

ADMIRALTY SUIT AND PLEADINGS

Admiralty Suit and Pleadings: A Detailed Overview

1. Title of the Plaintiff

In maritime law, specifically in suits *in rem*, the title of the plaintiff is crucial as it sets the stage for the legal proceedings concerning the ship. The title typically includes the following components:

Name of the Ship: The full name of the vessel involved in the suit is stated first. This is the identifier for the ship in legal documents and proceedings along with the IMO number.

Nationality of the Ship: Following the name, the nationality of the ship is mentioned. This is important as it helps in identifying the ship's registry and legal jurisdiction.

Description of the Ship: The title often includes a detailed description of the ship, which encompasses "its engines, boats, gear, tackle, apparel, furniture, and papers, and everything belonging to it whether on board or ashore". This comprehensive description ensures that all parts and accessories related to the ship are covered under the suit.

Location: The plaintiff should specify the current location of the ship, including details such as the port or harbour where it is located. This helps in determining where the arrest or other legal actions will be carried out.

Parties Involved: Some draftsmen include additional parties in the title, such as "The Owners and other parties interested in the first defendant

ship". This inclusion helps in addressing all relevant stakeholders in the legal action.

Maritime Claim/Lien: The plaint must be very clear about the maritime claim or lien under which the suit is being filed. This clarity is crucial for understanding the basis of the legal action.

Affidavit in Support: Alongside the plaint, an affidavit in support should be filed. This affidavit typically provides evidence and justification for the suit, and confirms that all necessary preliminary steps have been taken.

2. Judge's Order or Interim Application for Arrest

The process of arresting a ship involves obtaining a Judge's order or making an interim application, which includes the following steps:

Order for Arrest: The Judge's order will direct that the ship be arrested at any hour of the day or night, including weekends and holidays. This ensures that the ship can be seized promptly as needed.

Conditions for Arrest: The order may specify that the ship cannot be arrested if the payment of the claimed amount, court fees, and sheriff's poundage are made, or if satisfactory security is provided. This provides an opportunity for the shipowner to settle the claim and avoid arrest.

Affidavit in Support: An affidavit in support of the interim application should outline the reasons why the Judge's order should be granted. It should also confirm that notice has been given to the consul, where applicable, to ensure compliance with international conventions and treaties.

3. Undertaking, Certificate, and Other Requirements

Before proceeding with the arrest of a vessel, certain procedural steps must be followed:

Undertaking: The plaintiff is required to provide an undertaking to cover costs and damages. This is typically done through an affidavit that guarantees the court will be compensated for any potential costs or damages resulting from the arrest.

Certificate from the Prothonotary or Registry: Prior to making an application for the arrest, a certificate from the Prothonotary or registry is necessary. This certificate confirms that a search of the caveat against arrest register has been conducted, and no caveats are filed. If a caveat exists, notice must be given to the caveator.

Warrant for Arrest: Once the warrant for arrest is issued, it needs to be served by the bailiff or sheriff. The process involves:

Service of Warrant: The original warrant is affixed to the ship's mast or another suitable part of the superstructure for about 10 to 15 minutes before being replaced with a duplicate. This ensures that the warrant is properly served and visibly attached to the vessel.

Proper Service: Proper service is crucial. Service on the master or any crew member by delivering the duplicate of the warrant and obtaining their acknowledgment is not acceptable. Bad service can be grounds for challenging the arrest, although there have been no significant instances where the arrest was overturned due to bad service.

Service at Different Ports: If the ship is in a different port from where the writ was issued, it is advisable to request the registry to notify port authorities and customs officials to prevent the ship from sailing away before service can be executed. Alternatively, the court may order that fax or email copies of the warrant be accepted.

Return of Warrant: The rules require that the warrant be returned within a stipulated period after service. This ensures that the court is informed about the execution of the arrest.

Proceedings After Arrest: In courts like Calcutta and Madras, if no appearance is entered within 12 days after the return of the warrant, the plaintiff's advocate may set the suit down for hearing. If the judge finds the claim valid, the ship may be ordered to be sold, or other orders may be issued as deemed fit.

4. Cause Title for Defendants

In the cause title of the suit, the defendant is styled as follows:

Vessel Identification: The defendant is identified by the vessel's name and flag.

Description: The cause title includes a description of the vessel, including "hull, tackle, engines, machinery, paraphernalia, and all her appurtenances on board."

Location: The title specifies the current location of the vessel, such as the port or jetty where it is situated.

Interested Parties: It also includes "all persons claiming to be interested in the vessel" to ensure that all relevant parties are notified and given an opportunity to respond to the suit.

Admiralty Suit and Pleadings

Plaint

In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants. The Plaint should be very clear as regards maritime claim/ lien. Affidavit in Support to the Plaint should be drawn up and filed along with the Plaint.

