the original contract of employment between 1st plaintiff and the defendant dated 09.06.2011, Ex.P2 is the original contract of employment between 2nd plaintiff and the defendant dated 09.06.2011, Ex.P3 is the original contract of employment between 3rd plaintiff and the defendant dated 08.03.2011, Ex.P4 is the contract of employment between 4th plaintiff and the defendant dated 16.02.2011, Ex.P5 is the office copy of the letter of demand issued by the 1st plaintiff to the defendant dated 10.09.2011, Ex.P6 is the printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 13.09.2011, Ex.P7 is the printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 26.09.2011, Ex.P8 is the printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 03.10.2011, Ex.P9 is the printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 13.09.2011, Ex.P10 is the original articles of agreement for



C.S. No.672 of 2011

WEB COPY

employment of seafarers between defendant and the 1st plaintiff, Ex.P11 is the original articles of agreement for employment of seafarers between defendant and the 2nd plaintiff, Ex.P12 is the original articles of agreement for employment of seafarers between defendant and the 3rd plaintiff, Ex.P13 is the original articles of agreement for employment of seafarers between the defendant and the 4th plaintiff, Ex.P14 is the office copy of the grievance letter given by 1st plaintiff dated 10.10.2011, Ex.P15 is the office copy of the grievance letter given by 2nd plaintiff dated 10.10.2011, Ex.P16 is the statement of claim, Ex.P17 is the original power of attorney dated 11.10.2011, Ex.P18 is the original power of attorney dated 13.10.2011 and Ex.P19 is the 65B affidavit filed for Ex.P6 and Ex.P9.

5. The plaint is filed under admiralty jurisdiction. The defendant has not filed the written statement challenging the averments made in the plaint. The chief examination of the plaintiffs' witness and the documents marked on the side of the plaintiffs are also un-challenged.



C.S. No.672 of 2011

6. On a perusal of the averments made in the plaint and the proof affidavit filed by P.W.1 and also the documentary evidence marked on the side of the plaintiffs, this Court finds that the plaintiffs have proved their claims.

7. Therefore, the suit is decree as prayed for with cost.

26.06.2024
(1/2)

ksa-2

Witness examined on the side of the plaintiffs;

Mr.Krishnamoorthi Yuvaraj -P.W.1

List of exhibits marked on the side of the plaintiffs:

S.No.	Exhibits	Description of documents
1	Ex.P.1	The original contract of employment between 1st plaintiff and the defendant dated 09.06.2011
2	Ex.P.2	The original contract of employment between 2nd plaintiff and the defendant dated 09.06.2011
3	Ex.P.3	The original contract of employment between 3rd plaintiff and the defendant dated 08.03.2011



C.S. No.672 of 2011

S.No.	Exhibits	Description of documents
4	Ex.P.4	The contract of employment between 4th plaintiff and the defendant dated 16.02.2011
5	Ex.P.5	The office copy of the letter of demand issued by the 1st plaintiff to the defendant dated 10.09.2011
6	Ex.P.6	The printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 13.09.2011
7	Ex.P.7	The printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 26.09.2011
8	Ex.P.8	The printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 03.10.2011
9	Ex.P.9	The printout of the acknowledgement of liability issued by the defendant to the plaintiffs dated 13.09.2011
10	Ex.P.10	The original articles of agreement for employment of seafarers between defendant and the 1st plaintiff
11	Ex.P.11	The original articles of agreement for employment of seafarers between defendant and the 2nd plaintiff
12	Ex.P.12	The original articles of agreement for employment of seafarers between defendant and the 3rd plaintiff
13	Ex.P.13	The original articles of agreement for employment of seafarers between the defendant and the 4th plaintiff
14	Ex.P.14	Ex.P.14 is the office copy of the grievance letter



C.S. No.672 of 2011

S.No.	Exhibits	Description of documents
		given by 1st plaintiff dated 10.10.2011
15	Ex.P.15	The office copy of the grievance letter given by 2nd plaintiff dated 10.10.2011
16	Ex.P.16	The statement of claim
17	Ex.P.17	The original power of attorney dated 11.10.2011
18	Ex.P.18	The original power of attorney dated 13.10.2011
19	Ex.P.19	The 65B affidavit filed for Ex.P6 and Ex.P9.

List of witnesses examined on the side of the defendant - **Nil**

List of exhibits marked on the side of the defendant – **Nil**

26.06.2024

(2/2)

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

Ksa-2



WEB COPY



C.S. No.672 of 2011

P.VELMURUGAN. J.

Ksa-2

C.S. No.672 of 2011

26.06.2024