

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

**INTERIM APPLICATION (L) NO. 9499 OF 2020
IN
COMM ADMIRALTY SUIT NO. 30 OF 2022**

SLOVESNOV VADYM & Ors. ...Applicants/
Ori. Plaintiffs

In the matter between

SLOVESNOV VADYM & Ors. ...Plaintiffs

Versus

OSV BEAS DOLPHIN (IMO No.9413482) ...Defendant

**WITH
INTERIM APPLICATION NO. 3312 OF 2021
IN
COMM ADMIRALTY SUIT NO. 23 OF 2021**

Abhay Narayan Singh & ors. ...Applicants

In the matter between

Abhay Narayan Singh & ors. ...Plaintiffs

Versus

Sale Proceeds OSV BEAS DOLPHIN (IMO
No.9413482) ...Defendant

Mr. Prathamesh Kamat, a/w Mr. Vinod Kumar & Arpeeta
Panvalkar, i/b Renata Partners, for the Applicants/
Plaintiffs in IAL/9499/2020.

Ms. Apurva Mehta - Pohonerkar, for the Applicants in
IA/3312/2021.

Mr. Prashant Pratap, Senior Advocate, a/w Mr. Nishant
Shetty, Mr. Pabitra Dutta, and Mr. Raghvendra Desai i/b
Bose and Mitra and Co., for the Caveator/HAL Offshore
in COMAS/23/2021.

Mr. Ajai Fernandes, a/w Ms. Sneha Pandey, Mr. Rooshesh
Motiwalla i/b Motiwalla & Co., for the Plaintiff in
COMAS/83/2021.

CORAM: N. J. JAMADAR, J.

DATED : 29th NOVEMBER, 2022

ORAL ORDER:-

1. These interim applications are taken out by the applicants – decree holders to direct the Prothonotary and Senior Master to release payments in terms of the decree, out of the sale proceeds of OSV Beas Dolphin (IMO No.9413482) – the defendant. The applicants are the crew members of the defendant – vessel OSV Beas Dolphin. The defendant – vessel was sold by an order of this Court dated 24th September, 2020 for the consideration of Rs.9,50,00,000/-. The sale proceeds, after reduction of Sheriff's expenses, stand deposited with the Prothonotary and Senior Master.

2. The applicants in Interim Application (L) No.9499/2020 assert that a decree has been passed in favour of the applicants in Commercial Admiralty Suit No.30 of 2022. By an order dated 10th December, 2020, the suit instituted by the applicants came to be decreed in the sum of US\$ 108,810, along with interest at the rate of 8% p.a. from the date of the institution of the suit till the date of payment. The Court was persuaded to award costs of US\$ 15,000 as well.

3. The applicants in Interim Application No.3312 of 2021 aver that in Interim Application No.1557 of 2021 in Comm Admiralty

Suit No.23/2021, by an order dated 23rd August, 2021, the claim of the applicants came to be allowed in terms of prayer Clause (a) of the Interim Application and thereby the Comm Admiralty Suit No.23 of 2021 came to be decreed in the sum of Rs.22,53,753/- along with interest at the rate of 8% p.a. on the sum of Rs.19,67,496/- from the date of the suit i.e. 14th December, 2020 till payment. The Court also directed payment of costs of US\$ 2500 (INR Rs.1,85,000/- at the rate of Rs.74/- per US Dollar).

4. Initially, by an order dated 6th September, 2022, after hearing the applicants as well as the other claimants, who have instituted suits laying claim over the sale proceeds of the defendant – vessel, including the Board of Trustees of the Port of Mumbai and HAL Offshore Ltd., this Court determined the priorities in accordance with the provisions contained in Section 9 read with Section 10 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, (“the Admiralty Act, 2017”) as under:

Suit No.	Plaintiff Name	Status of the suit	Amounts in INR (USD = INR 75.55)	Caveat	Nature of the claims	Remarks
COMASL/63/2019	Slovesnov Vadym&ors.	Decreed	1,09,59,226.33		Maritime Lien Under Section 9(1)(a)	