Judge's order or Interim application for arrest and its affidavit in support

The Judge's order or Interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage, is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable.

Undertaking, Certificate et al

An undertaking from the Plaintiff securing cost and damages should be given to the court by way of an affidavit when an application for arrest of the Defendant vessel is made.

A Certificate from the Prothonotary or the registry should be obtained prior to making an application for arrest of the vessel stating that a search of the caveat against arrest register has been taken and that no

caveat are filed or has been filed, depending on the search result and if a caveat exist, a notice to the caveator has to be given.

Warrant for Arrest

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal or of the Sheriff or his substitute, in some cases direct service who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, see *infra*, on the ship.).

There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - *The Marie Constance*. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been issued. This lacuna puts the plaintiff to the expense of taking the marshal's/sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished.

To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile, email intimation to the Port authorities and to the Commissioner of Customs at the particular port of issue of the warrant for arrest of the ship and instruct that officer not to grant port clearance to the ship, pending arrival of the warrant of arrest. Alternatively, while obtaining an order of arrest the Warrant of Arrest should be dispensed with and an order should be obtained that all authorities should act on fax and email copies.

Whereas the Admiralty Rules require that the warrant shall be returned within a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from the return of the warrant for arrest, if no appearance shall have been entered in the suit the advocate for the plaintiff may cause the suit to be set down for hearing and also provide that, if when the suit comes up before the court, the judge is satisfied that the plaintiff's claim is well founded he may pronounce the claim and may order the ship to be sold with or without previous notice and the proceeds of the sale paid into the registry or make such order in the premises as he deems fit.

The warrant of arrest issued by the said two High Courts is in its form citatory, calling upon the owners and all parties interested in the ship to appear before the court, is deemed sufficient notice to all whom it may concern regarding the suit. It, however, does not require them to file a written statement to the suit.

In the cause title the defendant is styled as below:

M. V. XXXXXXXXX, vessel flying a xxxxx)
flag together with her hull, tackle,)
engines, machinery, paraphernalia)

and all her appurtenant on board)
presently lying and being at stream/port)
and harbour/jetty of xxxx, xxxxx and all)
persons claiming to be interested)
in the vessel)

...DEFENDANT

The procedural framework governing admiralty suits in India is largely derived from the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “Admiralty Act, 2017”) and the Admiralty Rules of the High Courts. Admiralty proceedings, particularly suits in rem, require meticulous adherence to procedural and substantive legal principles, as these proceedings involve the arrest of vessels and complex jurisdictional issues. The following sections provide a detailed exploration of the fundamental aspects of admiralty suits and pleadings under Indian law.

1. Title of the Pleint

The title of the pleint in admiralty suits holds paramount importance as it determines the identification of the res (vessel) and the scope of the maritime claim. The drafting of the title should adhere to the following principles:

Name of the Ship: The ship's full name must be mentioned, as this serves as the primary identifier in the legal action. The inclusion of the ship's IMO (International Maritime Organization) number is also recommended for clarity and accuracy.

Nationality and Registration: The nationality of the ship should be clearly stated, as this impacts the determination of applicable international laws and conventions, as well as the jurisdiction of the Indian courts.

Detailed Description: The description of the ship should encompass not only the hull but also all associated components such as "engines, boats, gear, tackle, apparel, furniture, and papers, and everything belonging to it whether on board or ashore." This ensures that the entire vessel and its accessories are included in the ambit of the suit, which is particularly significant in cases of arrest and sale.

Location of the Ship: The plaint must specify the current location of the ship, including details such as the port or harbor. This is essential for determining the court's territorial jurisdiction and the execution of any arrest order.

Parties Involved: In many cases, it is prudent to include additional parties in the title, such as "The Owners and other parties interested in the first defendant ship." This ensures that all stakeholders, including beneficial owners and charterers, are accounted for in the legal proceedings.

Maritime Claim/Lien: The nature of the maritime claim or lien under which the suit is being filed must be explicitly stated. This clarity is crucial, as the court will need to determine whether the claim falls within the scope of admiralty jurisdiction under the Admiralty Act, 2017.

Affidavit in Support: An affidavit in support of the plaint must be filed, substantiating the factual basis of the maritime claim and providing evidence that justifies the initiation of the suit. The affidavit should also confirm compliance with procedural prerequisites, such as notice to relevant authorities or consuls, if applicable.

2. Judge's Order or Interim Application for Arrest

The arrest of a vessel is a core remedy in admiralty law, providing security to the claimant for satisfaction of the maritime claim. The process of arrest involves obtaining a Judge's order or making an interim application, which requires compliance with the following legal principles:

Order for Arrest: The Judge's order will direct that the ship be arrested, typically at any hour of the day or night, including weekends and holidays. The urgency of arrest in admiralty cases necessitates such flexibility, ensuring that the ship cannot evade jurisdiction by sailing away.

