

IN THE HIGH COURT OF SINDH AT KARACHI

Admiralty Suit No.06 of 2018

[Fareed Ahmed Khan and others v. M. V. Miski The Vessel and another]

Dates of hearing : 04.09.2019, 05.09.2019 and 06.09.2019.
Date of Decision : 06.09.2019.
Plaintiffs : Fareed Ahmed Khan and 12 others, through
M/s. Khawaja Naveed Ahmed and Afsheen
Khanum, Advocates.
Defendants : Nemo.

Dr. Chaudhry Wasim Iqbal, Official Assignee.

JUDGMENT

Muhammad Faisal Kamal Alam, J: - The present action at law has been preferred by Plaintiffs against the Defendants with the following prayer clause_

“ *It is most therefore, humbly prayed that this Hon’ble Court may be pleased to order detention of M/s. M.V. MISKI THE VESSEL at Karachi Port till realization of salary of the Plaintiffs.*

b) Ad-interim orders may be passed during pendency of the suit.

c) Cost of the suit.

d) Any other relief which this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. It is necessary to point out that initially the plaint was filed by four Plaintiffs, who are claiming to be Pakistani crew/seafarers working at the

Vessel M.V. Miski – Defendant No.1 (the “**Subject Vessel**”). But, in the intervening period, an application was preferred for impleading the foreign crew, which was granted on 17.09.2018. Vide an order dated 04.10.2019, it was observed that owner of the Subject Vessel was not appearing to proceed with the matter and sufficient time had elapsed and the outstanding amount was increasing day-by-day. In the said order, it was further directed that Plaintiffs should lead the evidence by filing affidavit in *ex parte* proof.

3. On 14-3-2019, Ms. Rukhsana Ahmed, Advocate, was appointed as Commissioner to record the evidence, which was recorded and the learned Commissioner filed her report. On behalf of the Plaintiffs, Plaintiff No.1 – Fareed Ahmed Khan, led the evidence and produced certain documents.

4. Even though the matter proceeded *ex parte*, but still the Court has to apply its judicial mind to the facts of the case and claim of the Plaintiffs that whether or not the same falls within the parameters of law.

5. During the course of hearing arguments, on 04.09.2019, it transpired that the Plaintiffs were in possession of original documents relevant for deciding the controversy but due to some *bona fide* error, those documents could not be exhibited while recording *ex parte* evidence, therefore, P.W. – 1 (Fareed Ahmed Khan) was against examined, who produced certain documents, which were exhibited. Despite providing opportunity of cross-examination to the learned counsel and the parties on that day, as reflected in the order, no one opted to cross-examine the Plaintiffs’ witness.

6. In this *lis*, the following points are to be considered_

1. *Whether the Plaintiffs are crew members of Defendant No.1 – the Subject Vessel?*

2. Whether the claim of crew / Plaintiffs is genuine and payable by the Defendants?

3. What should the decree be?

POINT NO.1:

7. P.W.-1 (Fareed Ahmed Khan) in his evidence has produced Exhibit P.W.-1/10, in which names of Plaintiffs No.2, 3 and 4 (Pakistani crew) are mentioned. The said document also further states that the above Plaintiffs will be employed by Defendant No.1 at the Subject Vessel. Exhibit P.W.-1/11 is the similar document with the caption “AGREEMENT FOR EMPLOYMENT ON SHIPS”, and it is between Plaintiff No.1 and the Subject Vessel. Both these Documents bear Official Seal of ‘Shipping Master, Government Shipping Office, Ministry of Ports & Shipping, Government of Pakistan’, thus presumption of genuineness as envisaged in Article 90 of the Qanoon-e-Shahadat Order, 1984, is applicable to the aforesaid documents.

The next set of documents produced by the witness (P.W.-1) are the Memorandum of Agreements **{Exhibit P.W.-1(A) to 1(D)}** between the above named Plaintiffs No.1 to 4 with the owners of the subject Vessel, viz. Jubba General Trading Co LLC UAE as well as Fair Sea International FZC UAE; the latter has preferred a separate Admiralty Suit No.07 of 2018 against the above owner of the vessel. The above Memorandum of Agreements are also service contracts; Clause 1 whereof mentions the Basic Wages of these Pakistani Seafarers. The other set of documents produced by P.W.-1 is the Employment Contract between the above named Owner and the Master of the subject Vessel Mr. Myo Thet, who has also attended the proceeding on number of dates. Since P.W.-1 was not in possession of the original contracts of other foreign seamen, that is, Plaintiffs No. 6 to 13, therefore, Photostat copies whereof were produced in

the evidence and same were marked as Article – 1 to Article – 8. However, these documents were never objected to on that day, during recording the evidence. A material document showing the relationship between the present Plaintiffs and Defendant No.1 – the Subject Vessel [M.V. Miski], is the Vessel Crew Log Book, which was produced in the evidence as P.W.-1/15 and it contains names of all crew members, that is, the present Plaintiffs.

Since the above evidence has gone un-rebutted, therefore, Point No.1 is answered in Affirmative that all the Plaintiffs were / are in the employment of the Subject Vessel, that is, Defendant No.1.