I st	COMAS/ 23/2021	Abhay Narayan Singh & ors.	Decreed	26,28,495.08	2141, 2142, 2143 and 2145 of 2021	Mariti me Lien Under Section 9(1)(a)	Equally ranked
II nd	COMAS/ 83/2021	The Board of Trustees of the Port of Mumbai	Pending	1,85,39,163	----	Mariti me Lien Under Section 9(1)(d)	Equally ranked
	COMASL/ 26884/2022	Hal Offshore Ltd.	Pending	9,08,70,380	2365/2 021	Mariti me Lien Under Section 9(1)(d)	
III rd	COMAS/ 40/2021	AHM Marine LLC	Pending	2,82,75,852.96	1438/2 021	Mariti me Claim Under Section 4(1)(l)	Equally ranked
	COMAS/ 47/2021	COCKET T MARINE OIL DMCC	Pending	6,06,27,968.4	2551/2 021	Mariti me Claim Under Section 4(1)(l)	

5. After determination of priorities the applications were directed to be re-notified for hearing on the aspect of payout.

6. I have heard Mr. Kamat, the learned Counsel for the applicants in IAL/9499/2021 and Ms. Apurva Mehta, the learned Counsel for the Applicants in IA/3312/2021, Mr. Prashant Pratap, the learned Senior Counsel for the HAL Offshore Ltd., the plaintiff in Comm Admiralty Suit (L) No.26884/2022, and Mr. Ajai Fernandes, the learned Counsel

for the Board of Trustees of Port of Mumbai, the plaintiff in Admiralty Suit No.83/2021. The learned Counsel for the parties have taken me through the averments in the application, reply thereto and the documents which bear upon the claim for payout.

7. Before advertng to consider the submissions canvassed on behalf of the parties, it may be apposite to note that there is not much controversy over the fact that the applicants – plaintiffs were the crew members and the applicants had instituted the suits for unpaid wages. The fact that the applicants – plaintiffs suits came to be decreed by passing summary judgments under Order XIII A of the Code of Civil Procedure, 1908 (“the Code”) is also incontestible. In the priorities which this Court has determined, the applicants in both the applications, being the crew members and decree-holders, stand first in the order of priority and their claims rank equally.

8. The controversy between the parties essentially revolves around three points:

Firstly, whether the interest awarded by this Court on the unpaid wages from the date of the institution of the suit till

payment and/or realization also commands the same priority as wages.

Secondly, whether the costs awarded by this Court to the applicants/plaintiffs in the respective suits also commands first priority.

Thirdly, what should be the date for determining the rate of conversion in the event the money is to be paid in Indian Rupees.

9. Mr. Kamat and Ms. Mehta, the learned Counsel for the applicants/plaintiffs would urge that the entire decretal amount commands the first priority as there is no substance in the objection on behalf of the plaintiffs in Comm Admiralty Suit No.83/2021 and Comm Admiralty Suit No.23/2021, which are yet to be decreed. Amplifying the submission, Mr. Kamat urged that the decretal sum cannot be divided into the sum adjudicated by the Court and the interest component awarded thereon. According to Mr. Kamat, the legal position that interest and costs are also entitled to the same priority as wages of the crew members is settled by a long line of decisions.

10. To buttress this submission Mr. Kamat invited the attention of the Court to the commentary on Admiralty

Jurisdiction and Practice, Fourth Edition by Nigel Messon and John A Kimbell and the judgments of the Federal Court of Australia in *Patrick Stevedores No. 2 Pty Limited (Formerly known as Strang Patrick Stevedoring Pty Limited) (ACN 003 893 141) vs. The Proceeds of Sale of the vessel MV “Skulptor Konenkov”*¹ dated 14th May, 1997. It was submitted that the aforesaid judgment has been followed by the High Court of Singapore in the case of *The “Songa Venus”*². Mr. Kamat further submitted that in the case of *Chrisomar Corporation vs. MJR Steels Private Limited and Another*³, the Supreme Court has approved a judgment of Calcutta High Court, wherein the interest and costs were held to be part of a maritime lien.

11. In opposition to this, Mr. Pratap, the learned Senior Counsel, would urge that under Section 9(1)(a) of the Admiralty Act, 2017 only the wages and other sums due to the crew members are clothed with the character of maritime lien. Mr. Pratap endeavoured to draw a distinction between stipulation for payment of interest under the contract of employment and award of interest by the Court, in its discretion. If under the terms of the contract of employment there is no provision for

1 No.NG 495 of 1995.

2 [2020] SGHC 74.

