

RELEASE OF ARRESTED PROPERTY (SHIP)

The release of an arrested ship, or any property under a warrant, is a complex procedure governed by specific legal protocols. This process ensures that the interests of both the claimant and the ship owner are balanced. Below is an expanded explanation of the procedures, legal principles, and case law examples involved in the release of arrested ships.

1. Grounds for Release:

At the Plaintiff's Request: Before any appearance by the defendant or filing of a Vakalatnama (a legal document authorizing a lawyer to represent a client), the plaintiff can request the release of the arrested property.

Upon Payment by the Defendant: If the defendant pays the amount claimed in the suit into the court, the property can be released.

Providing Security: The defendant may provide security for the amount claimed, as directed by the court. This security can take various forms such as a bail bond, a payment into court, a bank guarantee, or a letter of undertaking from a P&I Club.

Other Grounds Deemed Just by the Court: The court has discretion to release the property on any other grounds it finds just.

2. Authorization and Costs:

The release must be authorized by an instrument issued by the Prothonotary and Senior Master, unless dispensed by the court.

The party obtaining the release must lodge it with a praecipe in the office of the Sheriff or Marshal and pay all costs related to the care and custody of the property during its arrest.

Challenges in Release Situations

Issues can arise if a ship is not released, especially in cases of the owner's bankruptcy or abandonment by the master and crew. In such cases, the Marshal or Sheriff must ensure the ship is maintained, which involves expenses. If the arresting party fails to provide funds for maintenance, the court may order the ship's release based on the Marshal's or Sheriff's report.

Case Law Examples

Captain & Crew of the MV Voseleai v Owners of the MV Voseleai (1994): The court ordered the release of a vessel upon the payment of a F\$25,000 bond after the crew claimed unpaid wages. This case established that the court must release the res upon receiving sufficient security for the plaintiff's claim.

Chandra v Kiribati Shipping Services Ltd (2010): The court recognized that a claim for repairs, even without constituting a maritime lien, could justify an arrest if the plaintiff establishes a lawful right to claim monies due under a contract.

Cong Yu Qin v The Owners of the Motor Vessel 'Ping An 6' (2003): The court granted a default judgment without the vessel being under arrest, demonstrating that a vessel need not be arrested to found jurisdiction, provided the property is under the lawful control of the state.

Donald Pickering & Sons Enterprises Ltd v Karim's Ltd (1997): The court dismissed the defendant's motion to discharge the arrest warrants, reiterating that an in rem action could be brought even without a maritime lien.

Practical Implications

Negotiating Settlements: Settlements often expedite the release process. Both parties can negotiate terms, saving time and resources. This requires skilled diplomacy and a deep understanding of maritime law.

Maintaining Arrested Ships: The arresting party or an intervener may need to fund the maintenance of the arrested ship to prevent deterioration. Courts can order these expenses to be a first charge on the proceeds of the ship's sale, ensuring they are prioritized regardless of claim priority.

Property arrested under a warrant may be ordered to be released.

(i) at the request of the plaintiff, before an appearance in person or a Vakalatnama is filed by the defendant; or

(ii) on the defendant paying into Court the amount claimed in the suit; or

(iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(iv) on any other ground that the Court may deem just.

Property arrested under a warrant shall only be released under the authority of an instrument issued by the Prothonotary and Senior Master, to be called a release, unless the same has been dispensed by the court.

The release when obtained shall be lodged with a praecipe in the office of the Sheriff or Marshal by the party obtaining the same who shall also at the same time pay all costs, charges and expense attending the care and custody of the property whilst under arrest, and the Sheriff or the Marshal shall thereupon release the property.

In cases where the arrested ship is released on security being furnished for the plaintiff's claim, the suit, unless compromised, will proceed to trial and judgment in the normal course.

