

SECURITY FOR COSTS AND DAMAGES

Security for costs and damages is not a condition for the arrest, but while applying for the arrest an undertaking is required to be given in writing to pay such sum by way of damages as the court may award compensation in the event of a party affected sustains prejudice by the arrest. There is however little risk of being condemned to pay damages to the owners of an arrested ship, even if the claim fails unless the arrest was manifestly a gross abuse of the court's process which was instituted with malafide intention.

The 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 before the trial court.

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.

Security for costs and damages in admiralty law plays a crucial role in balancing the rights of the claimant seeking to arrest a vessel and the rights of the shipowner against wrongful arrest. Though not a prerequisite for arrest, the Admiralty Courts in India mandate an undertaking by the plaintiff, pledging to compensate the defendant in the event that the arrest is deemed wrongful or if the defendant sustains prejudice due to the arrest. This

undertaking serves as a measure to prevent vexatious litigation and ensures that claimants act in good faith.

Legal Basis and Provisions under Indian Law

The process in India is governed by the Admiralty Rules of the High Courts and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). Section 5 of the Admiralty Act, 2017 specifically allows for the arrest of vessels to provide security for maritime claims. However, the plaintiff must submit an undertaking to pay compensation as the court deems fit if the arrest causes undue harm to the vessel owner.

Furthermore, Rule 108 of the Admiralty Rules of the High Courts emphasizes the plaintiff's obligation to furnish security for costs and damages. The provision ensures that any frivolous or malicious arrest can be counterbalanced by the ability of the aggrieved party to claim compensation. This undertaking, while procedural, is crucial in maintaining fairness in admiralty litigation.

In Indian admiralty practice, while wrongful arrest is a serious concern, the courts generally refrain from awarding damages unless there is clear evidence of bad faith or gross negligence. The burden of proof lies on the defendant to establish *mala fides* or *crassa negligentia*. For instance, in *M.V. Al Quamar v. Tsavlis Salvage (International) Ltd.* [(2000) 8 SCC 278], the Supreme Court of India emphasized that damages for wrongful arrest would only be awarded if the claimant acted with *mala fide* intent or gross negligence.

International Jurisprudence: English and Global Perspectives

The Indian approach to security for costs and damages finds parallels in English admiralty law. Under English law, wrongful arrest requires proof of bad faith or gross negligence. Merely showing that the arrest was erroneous or unjustified does not suffice for awarding damages. The leading English case

of *The Evangelismos* [(1858) 12 Moo PC 352] established the principle that damages for wrongful arrest are only awarded if there is evidence of *mala fides* or *crassa negligentia*. This principle has been consistently upheld in subsequent English cases, such as *The Andres Bonifacio* [(1995) 1 Lloyd's Rep. 77].

In global admiralty practice, similar principles apply. Courts in jurisdictions such as the United States, Singapore, and Australia generally follow the same approach, emphasizing the necessity of proving bad faith or gross negligence to succeed in a claim for damages due to wrongful arrest.

Procedure in Indian Admiralty Courts

When an application for the arrest of a defendant vessel is made before an Indian trial court, the plaintiff is required to submit the undertaking regarding costs and damages at the time of filing the arrest petition. This undertaking serves as a safeguard to ensure that claimants are aware of the potential financial repercussions of an unjustified arrest.

In the event that the court later determines that the arrest was wrongful, the defendant may file a separate suit for damages, alleging malicious intent or gross negligence on the part of the claimant. The court will then scrutinize the circumstances of the arrest to determine whether there was any element of bad faith or gross negligence.

The concept of security for costs and damages in admiralty law is a necessary safeguard against the wrongful use of arrest proceedings. Indian law, in alignment with global jurisprudence, seeks to strike a balance between the rights of claimants and defendants, ensuring that maritime claims are pursued in good faith. While the Admiralty Rules of the High Courts and the Admiralty Act, 2017 provide for the submission of an undertaking by the plaintiff, the courts maintain a high threshold for awarding damages, requiring proof of *mala fides* or gross negligence.