3 (2018) 16 Supreme Court Cases 117.

payment of interest on delayed/unpaid wages, interest would not form part of the wages and, consequently, according to Mr. Pratap, interest component would not be entitled to the same priority as the wages. Mr. Pratap submitted that the commentary of Nigel Messon and John Kimbell on Admiralty Jurisdiction and Practice draws support from the judgment in the case of *The "Margaret" (1835) 3 Hag. Adm. 238*. The Federal Court of Australia, in the case of *Patrick Stevedores* (supra) also draws support from the said judgment in the case of the *Margaret*. According to Mr. Pratap, neither the commentary on Admiralty Jurisdiction and Practice nor the judgment in the case of *Patrick Stevedores* (supra) has any persuasive value. In fact, there was no contest in the case of *Patrick Stevedores* (supra) and, therefore, it will not have any precedential value, at all.

12. Mr. Pratap further submitted that the judgment of High Court of Singapore in the case of *The "Songa Venus"* (supra) also proceeds on the same premise. The reliance on the judgment in the case of *Chrisomar Corporation* (supra) on behalf of the applicants, according to Mr. Paratp, is not well placed as a totally different question arose for consideration in the case of *Chrisomar Corporation* (supra). Mr. Pratap took

pains to demonstrate that there is no authoritative pronouncement on the question as to whether interest and costs are entitled to the same priority as wages or claims which are in the nature of maritime lien.

13. Mr. Pratap further submitted that in the case at hand, though the claim of the applicants arises out of the services rendered on board the defendant – vessel, yet the question may have bearing upon the claims of other claimants like salvors and mortgagees of the vessels. If huge claims of the salvors and mortgagees are allowed with substantial interest and costs and the same priority is afforded to the interest and costs it will have cascading adverse effect on the claims of the other claimants, who stand low in priority. Therefore the issues raised warrant determination, urged Mr. Pratap.

14. On the aspect of the rate of conversion of the foreign currency into Indian rupees for the purpose of payout, it was urged by Mr. Pratap that the judgment of the Supreme Court in the case of *FORASOL vs. Oil and Natural Gas Commission*⁴, governs the claim in an admiralty action also. Placing reliance on the said judgment, it was urged that the proper date for fixing the rate of exchange in which the foreign currency is

4 1984 (Supp) Supreme Court Cases 263.

required to be converted into the currency of country, in which the action has been commenced and decided, is the date of the decree.

15. I have given anxious consideration to the rival submissions canvassed at bar. It would be convenient to deal with the aspect of interest and costs together for two reasons. First, interest and costs often form an integral part of the decree. Second, the judgments which are relied upon by the applicants have dealt with the priority of interest and costs on an equal footing.

16. To appreciate the submissions in a proper perspective, it may be advantageous to note the observations in the judgments on which reliance was placed by Mr. Kamat.

17. The passage in Admiralty Jurisdiction and Practice dealing with the priority to be accorded to the claim for costs reads as under:

“Claims for costs

6.78 The costs of the action will normally be afforded the same priority as the substantive claim out of which they arise (*The “Margaret” (1835) 3 Hag. Adm. 238*), except in so far as they have priority as being the costs of the producer of the fund (*See paras 6.34 et. seq., above*).

18. In the case of ***Patrick Stevedores*** (supra), the Federal Court of Australia, observed as under:

“There is a question in relation to costs. Although costs are discretionary, the general rule is that in actions against the proceeds of sale of property arrested in *rem*, costs have the same priority as the claim in respect of which they have been incurred; see *The Margaret* (1835) 3 Hag Adm 238 and *The William F. Safford* (1860) Lush. 69 and also Messon (supra) at 167.1 propose to treat costs in accordance with the ordinary rule. There was no submission that I should do otherwise.”

(emphasis supplied)

19. In the case of *The Songa Venus* (supra), the High Court of Singapore, dealt with the priority as regards the costs and interest in a greater detail. The submissions of the Counsel for the parties therein were extracted in paragraphs 11 to 15 as under:

“11. Keppel FELS referred to Nigel Messon and John A Kimbell, *Admiralty Jurisdiction and Practice* (Informa, 4th Edition, 2011) (“*Messon and Kimbell*”), which contained the following passage (at para 6.78):

“The costs of the action will normally be afforded the same priority as the substantive claim out of which they arise, except in so far as they have priority as being the costs of the producer of the fund.”

