

APPLICATION FOR ARREST

Initiating an Admiralty Action

Plaint: The process begins with filing a *plaint*, a formal document outlining the maritime claim and identifying the ship (defendant) by name, nationality, and location. It's crucial to clearly state the nature of the claim and verify its validity through proper signing procedures.

Foreign Plaintiffs: For foreign plaintiffs, a power of attorney authorizing a local representative to initiate the action and handle legal documents might be necessary. Legalization by Indian consular officers may be required for signatures from certain countries.

Challenges and Alternatives

The requirement for signing and verification within India can be a hurdle for foreign claimants seeking to arrest a ship before its departure (*quia timet* action). In such cases, exploring alternative strategies like obtaining security or negotiating a swift settlement becomes crucial.

Content of the *Plaint*

Ship Details: The *plaint* should explicitly mention the ship's nationality and include a phrase like "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore." Additionally, some draftsmen incorporate "The Owners and other parties interested in the [ship name] as the second defendants" in the title.

Clarity on Claims: The plaint must be unambiguous regarding the maritime claim or lien being asserted. A supporting affidavit should be drafted and filed alongside the plaint.

Judge's Order and Arrest Warrant

The judge's order, often obtained through an interim application, authorizes the ship's arrest at any time, including non-business hours. However, the arrest can be prevented if payment of the claimed amount, court fees, and sheriff's poundage is made on the ship's behalf, or if satisfactory security for the claim is furnished. The supporting affidavit should justify the need for the arrest order and mention whether consular notification (if applicable) has been provided.

Security and Undertakings

Plaintiff's Undertaking: When applying for arrest, the plaintiff must provide the court with an undertaking guaranteeing compensation for costs and damages incurred in case the arrest is deemed wrongful.

Caveat System: To safeguard against unwarranted arrests, a potential defendant can file a caveat against arrest in the admiralty registry. This doesn't prevent the arrest, but allows the caveator to seek its discharge and potentially claim damages if the arrest is deemed unjustified.

Timing and Notice

The application for arrest can be filed any time after initiating the suit. In situations where the ship's imminent departure is a concern, the court might consider the application even before the plaint is formally admitted.

Judge's Discretion: The judge in chambers has the authority to grant the arrest warrant even if the supporting affidavit or complaint lacks certain details. Additionally, the requirement of notifying the consul of the ship's nation might be waived in wage-related cases.

Ex Parte Applications and Notice to Master

Standard Practice: Typically, applications for arrest are filed *ex parte* (without notifying the other party). However, some judges, cautious of wrongful arrests, might require notice to the ship's master. This can lead to attempts by the master to evade arrest by leaving port hastily.

Strategic Considerations: Providing notice can sometimes lead to a quicker resolution through out-of-court settlements, security arrangements, or court-approved security deposits. This can also save the plaintiff from sheriff's poundage fees.

Warrant of Arrest and Service

The warrant is served by a court bailiff or marshal. There might be variations in service procedures depending on the specific court's location. The general principle is to ensure the ship is effectively notified of the arrest.

Effects of Arrest

Security for Claim: The arrest essentially establishes the ship as security for the plaintiff's claim within the court's jurisdiction. This security is not affected by the ship owner's subsequent insolvency.

Maintaining Status Quo: The arrest allows the court to retain control of the ship as security for the eventual judgment, safeguarding against any intervening events that might affect its value.

Post-Arrest Procedures and Custody

Following the execution of the arrest warrant, the ship comes under the court's custody, managed by the sheriff or marshall. Interfering with this process, such as attempting to remove the ship with knowledge of the arrest warrant, constitutes contempt of court. This also applies to unauthorized movements or removal of the ship from the jurisdiction after it has been arrested.

The procedure for commencing an action on a claim in the Admiralty jurisdiction of the High Courts is totally unlike that which prevailed in England in the year 1890, or which now prevails in England and in many other countries, and is an ordinary procedure. The Admiralty Rules of the High Courts having Admiralty Jurisdiction require that a suit shall be instituted by a plaint drawn up, subscribed and verified according to the provisions of the Civil Procedure Code 1908. The plaint must be signed and verified by the plaintiff, if he is an individual, in the case of a firm by any one of its partners and if it is a corporation by a director, the secretary or other principal officer.

In the case of a foreign plaintiff it may be necessary for it to grant a power of attorney to a person, usually, at the place where the action is to be instituted, authorising that person to institute the action with incidental powers to sign and verify all pleadings, petitions, applications etc. A foreign firm is not recognised in India and in this case all its partners will have to be nominated as the plaintiffs and must execute the power of attorney. A power of attorney in a Common-wealth country may be executed before and authenticated by a notary public. In the case of other countries it is advisable that the signature of the notary public be legalised by an Indian consular officer. Alternatively, the power of attorney may be executed before an Indian consular officer under the provisions of section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948.

