

WRIT OF SUMMONS

There was a similar provision in the Bombay Rules, which has been omitted in the new Rules which came into effect from 1 January 1980 and the warrant of arrest now being issued by the court does not contain a citation to the owners and other parties interested in the ship. The Bombay Rules currently applicable enjoin the service of the writ of summons on the ship in the same manner as the warrant of arrest. The writ of summons is in the same form as applicable to suits filed in the ordinary original civil jurisdiction of the High Court with such variations as the circumstances of the case may require. The prescribed form requires the filing of an appearance and a written statement of the defence to the suit and delivery of a copy thereof to the plaintiffs within 30 days from the service thereof. Unless otherwise directed, the returnable date of the writ of summons is 16 weeks after the date of filing of the suit and on that date the suit will be placed before the judge in chambers for directions. If on that date no appearance has been filed, the judge may order the suit to be set down on the board to be proceeded with as undefended.

This difference in the Bombay Rules is liable to put a plaintiff, particularly in a suit for wages, who has arrested a ship for his claim, to inconvenience and hardship as it precludes him from having the suit set down on board for judgment for default of appearance before the returnable date. To overcome this problem, in the writer's view, a direction will have to be obtained from the judge ordering the arrest, for variation of the form of the writ of summons by abridging the time for entry of appearance to 12 days of the service thereof and fixing the returnable date to say two weeks after such service.

When the warrant of arrest is citatory in form as under the Calcutta and Madras Rules, it may not be necessary for a separate writ of summons to be served on the ship. (It has been so held by the Bombay High Court when the Bombay Rules were similar to the Calcutta and Madras Court Rules.) Nevertheless, in the writer's view it is advisable to ensure that the Writ of Summons is issued by the registry and served at the same time as the warrant of arrest. A writ of summons on the vessel may not be required if warrant of arrest is properly served on the vessel.

The Rules of all the three courts provide that in a suit in rem no service of warrant of arrest shall be required when the advocate for the defendant ship agrees to accept service and to give security or to pay money into court.

In India, the procedural framework for admiralty jurisdiction, including the issuance of a writ of summons, is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules framed by the High Courts exercising admiralty jurisdiction. The Act, which came into effect on April 1, 2018, consolidates laws relating to admiralty jurisdiction and brings uniformity to the legal regime governing arrest, sale, and distribution of proceeds of arrested ships.

1. Procedural Framework under the Admiralty Act, 2017

Section 5 of the Admiralty Act, 2017 provides the statutory basis for arresting a vessel in rem for maritime claims, establishing the scope of the High Court's admiralty jurisdiction. The Act also prescribes the general procedural requirements, including the issuance of a writ of summons, service, and the handling of suits in rem.

Issuance of Writ of Summons: The High Courts exercising admiralty jurisdiction follow specific rules for the issuance of a writ of summons in admiralty suits, which may vary between different High Courts. The issuance

and service of the writ of summons are crucial for bringing the defendant (whether an individual or a vessel) before the court.

Service of Writ of Summons: The service of the writ of summons on the vessel, traditionally in rem actions, follows the procedure established by the Bombay, Calcutta, and Madras High Courts. Although the Bombay High Court's Rules underwent amendments, with changes effective from January 1, 1980, the procedure for service of the writ of summons remains aligned with ensuring that the owner or interested parties are informed of the pending litigation.

2. Bombay High Court Rules

Under the revised Bombay High Court Rules, effective from January 1, 1980, the warrant of arrest issued by the court no longer contains a citation to the owners or interested parties in the vessel. This contrasts with earlier rules where a citation was required. The service of the writ of summons in the Bombay High Court is now undertaken in the same manner as the warrant of arrest, where the writ is issued in a standard form applicable to suits filed under the court's ordinary original civil jurisdiction, with necessary modifications based on the case circumstances.