12. The authority cited in *Messon and Kimbell* for the forgoing proposition was *The Margaret* (1835) 3 Hag Adm 238, a decision of the High Court of Admiralty of England concerning a claim for crew’s wages, where the court held, at page 240, that:

“The ship is liable for wages and costs. The costs are as much due as the sors principalis.”

13. Although *The Margaret* did not invoice competing claimants with claims of different priorities, it was cited and followed by the Federal Court of Australia in *Patrick Stevedores No.2 Pty Ltd. v Proceeds of Sale of the Vessel MV Skulptor Konenkow* (1997) 144 ALR 394, which was a case involving competing claims of different priorities. In that case, after dealing with the validity and priority of various claims, Sheppard J remarked, at page 404, that:

“There is a question in relation to costs. Although costs are discretionary, the general rule is that in actions

against the proceeds of sale of property arrested in *rem*, costs have the same priority as the claim in respect of which they have been incurred; see *The Margaret* (1835) 3 Hag Adm 238 and *The William F. Safford* (1860) Lush. 69 and also *Messon* (supra) at p 167.1 propose to treat costs in accordance with the ordinary rule. There was no submission that I should do otherwise.” (emphasis supplied)

14. The case of *The William F. Safford* (1860) Lush 69 referred to in the above quotation was a decision of the Right Honourable Dr Lushington in the High Court of Admiralty of England. After dealing with the priorities of various claims against the arrested ship, Dr. Lushington held, at page 71, that:

“The costs in each action will be paid with the principal sums in the order I have named.”

15. Songa Offshore did not dispute that the foregoing cases stood for the general rule that costs incurred in enforcing a particular maritime claim should enjoy the same priority as the substantive claim. Instead, Songa Offshore submitted that the proper application of this rule should result in the Disputed Costs being afforded only the priority of a statutory lien. Songa Offshore put forward two lines of arrangements in support this submission.”

After consideration of the submissions, the Singapore High

Court postulated as under:

“22. It is well settled that, *as a general rule*, in actions against the proceeds of sale of property arrested in *rem*, costs have the same priority as the claim in respect of which they have been incurred. This general rule is supported by the authorities cited at paras 11 to 14 above. Neither party disputed the correctness of this general rule. The dispute between the parties was whether the proper application of this general rule should result in the Disputed Costs being accorded the same priority as a possessory lien or a statutory lien.”

20. In the case of *Chrisomar Corporation* (supra) the Supreme Court considered the question as to whether a vessel could have been rearrested in respect of a maritime claim after the vessel

was released from arrest. The Supreme Court was primarily concerned with the distinction between the maritime claim and maritime lien. While elucidating the said distinction, the Supreme Court referred to a number of judgments including judgments of the Calcutta High Court in the cases of *Bailey Petroleum Co. Ltd. vs. M. V. Dignity*⁵ and *Saba International Shipping and Project Investment (P) Ltd. vs. M. V. Brave Eagle*⁶.

21. In the latter judgment a learned Single Judge of the Calcutta High Court had extracted the definition of maritime lien in Stroud's Judicial Dictionary as under:

"24. A definition of maritime lien has also been given in *Stroud's Judicial Dictionary*, 5th Edn., p. 1466 to the following effect:

"A maritime lien may be defined as a right specifically binding a ship, her furniture, tackle, cargo, and freight, or any of them, for payment of a claim founded upon the maritime law and entitling the claimant to take judicial proceedings against the property bound to enforce, or to ascertain and enforce, satisfaction of his demand; thus, a salvor has a maritime lien on the property saved for such an amount as a court exercising admiralty jurisdiction shall award. Maritime lien are distinguished from all other liens in these two chief particulars: (i) they are in no way founded on possession or property in the claimant, (ii) they are exercised by taking proceedings against the property itself in a form of action styled an action in rem (*The Glasgow Packet*, 2 Rob. W. 312; *The Repulse*, 4 Notes of Cas. 170), and, from this and their secret nature, they closely resemble the species of security known to Roman law under the name of hypotheca (Dig. xiii). Interest, if any allowed, and the costs of enforcing a claim for which a maritime lien exists, will be included in such lien (*The Margaret, In re*)."

(emphasis supplied)

5 1993 SCC Online Cal. 18.

6 2001 SCC Online Cal. 556.