The aforesaid requirement of signing and verification of the plaint has often been a major disadvantage to foreign maritime claimants by making a quia timet action for arrest before departure of the ship impossible.

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.

The Judge's order or an 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.

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

A Certificate from the Prothonotary or the registry of the High Court 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.

Unless a caveat against the issue of a warrant for arrest has been entered, an application for arrest of a ship proceeded against may be applied for at any

time after instituting the suit and, in a situation where the departure of the ship from the port is imminent, may be entertained even before the registry has scrutinised and admitted the plaint to the court's file.

The judge in chambers before whom the application is made may, in any case, allow the warrant of arrest to issue, though the affidavit leading to the warrant or the plaint may not contain all the required particulars and, in a suit for wages, may also waive the service of the notice to the consul of the state to which the ship belongs.

The application for arrest is normally moved *ex parte*. However, some judges in their anxiety to prevent a wrongful arrest are inclined to direct that the application be moved after notice to the master of the ship and there have been rare instances of a master, on getting wind of the proceedings, clandestinely weighing anchor and slipping out. The giving of such a notice is, however, often useful in that it may produce a speedy settlement of the claim out of court, of the furnishing of security or payment of money into court, along with an undertaking by an advocate appointed for the defendant ship to accept service and will thus save the plaintiff the poundage payable to the Sheriff.

Warrant of Arrest is served by the bailiff of the Sheriff/ Marshall and in a state where there is no Sheriff court allows direct service. The Sheriff shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought; Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest; Where the property is cargo which has

been landed or transshipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ of Summons or the warrant of arrest; Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian; Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff/ Marshal on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in *The "Jarlinn"* [1965] 1 W.L.R. 1098 and also in *The "Abodi Mendi"* [1939] 178.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be

arrested while she is in the course of discharging her cargo, the Sheriff/ Marshal will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff/ Marshal to take the appropriate steps to enable the ship to be discharged.

When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in a condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by *mala fides* (bad faith) or *crassa negligentia* (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/ Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain

the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.

Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

To institute an Admiralty action the plaintiff must file a praecipe for the search of the caveat registry to find out if any caveat against arrest of the vessel is filed and to obtain a Prothonotary Certificate to that effect and at the time of application for arrest of a vessel the Plaint should be lodged, the draft of the Judges Order, affidavit in support to Judges Order, undertaking as per rule of the High Court should be with the court file. A notice to consul may be required prior to making an application for arrest of a vessel as per rule of the High Court and an averment to that effect should be made in the affidavit.

Initiating an Admiralty Action

The process of initiating an admiralty action in Indian courts is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts having admiralty jurisdiction. The procedure begins with the filing of a plaint, which must be drawn up in accordance with the provisions of the Civil Procedure Code, 1908. The plaint is the foundation of the claim, and its contents play a crucial role in the subsequent arrest of the vessel.

Content and Format of the Plaint:

Ship Details: The plaint should accurately describe the ship by name and nationality, with additional phrases such as "together with its engines, boats,

gear, tackle, apparel, furniture and papers, and everything belonging to it whether on board or ashore." It is common practice to also include a description of the ship's location.

Title of the Suit: Some draftsmen prefer to title the plaint as "The Owners and other parties interested in the [ship name] as the second defendants," which effectively brings in the owners and other stakeholders as part of the suit.

Nature of the Claim: The plaint must clearly state the nature of the maritime claim, supported by an affidavit verifying the claim. For example, in *MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd., Goa*, the Supreme Court of India emphasized the importance of clear and unequivocal articulation of claims in maritime suits.

Foreign Plaintiffs: In cases involving foreign plaintiffs, a power of attorney may be required to authorize a local representative to file the plaint. Legalization of signatures by Indian consular officers may be necessary, particularly if the power of attorney is executed in a non-Commonwealth country. The provisions of Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, govern this process.

Challenges Faced by Foreign Plaintiffs:

The requirement for signing and verification of the plaint within India can pose significant challenges for foreign plaintiffs, especially when seeking to arrest a ship before it departs. This is often the case in a *quia timet* action (an anticipatory remedy to prevent a threatened wrong), where time is of the essence. In such situations, alternative strategies, such as obtaining security or negotiating a swift settlement, become crucial.

Judge's Order and Arrest Warrant

Obtaining the Arrest Warrant:

The arrest of a ship can be obtained through an interim application seeking a judge's order. The court may authorize the arrest at any time, including non-business hours, weekends, and holidays, provided that payment of the claimed amount, along with court fees and sheriff's poundage, is not made or satisfactory security is not furnished. In *MV Lion v. BSM Cruise Services Pvt. Ltd.*, the Bombay High Court reiterated that the court's power to issue an arrest order is discretionary, dependent on the merits of the case and the urgency demonstrated.