POINT NO.2:

8. Since certain documents relating to the outstanding wages of Plaintiffs have been signed and stamped by the above named Master of Vessel Mr. Myo Thet, therefore, on 04.09.2019, when he was present in Court, a specific query was asked about his signatures and stamping on the said documents and he confirmed that he signed and stamped those documents. The above P.W.-1 has produced further evidence with regard to identification of above named Master of Vessel (Plaintiff No.5), by exhibiting his original passport, which was seen and returned to him and its Photostat copy was retained and exhibited as P.W.-1/12.

9. With regard to the claim of outstanding wages, earlier the Plaintiffs above named witness has submitted documents before learned Commissioner in the form of two Charts- *Exhibits PW-1/16 and PW-1/17, showing outstanding wages up to March 2019*; both these exhibits are duly signed and stamped by (above named) Master of the Vessel. On a specific query, the learned counsel appearing for the parties in other connected suits, have confirmed that this is the acceptable practice. Though Mr. Agha Zaffar Ahmed, Advocate, is appearing for Karachi Port Trust, but

in order to assist the Court, he has referred to Convention on Facilitation of International Maritime Traffic (**FAL**) and produced the relevant pages of FAL Convention to substantiate the above. The I.M.O. Crew list as of March 2019, has been produced earlier in the evidence, confirming the credentials of present Plaintiffs.

Exhibit P.W.-1/16 and Exhibit P.W.-1/17, which is accompanied by I.M.O Crew list, mentions the total outstanding wages of Plaintiffs as follows_

Plaintiffs No. 1 to 4, the amount is US \$ 55396 and the breakdown of the salary and wages is as under_

SR. NO.	NAME OF CREW	RANK	TOTAL PENDING WAGES IN USD
1	Khan Farid Ahmed	2 nd Engr	38266.7
2	Muhammad Raza	Eng. Cadet	4758.33
3	Inzamam ul Haq	Eng. Cadet	4758
4	Muhammad Faizan	DM	7613.33
		Total	55396

Whereas; total outstanding wages of foreign crew of Defendant No.1 comes to US \$ 239233.13 (up to 27.03.2019). A detailed breakdown of which is as under_

SR. NO.	NAME OF CREW	RANK	TOTAL PENDING WAGES
1	Myo Thet	Master	69,600.00
2	Win Nyunt	Ch.Off	46,333.33
3	Charles Omondi	2 nd Off	24,500.00
4	Khaled H.Mohamed	3 rd Eng	21,000.00
5	Shama Amit Kumar	Bosun	20,500.00
6	Prasad Raama Shankar	Fitter	16,276.57
7	Niraj Kumar Nokhairam	AB	11,366.66
8	Rajendra Kumar	Oiler	13,880.00
9	Shaikh Rajesh	C/Cook	15,776.57
		Total	239,233.13

10. At this juncture, M/s. Khawaja Naveed Ahmed and Afsheen Khanum, Advocates, argue that the wages of Plaintiffs are continuously incurring till the time these Plaintiffs sign off, as also provided in the afore-referred service contracts. Since the issue of various claims are involved in this *lis* and connected Suits and to a certain extent are intertwined, thus, on a specific query, other learned Advocates appearing for the parties (in other suits), have not controverted the above submission. **Secondly**, Article 21 of above PW-1/10, *inter alia*, makes the Owner of a Vessel liable for signing-off and final payment of dues to the crew. **Thirdly**, the above claims of Plaintiffs fall within the ambit of Sections 549 to 551 of the Merchant Shipping Ordinance, 2001.

11. Since present suit is also a claim in rem (against the subject Vessel), and mainly depends on the successful sale of the Subject Vessel and recovery of proceeds therefrom, therefore, the **cutoff date for settling dues** of the crew / Plaintiffs of the present *lis* [Admiralty Suit No. 6 of 2018], which can be considered as a signing off date, in these peculiar circumstances, should not be later than 30.09.2019, in any event. This Point is also answered accordingly, but with a clarification that the learned Official Assignee has to scrutinize up-to-date wages claim of Plaintiffs after examining the undisputed record of the case and after giving proper hearing (if required) to the learned counsel for the parties.

POINT NO.3:

12. Suit is decreed in the above terms. The learned Official Assignee is authorized to take further steps and measures in this regard, by calling upon any concerned Government functionary or Authority to aid and assist the learned Official Assignee, *inter alia*, for a safe repatriation of those Plaintiffs who are foreign crew members / seafarers from Karachi to their respective Countries. Since under the aforementioned service contracts, it is

the obligation of owners of vessel to bear expenses for repatriation and free passages to the respective countries, hence, all the expenses will be deducted from the sale proceeds / vessel. The learned Official Assignee can take any further step within the parameters of law and applicable Rules.

13. Office is directed to send a copy of this Judgment to_

- i) Secretary Interior, Government of Pakistan at Islamabad.
- ii) Secretary Foreign Affairs, Government of Pakistan at Islamabad.
- iii) Secretary, Port and Shipping, Government of Pakistan.
- iv) Home Secretary, Government of Sindh.

Judge

Karachi Dated: 06.09.2019.

Riaz / P.S