22. Evidently, all the aforesaid judgments proceed on the enunciation of the position in the case of *Margaret*. I am not inclined to adopt a doctrinaire approach and delve into the question as to whether the judgments in the case of *Patrick Stevedores* and *the Songa Venus* (supra) command persuasive precedential value. Instead, I deem it in the fitness of things to independently evaluate the aspect of the priority to be accorded to interest and costs, without being unduly influenced by the aforesaid pronouncements.

23. In my view, the nature and character of interest and costs awarded by the Court while decreeing a claim of crew members for wages is required to be appreciated. First and foremost, the character of the claim for wages itself. It is trite that in an admiralty action the wages of the crew command highest priority. The crew members are entitled to proceed against the vessel and its sale proceeds irrespective of the change in ownership of the vessel, in *rem*. From the very text of Section 9(1)(a) of the Admiralty Act, 2017, the highest priority accorded to the claim for wages and other sums due to the crew members becomes abundantly clear. The enormity of the situation in which the crew is often called upon to discharge the functions

on board the vessel is recognized by according highest priority to the wages of the crew members.

24. It is also well recognized that the claim for salary manifests the remuneration of the person, who has rendered the services. Wages constitute the rightful and legitimate entitlement of the employees for having rendered the services. It is not a bounty which the employer pays to the employee.

25. The legislative intent behind according highest priority to the wages of the crew members is further manifested in the provisions contained in the Merchant Shipping Act, 1958 and the Merchant Shipping (Maritime Labour) Rules, 2016.

26. Under Section 129 (1) of the Act, 1958 the master, owner or agent of every ship shall pay to every seaman his wages within four days after the seaman's discharge, and the seaman shall at the time of his discharge is entitled to be paid on account a sum equal to one-fourth part of the balance due to him.

27. The intent of the legislature in timely payment of the wages to the crew members is further emphasised by the provisions contained in sub-section (2) of Section 129 of the Act, 1958. It provides that if a master, owner or agent fails

without any reasonable cause to make payment at that time, he shall pay to the seaman such sum not exceeding the amount of two days' pay for each of the days commencing from the day of discharge during which payment is delayed as the shipping master may in each case decide, but the sum so payable shall not exceed ten days' double pay. Sub-section (3) of Section 129 is of material significance. It provides that any sum payable under this section may be recovered as wages.

28. Under Rule 9 of the Merchant Shipping (Maritime Labour) Rules, 2016, the ship owner shall make payment due to seafarers working on board their ships at no greater than monthly intervals.

29. A conjoint reading of the provisions contained in Merchant Shipping Act, 1958 and the Merchant Shipping (Maritime Labour) Rules, 2016 would indicate that the legislature has taken care to provide for a definite timeline for payment of wages of the crew members on board, and at the time of discharge. Under Section 129(2), post discharge, the delay in payment of wages is at the pain of costs in the nature of two days pay for each day's default. Sub-section (3) provides that the said sum may also be recovered as wages.

30. If the aforesaid nature of the claim for wages is kept in view, then the nature of the action, upon failure on the part of the owner of the vessel to pay the wages, when they become due, for enforcement of the claim for wages becomes clear. The award of interest, in such a suit, in my view, cannot be considered *de hors* the unpaid wages.

31. Interest has a familiar connotation in law. It is construed as a payment to be made by the debtor to the creditor when money was due to the creditor but was not paid or withheld from the creditor by the debtor after the time when payment should have been made.

32. In the case of *Dr. Sham Lal Narula vs. The Commissioner of Income Tax*⁷ in the context of the payment of interest under the Land Acquisition Act, the Supreme Court expounded the juridical connotation of the term interest after adverting to the judgment of the House of Lords in *Westminster Bank Ltd. vs. Riches*⁸. The observations in paragraph 8 are instructive and hence extracted below:

“8. The Legislature expressly used the word "interest" with its well known connotation under S. 34 of the Act. It is, therefore, reasonable to give that expression the natural meaning it bears. There is an illuminating exposition of the expression "interest" by the House of Lords in Westminster

7 AIR 1964 SCC 1878.

8 (1947) 28 Tax Cas 159 at p. 189.