Conditions for Arrest: The court may condition the arrest on the payment of the claimed amount, court fees, and sheriff's poundage, or on the provision of satisfactory security. This provides an opportunity for the shipowner to settle the claim and avoid arrest, balancing the interests of both parties.

Affidavit in Support of Interim Application: The affidavit in support of the application for arrest should articulate the reasons for granting the arrest order and demonstrate the necessity of such an order to secure the claimant's maritime claim. The affidavit should also confirm that all procedural steps, such as notice to the consul of the ship's flag state, have been fulfilled, where applicable.

3. Undertaking, Certificate, and Other Procedural Requirements

The procedural safeguards associated with arresting a vessel include the following key elements:

Undertaking for Costs and Damages: Before the court grants an arrest order, the plaintiff must provide an undertaking, typically in the form of an affidavit, guaranteeing to cover costs and damages that may arise

from the wrongful arrest of the vessel. This ensures that the shipowner is protected against unjustified claims.

Certificate from the Prothonotary or Registry: A certificate from the Prothonotary or the court's registry is required to confirm that a search of the caveat against arrest register has been conducted. If a caveat against arrest has been filed, the plaintiff must provide notice to the caveator, allowing them an opportunity to contest the arrest.

Warrant for Arrest: Upon the issuance of the warrant for arrest, it must be served by the bailiff, marshal, or sheriff, or their substitute. The warrant is typically affixed to a conspicuous part of the ship, such as the mast or superstructure, for a brief period before being replaced with a duplicate. This procedure ensures that the arrest is properly executed and visibly acknowledged.

Service of the Warrant: Proper service is a critical element of the arrest process. Inadequate service, such as delivering the duplicate of the warrant to the ship's master or any crew member, may constitute bad service, rendering the arrest susceptible to legal challenge. Although there have been no significant cases where an arrest was overturned due to bad service, the process must be executed meticulously to avoid complications.

Service at a Different Port: If the vessel is located in a different port from where the writ was issued, it is advisable to request the court's registry to notify port authorities and customs officials to prevent the ship from sailing away before service can be effected. Alternatively, the court may order that fax or email copies of the warrant be accepted by the relevant authorities, ensuring that the arrest can be executed without delay.

Return of Warrant: The Admiralty Rules require that the warrant for arrest be returned to the court within a stipulated period after service. This step informs the court that the arrest has been executed and enables the court to proceed with the subsequent stages of the legal process.

4. Proceedings After Arrest

The procedural steps following the arrest of a vessel are governed by the specific rules of the High Courts, as well as the Admiralty Act, 2017. The key aspects of post-arrest proceedings include:

Entry of Appearance: The defendant (shipowner or interested party) must enter an appearance within a prescribed period (e.g., 12 days) after the return of the warrant for arrest. Failure to enter an appearance may result in the plaintiff setting the suit down for hearing *ex parte*.

Hearing and Sale of the Vessel: If the defendant does not appear, or if the court finds the plaintiff's claim to be well-founded, the court may order the sale of the vessel. The proceeds from the sale are typically paid into the court's registry and may be used to satisfy the plaintiff's claim, subject to other claims and priorities.

Notice to Interested Parties: The warrant for arrest serves as notice to all parties interested in the vessel, including owners, charterers, and lienholders. However, the court may also require that additional notice be provided to specific parties, ensuring that their rights are protected in the admiralty proceedings.

5. Cause Title for Defendants

The cause title in admiralty suits must accurately describe the defendant vessel and any interested parties. The typical format includes the following elements:

Vessel Identification: The vessel is identified by its name and flag, along with a description of its hull, tackle, engines, machinery, and appurtenances.

Location: The cause title should specify the current location of the vessel, whether at port, jetty, or anchorage. This information is crucial for the execution of the arrest and subsequent legal proceedings.

Interested Parties: The cause title should include "all persons claiming to be interested in the vessel," ensuring that all relevant stakeholders are notified and given an opportunity to participate in the proceedings.

Case Law and Legal Precedents

Several landmark judgments from Indian courts have shaped the procedural and substantive aspects of admiralty suits and pleadings:

MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd. (1993) Supp (2) SCC 433: This case affirmed the broad admiralty jurisdiction of Indian High Courts, emphasizing the importance of adhering to procedural safeguards in admiralty suits.

OIL & Natural Gas Corporation Ltd. v. SAIBOS Offshore Ltd. (2005) 6 SCC 454: The Supreme Court reiterated the principles governing the arrest of vessels, including the necessity of proper service and compliance with procedural requirements.

MV Al Quamar v. Tsavliris Salvage (International) Ltd. (2000) 8 SCC 278: The Supreme Court clarified the procedural steps for arresting a

vessel, including the requirement for an undertaking to cover costs and damages.