Problems are, however, encountered in those cases where the ship is not released, usually because of the owner's bankruptcy and the master and crew have also abandoned the ship. The Marshal or the Sheriff or the other officer who has the custody and care of the ship is expected to take steps involving expenses for protecting the ship and its equipment; he has to provide a skeleton crew in accordance with the requirements of the port regulations in order to maintain an anchor watch and to tend to the lights to be exhibited between sunset and sunrise in compliance with the Collision Regulations; and to keep the ship up to full sea-going standards, entailing over and inspection of machinery and watchmen to prevent thefts of valuable equipment and fittings.

The Marshal's or the Sheriff's office does not have either the personnel or the wherewithal to undertake these measures in order to prevent undue deterioration and reduction of the ship's value. The arresting party will be called upon to provide the marshal/sheriff with funds to meet the expenses involved and, in the event of failure to do so, the marshal/sheriff will report the matter to the court and apply for directions with respect to the ship. On the report coming up for consideration after notice to the arresting party and interveners, if any, the court may order the arrested ship to be released.

In such a situation, it is appropriate for any other party who was an intervener in the suit, especially a mortgagee with a high ranking priority, to volunteer to provide the marshal/sheriff with funds to engage a caretaker, usually a firm of marine surveyors, to undertake the said measures. The court may be moved to make the appropriate order appointing the caretaker and directing that the expenses incurred shall be a first charge on the proceeds of sale of the ship to be paid first out of the sale proceeds to the party advancing them, regardless

of the priority ranking of its claim and irrespective of the result of its own suit. The advocate of the arresting plaintiff and/or intervener advancing the funds should ensure that this provision is specifically included in the order.

Following its arrest, the ship is usually released from arrest after security has been provided by the ship owner or any interested parties for the claim. The security may be in the form of a bail bond, a payment of money into court, a bank guarantee or a letter of undertaking (LOU) from the ship owner's protection and indemnity club (P.& I. Club). The security is seen as replacing the arrested res, thereby precluding re-arrest in most cases. The amount of security is set by the court in its discretion, but the general principle is a sum sufficient to cover the claimant's "reasonably arguable best case", together with interest and costs, not exceeding the value of the arrested vessel. A final judgment in the claimant's favour may be enforced against the substituted security, just as it could have been against the arrested ship. Although the arrest of his ship may have grave effects on the ship owner's business, it is not usual for the courts to impose any requirement on the plaintiff/claimant to put up countersecurity to guarantee the defendant against losses which the latter may incur as a result of the arrest, although countersecurity is sometimes ordered, in the court's discretion, under order XXV Rule 1 of Code of Civil Procedure, 1908 for Security for Cost. Security for Cost may be required from the Plaintiff at any stage of a suit, the court may either of its own motion or on application of any defendant, order the plaintiff, for reasons to be recorded, to give within time fixed by it security for payment of all cost incurred or likely to be incurred by any defendant provided that such an order shall be made in all cases in which it appears to the court that a sole plaintiff is, or (when there are more plaintiffs' than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs' possess any sufficient immovable property within India other than property in suit.

Any person desiring to prevent the release of any property under arrest 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 release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Release Book."

The release of an arrested vessel or any property under arrest by a High Court is a multifaceted process governed by specific legal principles and procedures under Indian admiralty law. This process aims to balance the interests of the claimant and the ship owner while ensuring the effective administration of justice.

1. Grounds for Release

The release of an arrested ship can occur under several conditions:

At the Plaintiff's Request: The plaintiff may request the release of the property before the defendant appears in court or files a Vakalatnama (a legal document authorizing representation). This can be done to expedite proceedings or settle disputes amicably.

Upon Payment by the Defendant: The defendant can secure the release of the arrested ship by paying the claimed amount into the court. This payment effectively discharges the claim and results in the release of the property.

Providing Security: The defendant may provide security for the amount claimed in the suit, as directed by the court. This security can take various forms:

Bail Bond: A written undertaking to pay the amount if required.