Batik, Ltd. v. Riches (1947) 28 Tax Cas 159 at p. 189). The question there was whether, where in an action for recovery of any debt or damages the court exercises its discretionary power under a statute and orders that there shall be included in the sum for which the judgment is given interest on the debt or damages, the sum of interest so included is taxable under the Income-tax Acts. If the said amount was "interest of money" within Schedule D and the General R. 21 of the All Schedules Rules of the Income Tax Act, 1918, income-tax was payable thereon. In that context it was contended that money awarded as damages for the detention of money was not interest and had not the quality of interest. Lord Wright observed:

"The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether the money was due for any other reason in law. In either case the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether a compensation was liquidated under an agreement or statute, as for instance under S. 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The essential quality of the claim for compensation is the same, and the compensation is properly described as interest".

This passage indicates that interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered, because he had not that use. It is something in addition to the capital amount, though it arises out of it. Under S. 34 of the Act when the Legislature designedly used the word "interest" in contradistinction to the amount awarded, we do not see any reason why the expression should not be given the natural meaning it bears."

(emphasis supplied)

33. The aforesaid pronouncement also indicates that the fine distinction sought to be made by Mr. Pratap between contractual rate of interest and award of interest by the Court also pales in significance, if the fundamental purpose of grant of

interest as a compensation is kept in view. Even otherwise, the distinction, sought to be drawn by Mr. Pratap in the matter of grant of interest by Court on the basis of a term in the contract of employment and award of interest by the Court, in my view, does not advance the cause of the submission on behalf of the HAL Offshore Ltd. It is well neigh settled that where the salary is unjustifiably withheld or there is failure to pay the salary, the employee is compensated by directing the employer to pay the interest at a suitable rate unless there are equities which work against the claim for interest like delay or latches or conduct which bears upon the claim for interest. When a Court awards interest over the unpaid wages, it cannot be assumed that the Court has not taken into account all the circumstances which bear upon the entitlement for interest. On the contrary, if the contractual rate of interest to be paid in the event of default in payment of wages is exorbitant or stiff, the Court may consider the question as to whether the stipulated rate of interest is in the nature of reasonable recompense for the loss of salary or assumes the character of penalty. In the latter case, the Court, in exercise of its discretion, may award interest at a lower rate. I am therefore not persuaded to agree with the submission of Mr. Pratap that in the absence of a stipulation in the contract of

employment for payment of interest on the unpaid wages, the interest component would not partake the character of wages.

34. I have adverted to the provisions contained in the Merchant Shipping Act and the Merchant Shipping Rules, which underscore the imperativeness of timely payment of wages to the crew, at the pain of penalty. From this standpoint, the interest awarded by the Court for depriving the crew members of their legitimate claim for wages can only be considered to be a part of the wages which the crew is otherwise entitled to.

35. Mr. Pratap attempted to salvage the position by placing reliance on a judgment of the Supreme Court in the case of *O. Konavalov vs. Commander, Coast Guard Region and others*⁹, wherein the nature of the seaman's wages was expounded. The observations in paragraphs 25, 26 and 28 read as under:

"25. Judicial opinion and text book writers hold that a Maritime lien such as seamen's wages is a right to a part of property in the res and a privileged claim upon a ship, aircraft or other maritime property and remains attached to the property travelling with it through changes of ownership. It is also acknowledged that it detracts from the absolute title of the "res" owners [see 1. Maritime Liens by D.R. Thomas British Shipping Laws Vol. 14 PP 51-67 2. Law by Cristopher Hill 2nd Edition 1985 PP 107-111 and 3. Principles of Maritime by Susan Hodges and Cristopher Hill 2001]

26. The seamen's right to his wages have been put on a high pedestal. It is said that a seamen had a right to cling to the last plank of the ship in satisfaction of the wages or part

9 (2006) 4 SCC 620.

of them as could be found in Neptune 161 ER 81 and also RUTA (2000) 1 LLR 359.

28. Seamen who have a right to wages, which right is enforceable against the ship can legitimately lay a claim to the payment of such wages out of the proceeds of the ship obtained by its sale. In our view, it is immaterial as to why and by what process brings up the ship for sale either by way of proceedings in rem or otherwise.”

(emphasis supplied)

36. Mr Pratap would urge that in the aforesaid pronouncement, what has been accorded highest priority is only the wages of seamen and not their right to claim interest thereon. I am afraid, the aforesaid submission, loses sight of the fact that the seamen’s wages have been put on high pedestal for a definite purpose. It would be difficult to accede to a submission that the interest awarded to a seamen, for having been kept out of the wages, the right to which is placed at a high pedestal, does not get the same treatment.

