

CAVEAT AGAINST ARREST

A caveat against arrest is a legal instrument used in admiralty law to prevent the arrest of a vessel or other maritime property. This mechanism allows the owner or interested party to provide a security bond or guarantee, thereby discouraging the arrest of the vessel and ensuring that the arresting party has a good reason to proceed. The concept is widely recognized and utilized in various jurisdictions, including India, as part of their admiralty procedures.

Legal Framework and Procedure

In the context of Indian law, the procedure for filing a caveat against arrest is governed by Section 148A of the Code of Civil Procedure, 1908. This section outlines the right to lodge a caveat when an application is expected to be made or has been made in a suit or proceeding. The process involves filing a praecipe, which is a formal written request signed by the caveator or their advocate, requesting the court to enter a caveat against the arrest of the specified property.

Once the praecipe is filed, the caveator undertakes to enter an appearance and provide security in any suit that may be instituted against the property. This security amount is specified in the praecipe or paid into the registry. The caveat is then entered into the Caveat Warrant Book, which is maintained by the court registry and is open for public inspection. The validity of the caveat against arrest lasts for 90 days, and successive caveats can be entered upon expiry.

Importance and Impact

The caveat against arrest serves as a deterrent against the unwarranted arrest of a vessel. It provides the court with notice that the caveator is prepared to contest the arrest and put up security, thereby discouraging frivolous or malicious claims. This process ensures that only parties with a legitimate claim and sufficient reason can proceed with the arrest of the vessel. The caveat system is crucial in maintaining a balance between the rights of the claimant and the owner of the vessel, providing a fair hearing and due process before any arrest is executed.

International Perspective

Globally, the concept of a caveat against arrest is recognized under various legal frameworks. The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952, and its successor, the International Convention on Arrest of Ships, 1999, provide a uniform legal basis for the arrest of ships and related procedures. These conventions aim to harmonize the laws across different jurisdictions, ensuring consistency and fairness in maritime claims and arrests.

Case Law and Precedents

In India, several case laws have highlighted the importance and application of the caveat against arrest. Courts have consistently upheld the principles of fairness and due process, ensuring that caveators are given a fair hearing before any arrest is executed. The courts have also emphasized the need for the arresting party to demonstrate a good and sufficient reason for the arrest, even in the presence of a caveat.

Practical Considerations

For ship owners and maritime stakeholders, understanding the procedure and implications of filing a caveat against arrest is crucial. It

not only protects the vessel from unwarranted claims but also ensures that the business operations are not unduly disrupted. Legal practitioners specializing in maritime law play a vital role in advising clients on the strategic use of caveats and representing their interests in court.

The caveat against arrest is a significant legal tool in admiralty law, providing a mechanism to prevent the arbitrary arrest of vessels and ensuring due process. By filing a caveat, the interested party undertakes to enter an appearance and provide security, thereby deterring frivolous claims and protecting the interests of the vessel owner. The legal framework, both nationally and internationally, supports this process, promoting fairness and consistency in maritime law.

Any person desiring to prevent the arrest of any property shall file in the registry a praecipe, signed by himself or his Advocate, who may be acting for him, requesting that a caveat be entered against the arrest of the said property and undertaking to enter an appearance in person or a vakalatnama (appearance) in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay such sum into the registry. A caveat against the issue of a warrant for the arrest of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book". A caveat against arrest is valid for 90 days. Successive caveats may be entered upon expiry.

The caveator agrees to enter appearance and put up security to prevent an arrest of the ship. Although the caveat does not guarantee that an arrest will not be effected, it nevertheless acts as a deterrent to arrest. Unless the arresting party can demonstrate that there was a good and sufficient reason for arresting despite the caveat.

The Caveat Warrant Book or the Register is open for inspection.

A Caveat is a Notice given by a person, informing the Court that another person may file a suit or application against him and that the Court must give the Caveator (person filing the Caveat) a fair hearing before deciding any matter brought before it in the relevant case.

Section 148A of the Code of Civil Procedure Code, 1908, right to lodge a caveat.

(1) Where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.