Returnable Date: The writ of summons typically has a returnable date 16 weeks after the suit's filing, placing the matter before the judge in chambers for further directions. However, this timeline can pose challenges in certain cases, such as wage claims, where the plaintiff may need quicker resolution. In such scenarios, plaintiffs may seek a court direction to shorten the appearance period to expedite the process.

Challenges for Plaintiffs in Wage Claims: The procedural delay in setting down the suit for judgment in default of appearance before the returnable date has created inconvenience for plaintiffs, particularly in wage-related claims. To address this, plaintiffs may request a variation of the writ of

summons format, reducing the entry period for appearance to 12 days and setting the returnable date within a shorter timeframe, such as two weeks after service.

3. Comparative Jurisprudence: Calcutta and Madras High Courts

In contrast to the Bombay High Court's practice, the Calcutta and Madras High Courts' rules continue to maintain a citatory form for the warrant of arrest. This practice implies that the warrant of arrest itself serves as sufficient notice to the vessel and interested parties, thereby negating the necessity for a separate writ of summons. Notably, the Bombay High Court previously followed a similar practice when its rules mirrored those of the Calcutta and Madras High Courts. The current divergence raises practical concerns, necessitating careful consideration of whether a separate writ of summons should be issued and served alongside the warrant of arrest.

In this context, Bombay High Court judgments have held that when the warrant of arrest is citatory in nature, separate service of the writ of summons is not required. Nonetheless, practitioners often advise issuing the writ of summons concurrently with the warrant of arrest to avoid any procedural complications that might arise from improper service.

4. Global Jurisprudence and Comparative Law

In the United Kingdom, the procedural rules governing admiralty actions are set out in the Civil Procedure Rules (CPR) Part 61, which covers the issuance of a writ of summons and service in admiralty claims. English courts have established through case law, such as in *The Owners of the Ship "Wolfe" v. The Owners of the Ship "Ping An Fu"*, that service of the writ of summons on the vessel in rem must strictly adhere to procedural rules to ensure valid service and jurisdiction over the vessel.

The principles of admiralty jurisdiction in other common law jurisdictions, such as Singapore and Hong Kong, also emphasize strict adherence to procedural rules for serving writs of summons on vessels. The Singapore Court of Appeal, in *The "Duden"* [2008] SGCA 45, stressed the importance of complying with procedural requirements for the writ of summons to ensure the court's jurisdiction over the vessel.

5. Indian Case Law and Judicial Interpretation

Indian courts have also emphasized procedural compliance in admiralty matters. In the case of *Haji Ismail Noor Mohammad & Co. v. Kuwaiti Flag Vessel*, the Bombay High Court stressed that failure to adhere to procedural rules for service of writs of summons and warrants of arrest could lead to dismissal or setting aside of the proceedings. Similarly, in *Raj Shipping Agencies v. Barge Madhwa & Anr.*, the Supreme Court reiterated that procedural safeguards must be respected to ensure fair adjudication of maritime claims under the Admiralty Act, 2017.

Under Indian law, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 continues to evolve, and Indian courts have consistently interpreted the Act and the Admiralty Rules in alignment with international norms while adapting to local procedural nuances. The service of a writ of summons on vessels remains a critical procedural step that practitioners must navigate carefully to preserve the court's jurisdiction over the matter and to ensure the enforcement of maritime claims effectively.

The writ of summons in admiralty proceedings is an essential procedural instrument that facilitates the court's jurisdiction over vessels and related claims. While the Bombay High Court's current practice differs from the citatory warrant of arrest rules followed by the Calcutta and Madras High Courts, ensuring proper issuance and service of the writ of summons remains critical in all jurisdictions. Plaintiffs, particularly in wage-related claims, may seek court directions to expedite proceedings, while legal practitioners must

stay vigilant in complying with procedural requirements to protect their clients' interests.

Global jurisprudence, including English and common law precedents, continues to shape the development of admiralty law in India, particularly in areas involving procedural rules for writs of summons and the arrest of vessels. Courts must balance procedural formalities with the practical needs of maritime claimants to ensure the timely and efficient resolution of disputes under the Admiralty Act, 2017.