Payment into Court: Cash or other liquid assets deposited with the court.

Bank Guarantee: A guarantee from a bank to cover the amount claimed.

Letter of Undertaking (LOU): A written commitment from a Protection and Indemnity (P&I) Club or insurer to cover the claim.

Other Grounds Deemed Just by the Court: The court has the discretion to release the property on any other grounds it considers just. This can include settlements or other equitable considerations.

2. Authorization and Costs

Authorization: The release of an arrested ship must be authorized by an instrument issued by the Prothonotary and Senior Master, except where the court dispenses with this requirement. This instrument acts as formal documentation permitting the release.

Lodgment and Costs: Once the release is authorized, the party seeking the release must lodge the release order with a praecipe in the office of the Sheriff or Marshal. The party must also pay all costs related to the care and custody of the property during its arrest, including any expenses incurred for maintaining and securing the ship.

Challenges in Release Situations

Several issues can arise in the release of an arrested ship:

Bankruptcy or Abandonment: If the ship owner is bankrupt or the crew has abandoned the vessel, maintaining the ship becomes challenging. The Marshal or Sheriff is responsible for ensuring the ship's upkeep, which involves significant expenses such as hiring a skeleton crew and performing necessary inspections.

Failure to Provide Funds: If the arresting party fails to provide funds for the maintenance of the ship, the Marshal or Sheriff will report this to the court.

The court may then order the release of the ship if it deems the arresting party's failure to provide funds unjust.

Case Law Examples

Several case laws illustrate the principles and procedures involved in the release of an arrested ship:

Captain & Crew of the MV Voseleai v Owners of the MV Voseleai (1994):

In this case, the court ordered the release of the vessel upon the payment of a bond after the crew claimed unpaid wages. The judgment established that providing sufficient security for the plaintiff's claim necessitates the release of the arrested vessel.

Chandra v Kiribati Shipping Services Ltd (2010):

The court held that a claim for repairs, even if it does not constitute a maritime lien, could justify an arrest if the plaintiff establishes a lawful right to claim money due under a contract. The case highlighted that claims under contracts can be grounds for arrest and subsequent release.

Cong Yu Qin v The Owners of the Motor Vessel 'Ping An 6' (2003):

The court granted a default judgment without the vessel being under arrest, illustrating that jurisdiction can be established even if the vessel is not under arrest, provided the property is under the lawful control of the state.

Donald Pickering & Sons Enterprises Ltd v Karim's Ltd (1997):

This case reaffirmed that an in rem action could be maintained even without a maritime lien, emphasizing the court's discretion in issuing arrest warrants and subsequent release orders.

Practical Implications

Negotiating Settlements: Settlements can expedite the release process. Parties often negotiate terms to facilitate the release of the vessel, saving time and resources. This requires negotiation skills and a comprehensive understanding of maritime law.

Maintaining Arrested Ships: The arresting party or an intervener may need to fund the maintenance of the arrested ship to prevent its deterioration. Courts may order these expenses to be a first charge on the proceeds from the ship's sale, ensuring priority payment regardless of claim priority.

Procedural Details

Caveat Against Release: Any party seeking to prevent the release of arrested property must file a praecipe requesting a caveat against the release. The caveat is entered in the "Caveat Release Book" maintained by the court registry.

Security for Costs: Under Order XXV Rule 1 of the Code of Civil Procedure, 1908, the court may require the plaintiff to provide security for costs if the plaintiff is residing outside India and lacks sufficient immovable property within India. This requirement ensures that defendants are protected against potential costs incurred in the proceedings.

The release of an arrested ship involves a complex interplay of legal procedures and principles aimed at balancing the interests of the claimant and the defendant. Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Admiralty Rules of the High Courts, the release can be effected through payment, security, or other judicially deemed just grounds. Case law underscores the importance of timely and adequate provision of security to ensure the effective release of the vessel and the fair resolution of maritime claims.