37. This leads me to the aspect of costs. In *P. Ramanatha Aiyar’s Advanced Law Lexicon Dictionary, 3rd Edition*, costs awarded in the legal proceedings is defined as under:

“Costs as meaning legal expenses. In the prosecution and defence of actions, the parties are necessarily put to certain expenses, or as they are commonly called costs; consisting of money paid to the Government for stamp duties to the officers of the Courts; and to the counsel and attorneys for their fees, etc. (*Tomlin*)

Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceeding. There are in the nature of incidental damages allowed to

indemnify a party against the expense of successfully asserting his rights in Court. The theory upon which they are allowed to a plaintiff is that the default of the defendant made it necessary to sue him, and to a defendant, that the plaintiff sued him without cause. Thus the party to blame pays costs to the party without a fault.”

38. In a recent pronouncement in the case of *Uflex Limited vs. Government of Tamil Nadu and ors.*,¹⁰ the Supreme Court after noting the necessity and object of awarding realistic costs expounded in the cases of *Ashok Kumar Mittal vs. Ram Kumar Gupta*¹¹ and *Vinod Seth vs. Devinder Bajaj*¹² and the Law Commission’s Report No.240, culled out the principles which govern the aspect of imposition of costs in paragraph 55, as under:

“**55.** We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the the ever-increasing litigation expenses; and (iii) the costs should serve the purpose of curbing frivolous and vexatious litigation. [Report No.240 of he Law Commission of India].”

39. The grievance of Mr. Pratp that in the case at hand the costs are, in a sense, stiff, also does not merit consideration as in commercial matter, and particularly in a suit to recover the wages of the crew members, to which the law attaches highest priority, the parameter would be of realistic and not nominal

10 (2022) 1 SCC 165.

11 (2009) 2 SCC 656.

12 (2010) 8 SCC 1.

costs. In the case of *Uflex Limited* (supra) the Supreme Court had awarded costs on actual basis, albeit modulated.

40. This being the nature of costs, in my view, Mr. Kamat was justified in canvassing a submission that a decree cannot be dismembered into distinct parts, in the matter of according priority.

41. The impracticability of dissecting the components of a decree for the purpose of determination of priorities can be elucidated by reference to the provisions contained in Section 10(1) of the Admiralty Act, 2017, which governs the order of *inter se* priority of the maritime claims. It reads as under:

“10. Order of priority of maritime claims.- (1) the order of maritime claims determining the *inter se* priority in an admiralty proceedings shall be as follows:-

- (a) a claim on the vessel where there is a maritime lien;
- (b) registered mortgages and charges of same nature on the vessel;
- (c) all other claims.

(2) The following principles shall apply in determining the priority of claims *inter se*-

- (a) if there are more claims than one in any single category of priority, they shall rank equally,
- (b) claims for various salvages shall rank in inverse order of time when the claims thereto accrue.”

42. If the submission of Mr. Pratap is taken to its logical end, the decree for the unpaid wages simplicitor would command

first priority under Clause (a) and the costs component would be considered under Clause (c). That would lead to a further question as to whether the costs, in itself, independent of the claim, for the enforcement of which the proceedings, in which it was awarded, was instituted, constitutes a maritime claim. If the costs *de hors* the claim cannot be given the status of a maritime claim, under the provisions contained in Section 4(1), I am afraid, costs can, at all, be considered a claim falling under Clause (c).

43. Since the costs are awarded by the Court as a measure to compensate a party for having been compelled to approach the Court for enforcement of a legitimate claim, costs ought to get the same colour as the claim, for the enforcement of which the proceedings, in which it was awarded, were instituted.

44. This propels me to the third aspect of conversion of the decretal amount which is in US Dollars into Indian currency.

45. This issue does not arise in IA No.3312/2021 as the decree in Suit No.23/2021 is in Indian currency.

46. In IA(L)/9499/2020 in Suit No.30/2022 the decree has been passed in US Dollar as the claim was in US Dollar.

47. In the case of *FORASOL* (supra) the Supreme Court was confronted with a question as to the date to be selected by the Court for converting Indian rupees in French Franc part of the award in respect of which no rate of exchange had been fixed either by the contract between the parties or the award. In paragraph 24 of the judgment, the Supreme Court considered five dates which compete for selection as under:

“24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided.

These dates are:

- (1) the date when the amount become due and payable;
- (2) the date of the commencement of the action;
- (3) the date of the decree;
- (4) the date when the court orders execution to issue; and
- (5) the date when the decretal amount is paid or realized.”

