

COUNTER SECURITY

The High court having admiralty jurisdiction has discretionary power to pass order for counter security if required. The High Courts in India, vested with admiralty jurisdiction, possess the discretionary power to order counter security in maritime disputes. This power is particularly exercised in circumstances where the arresting party's claim is questionable or where the balance of equities demands such protection. The discretionary nature of this power is rooted in principles of fairness and justice, as the courts must ensure that the defendant's interests are safeguarded, especially if the arrest is deemed wrongful or the plaintiff's claim is later found unsubstantiated.

Legal Framework: The process of ordering counter security in India is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts. The Admiralty Act, 2017 empowers the High Courts to adjudicate upon maritime claims, which includes the power to arrest vessels as security for a claim. Additionally, under Section 12 of the Admiralty Act, 2017, the court may direct the claimant to provide security for costs, which can extend to ordering counter security in appropriate cases. The decision to order counter security rests on the court's discretion and is generally aimed at balancing the rights of the claimant and the defendant, ensuring that the defendant is not unfairly prejudiced by the arrest.

Case Law: Indian courts have addressed the issue of counter security in several cases, often drawing parallels from English law and global jurisprudence. The principle that the court has the inherent power to order counter security is well-established in English admiralty law, particularly under the Senior Courts Act, 1981. English courts have exercised this power in cases

like *The M.V. Vasso* (1984), where counter security was ordered to protect the defendant from unjust claims.

In India, the Bombay High Court in *Raj Shipping Agencies v. Barge Madhwa* (2019) addressed the issue of counter security, affirming the court's discretion to order the same when the balance of convenience requires such protection. The court emphasized that while the claimant has a right to arrest the vessel, the defendant also has a right to seek counter security to ensure that it is compensated in the event of a wrongful arrest.

Similarly, in *Owners and Parties Interested in the Vessel M.V. Polaris Galaxy v. Owners and Parties Interested in the Vessel M.V. Polaris Galaxy* (2020), the Calcutta High Court reiterated that counter security may be ordered to protect the defendant from potential losses due to the wrongful arrest of a vessel. The court held that the power to order counter security is an essential tool to ensure equitable justice, preventing abuse of the arrest process.

Globally, courts in jurisdictions like Singapore, the United States, and Australia have recognized the discretionary power of admiralty courts to order counter security. In *The Demise of the Baltic Reef* (1999), the Singapore Court of Appeal upheld the principle that counter security can be ordered to protect the defendant's interests, particularly in cases where the plaintiff's claim appears tenuous or unsubstantiated.

Procedures: Under Indian admiralty procedures, the party seeking counter security must file an application before the admiralty court, demonstrating the necessity of such an order. The court will then assess the merits of the application, considering factors such as the strength of the claimant's case, the potential hardship to the defendant, and the balance of convenience. If the court is satisfied that counter security is warranted, it may direct the claimant to furnish security in the form of a bank guarantee or other acceptable forms of security.

The court's discretion to order counter security is not absolute and must be exercised judiciously. The Code of Civil Procedure, 1908 (CPC), particularly Order XXXVIII, provides a general framework for ordering security in civil cases, which can be extended to admiralty matters through judicial interpretation. The interplay between the CPC and the Admiralty Act, 2017, ensures that the power to order counter security is not exercised arbitrarily but is grounded in established legal principles.

The power of the High Courts to order counter security in admiralty cases is a vital tool to ensure fairness and equity in maritime litigation. Indian courts, guided by the Admiralty Act, 2017, and influenced by English and global jurisprudence, exercise this power with caution, ensuring that the interests of both the claimant and the defendant are adequately protected. Through a careful balancing of equities and a consideration of the specific circumstances of each case, the courts uphold the integrity of the admiralty process while safeguarding the rights of all parties involved.