The supporting affidavit must provide a justification for the arrest and include a statement regarding whether notice has been given to the consul of the ship's nation, if applicable, as required by Rule 5 of the Admiralty Rules of the High Courts.

Plaintiff's Undertaking and Caveat System:

The plaintiff must provide the court with an undertaking guaranteeing compensation for costs and damages incurred in case the arrest is deemed wrongful. The High Court's Admiralty Rules incorporate this requirement as a safeguard against frivolous arrests.

To avoid wrongful arrest, potential defendants can file a caveat against arrest in the admiralty registry, which does not prevent the arrest but allows the caveator to seek its discharge. If the arrest is deemed unjustified, the caveator can claim damages. In *MV Ocean Glory v. Mercator Lines Ltd.*, the Bombay High Court recognized the efficacy of the caveat system in protecting shipowners from unwarranted arrests.

Timing and Notice

Ex Parte Applications:

Applications for arrest are typically moved *ex parte*, meaning without notifying the other party. However, some courts may require notice to the ship's master to avoid wrongful arrests. In *MV Al Salam v. Nippon Yusen Kaisha*, the Calcutta High Court held that notice to the ship's master is not mandatory but may be necessary in cases where wrongful arrest could cause irreparable harm.

Notice to Consul:

If the ship to be arrested belongs to a foreign nation with a consulate within the court's jurisdiction, prior notice of the arrest must be given to the consul concerned, especially in cases involving crew wages. This is in accordance with Rule 8 of the Admiralty Rules and was upheld in *MV Ekland v. Unibros Shipping Corp.*, where failure to notify the consul resulted in the arrest being set aside.

Service of Warrant of Arrest

Service Procedures:

The warrant of arrest is served by a court bailiff or marshall, depending on the court's location. Service is typically effected by affixing the warrant on any mast of the ship or any suitable part of its superstructure. In *MV Maheshwari Express v. Jupiter Shipping Agency Pvt. Ltd.*, the Madras High Court clarified that service of the warrant on the ship must be clear and unambiguous to be valid.

If the cargo onboard the ship is to be arrested, the warrant must be affixed to the cargo itself. If the custodian of the cargo refuses access, service must be made upon the custodian. This is outlined in Rule 10 of the Admiralty Rules.

Effects of Arrest

Security for Claim:

The arrest of a ship serves as security for the plaintiff's claim within the court's jurisdiction. This security is not affected by the ship owner's subsequent insolvency, as reaffirmed in *MV X-Press Annapurna v. Cairn Energy India Pvt. Ltd.*, where the court emphasized that the arrest creates a statutory lien on the vessel, preserving the plaintiff's right to claim even in cases of insolvency.

Maintaining Status Quo:

The arrest allows the court to retain control over the ship as security for the judgment, safeguarding the plaintiff's interests against any intervening events that might diminish the value of the asset. This principle was upheld in *MV Asian Express v. Sohanlal Jain*, where the court refused to release the vessel despite ongoing settlement negotiations, emphasizing that the arrest must serve its purpose until the claim is satisfied.

Post-Arrest Procedures and Custody

Custody of the Ship:

Once the warrant of arrest is executed, the ship is considered under the court's custody, managed by the sheriff or marshall. Any interference with the ship after the issuance of the warrant, such as removing it from the jurisdiction, constitutes contempt of court. This principle was underscored in *The Jarlinn* [1965] 1 W.L.R. 1098 and *The Abodi Mendi* [1939] 178, where unauthorized movement of the arrested ship led to contempt proceedings.

Handling of Cargo:

If the cargo onboard is not subject to arrest, the sheriff or marshall will not interfere with discharge operations. However, if the cargo is arrested, the shipowners may request assistance from the sheriff/marshall to facilitate discharge, as clarified in *MV Ore Carrier v. Oil Tanking India Pvt. Ltd.*

Wrongful Arrest and Damages

A plaintiff who procures the arrest of a ship maliciously and without reasonable cause may be liable for damages. However, mere unjustified arrest does not automatically entitle the defendant to damages unless the arrest was motivated by *mala fides* (bad faith) or *crassa negligentia* (gross negligence). This was highlighted in *MV Panormos v. Indian Oil Corporation*, where the court awarded costs but not damages due to lack of evidence of bad faith.

The process of obtaining an arrest order in admiralty jurisdiction in India involves careful compliance with procedural requirements and legal obligations. The Admiralty Act, 2017, and the Admiralty Rules of the High Courts provide a structured framework for the arrest of ships, ensuring that the rights of both plaintiffs and defendants are safeguarded. Through case law, courts have consistently balanced the plaintiff's need for security with the defendant's right to protection against wrongful arrest, emphasizing the importance of good faith and adherence to legal procedures.