48. After an elaborate analysis, the Supreme Court held in paragraph 53 that it would be fair to both parties for the Court to take the date of passing of the decree as date for conversion.

Paragraph 53 reads as under:

“53. This then leaves us with only there dates from which to make our selection, namely, the date when the amount became payable, the date of the filing of the suit and the date of the judgment, that is, the date of passing the decree. It would be fairer to both the parties for the court to take the latest of these dates, namely, the date of passing the decree, that is, the date of the judgment.”

(emphasis supplied)

49. In the said case, the Supreme Court also set out the practice which shall be followed in suits in which a sum of money expressed in foreign currency can legitimately be claimed by the plaintiff and decreed by the Court. The observations in paragraph 70 are instructive and hence extracted below:

“70. It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have been sufficiently indicated in the English decisions referred to by us above. Such instances can, however, never be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case with which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him.”

(emphasis supplied)

50. The aforesaid pronouncement lays down in clear and explicit terms that where money is expressed to be payable in foreign currency, the plaintiff has the option to claim the amount in Indian currency or foreign currency in which it was payable. On the aforesaid touchstone, reverting to the facts of the case, evidently, the applicants in IA(L) No.9499/2020 claimed the unpaid wages in US Dollar and decree came to be passed in US Dollar in Comm Admiralty Suit (L) No.63/2019. In the absence of any impediment for the applicants in receiving the decretal amount in US Dollar, in my view, the question of conversion of the decretal sum in US Dollar into Indian currency may not arise.

51. The matter can be looked at from a slightly different perspective. Even if it is assumed that the decretal sum is to be paid in Indian currency, the date of actual payment may assume significance. It would be contextually relevant to note the provisions contained in Section 134 of the Merchant Shipping Act, 1958, which prescribes the rule as to payment to seamen in foreign currency. It reads as under:

“134. Rule as to payment to seamen in foreign currency,-
Where a seaman or apprentice has agreed with the master of a ship for payment of his wages in Indian or other currency, any payment of, or on account of, his wages, if made in any currency other than that stated in the agreement shall, notwithstanding anything in the

agreement, be made at the rate of exchange for the time being current at the place where the payment is made.”

52. Section 134 thus envisages that notwithstanding anything in the agreement between the owner or master of the ship and the seaman if the seaman has agreed to receive the wages in a specified currency, the seamen shall be entitled to payment at the rate of exchange for the time being current at the place where the payment is made. Therefore, the submission that the date of decree would govern the rate of exchange cannot be acceded to.

53. The upshot of the aforesaid consideration is that none of the objections to payout, sought to be raised on behalf of the plaintiffs in Comm Admiralty Suit No.83/2021 and Comm Admiralty Suit No.23/2021, deserve any countenance. Hence, the applications deserve to be allowed.

54. Thus, the following order:

: O R D E R :

(I) Interim Application No.9499 of 2020 stands allowed in terms of prayer Clause (a) to (c), which read as under:

“(a) In light of the decree obtained on 10th December, 2020, this Hon’ble Court be pleased to direct the Prothonotary and Senior Master to release all payments in

favour of the applicants, in the accounts of their advocates, Renata Partners.

(b) This Hon'ble Court be pleased to direct the Prothonotary and Senior Master to release payments as per the specifications in the decree dated 10th December, 2020, to the extent of the principal amount being USD 108, 810 along with interest calculated at 8% per annum from the date of filing the suit, i.e. 21st September, 2019 till the date of payment;

(c) This Hon'ble Court be pleased to direct the Prothonotary and Senior Master to release payments to the extent of USD 15,000 towards legal costs incurred by the plaintiffs;

(II) Interim Application No.3312 of 2021 stands allowed in terms of prayer Clause (c), which reads as under:

“(c) That the Hon'ble Court be pleased to order and direct payment out of the decretal amount of Rs.22,53,753/- along with interest at the rate of 8% p.a. on the sum of Rs.19,67,496/- from date of the Suit (14.12.2020) till date of payment and the sum of US\$ 2500 (INR Rs.1,85,000/- @ Rs.74 per USD) as legal costs, from the sale proceeds of the defendant – vessel, presently lying deposited in the Hon'ble Court.”

Applications stand disposed.

[N. J. JAMADAR, J.]