

SHERIFFS POUNDAGE

Sheriff's poundage is a critical aspect of admiralty and maritime law, particularly within the jurisdiction of the Bombay High Court (Original Side). It refers to the fee payable for the execution of court orders related to the arrest or attachment of vessels. This chapter delves into the complexities of sheriff's poundage, focusing on its applicability, the conditions under which it is payable, and the interpretations of relevant legal precedents. By analyzing key cases and legal provisions, we aim to elucidate the nuanced considerations surrounding poundage and its practical implications.

Legal Framework

Bombay High Court (Original Side) Rules

The framework for sheriff's poundage is primarily governed by Rules 474 to 476 of the Bombay High Court (Original Side) Rules. These rules establish the circumstances under which poundage is applicable and delineate the responsibilities of the advocates and parties involved.

Rule 474: This rule outlines the liability for poundage in cases where a person is arrested or property is attached. It mandates that the party or advocate responsible for initiating the arrest or attachment is liable for the sheriff's fees or poundage.

Rule 475: This provision requires the execution-creditor or their advocate to file a praecipe in the sheriff's office to inform about any payment made in satisfaction of a decree or order. This ensures that the sheriff is updated on any settlements or payments impacting poundage.

Rule 476: States that no satisfaction of a decree or order can be recorded without a certificate from the sheriff confirming that no poundage is due.

The Table of Fees prescribes a poundage fee of 1% on any debt levied by execution, including attachment before judgment or in cases of settlement or compromise.

Key Cases and Interpretations

Issue 1: Poundage When Settlement Occurs Before Arrest Execution

In Commercial Suit No. 98 of 2015, the court faced the issue of whether poundage was payable when the vessel was ordered for arrest but was not executed due to a settlement between the parties. The plaintiff argued that poundage should not be payable since no actual arrest occurred. This argument was supported by the precedent set in *Malpani Brothers vs. Ramjidas Shyamlal Saboo*, which established that poundage is only due when there is actual attachment or seizure of property.

The court upheld this interpretation, ruling that poundage was not payable as the Sheriff had not executed the arrest. This aligns with the principle that poundage is contingent upon actual enforcement action by the Sheriff.

Issue 2: Poundage When Arrest is Executed, But Settlement or Arbitration Occurs Afterward

In Commercial Suit No. 816 of 2017, the vessel was arrested, but the matter was subsequently resolved through arbitration under English law. The plaintiff contended that poundage was not payable since no direct monetary recovery was made from the arrest.

However, the *State of Maharashtra vs. Quesham Bonyad Ship Management Co. Ltd.* case established that poundage is payable once the vessel is arrested,

regardless of subsequent settlement or arbitration. The rationale was that the arrest facilitated the plaintiff's ability to secure a settlement or arbitration.

In Commercial Suit No. 816 of 2017, the court agreed with this interpretation, determining that poundage was due based on the eventual outcome of the English arbitration. The poundage was to be calculated as 1% of the security amount, reflecting the amount claimed in the settlement.

Legal Perspective: Interpretative Divergence

The interpretation of sheriff's poundage has seen varying applications across different cases:

Malpani Brothers vs. Ramjidas Shyamlal Saboo: Emphasized that poundage is due only upon actual seizure or attachment. The Sheriff's claim for poundage was rejected if no action was taken to execute the warrant.

Seabird Marine Limited vs. m.v. Kota Berani and Great Pacific Navigation (Holdings) Corporation Ltd. vs. m.v. Tongli Yantai: Held that poundage is contingent upon the realization of money through execution, compromise, or settlement. If no money is realized, poundage is not payable.

State of Maharashtra vs. Quesham Bonyad Ship Management Co. Ltd.: Affirmed that poundage is payable upon the arrest of the vessel, irrespective of whether the claim is later settled or arbitrated. This case supports a stricter interpretation, suggesting that the mere act of arrest justifies the sheriff's claim for poundage.

Practical Application

The practical application of these rulings reveals:

When No Arrest is Executed: Poundage is not payable if the vessel is not arrested and the matter is settled beforehand. This is consistent with cases

such as Malpani Brothers and Kota Berani, where no poundage is due without actual enforcement action.

When Arrest is Executed: If the vessel is arrested and the matter is resolved through settlement, arbitration, or another court's jurisdiction, poundage is payable. This approach aligns with the rationale in State of Maharashtra, where the Sheriff's action of arrest facilitated the resolution of the claim.

Case Study: *Ecohidrotechnika LLC v. Black Sea and Azov Sea Production & Operating Administration of Shipping & Anr*

In *Ecohidrotechnika LLC v. Black Sea and Azov Sea Production & Operating Administration of Shipping & Anr*, the Sheriff of Mumbai claimed poundage despite no direct property being arrested or seized. The case involved the enforcement of a foreign award and an injunction, which led to the detention of the dredger. The Sheriff argued that poundage was due based on the detention and enforcement actions.

The court reviewed the rules and table of fees and concluded that poundage was not warranted since no direct arrest or seizure had occurred. This case underscored the importance of actual enforcement action in determining poundage entitlement.

Recent Developments

In January 2018, the Bombay High Court addressed the issue of sheriff's poundage in *Sinica Graeca Shipping Ltd -vs- m.t Chemroad Mega and North Star Marine Limited -vs- m.v. Xing An Da*. The court held that there was no justification for demanding a commission over and above the fees and costs collected by the Sheriff's Office. However, the court refrained from striking off the relevant rule concerning poundage, urging the Rules Committee to reconsider and potentially amend this part of the rules.

Sheriff's poundage is a complex facet of admiralty law, hinging on whether there has been an actual realization of money through execution, settlement, or compromise. While cases like *Malpani Brothers* and *Kota Berani* suggest non-payment of poundage without monetary realization, State of Maharashtra supports a stricter interpretation that poundage is due upon the mere act of arrest. The practical application of these interpretations will depend on the specifics of each case, and ongoing judicial review may further refine the understanding and application of sheriff's poundage.