

## **JURISDICTION BEFORE THE ARRIVAL OF THE SHIP**

At the time when the Admiralty suit is filed in the court the ship must already be within Indian territorial waters or jurisdiction of that state. The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding.

In admiralty law, the jurisdiction of the court over a vessel and the initiation of an admiralty action are closely tied to the presence of the ship within the court's territorial waters. However, questions arise when a maritime claimant seeks to file an admiralty suit before the ship arrives within the jurisdiction of the court. This scenario tests the boundaries of the court's jurisdiction and the conditions under which it may issue an arrest warrant for a vessel that is yet to arrive within the court's reach.

### **Jurisdictional Precondition: Presence of the Ship in Territorial Waters**

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ('Admiralty Act, 2017') governs admiralty actions in India. Section 5 of the Act explicitly provides that the High Court has jurisdiction over maritime claims and may order the arrest of a vessel that is within its territorial waters. The critical question, therefore, is whether the High Court can entertain an admiralty suit and issue an arrest warrant for a ship that has not yet entered Indian territorial waters.

Under Indian admiralty law, the jurisdiction of the High Court is contingent upon the physical presence of the vessel within its territorial waters. This is derived from the general principle that admiralty jurisdiction in rem attaches to the res, i.e., the vessel itself, and the res must be within the court's reach for the court to exercise its powers. Consequently, a suit cannot ordinarily be filed

unless the ship is within the territorial waters of the court, as jurisdiction is dependent on the ability of the court to execute its orders within its territorial boundaries.

However, this principle does not entirely preclude the possibility of filing an admiralty suit or obtaining an arrest order before the ship's arrival. Under certain circumstances, the court may entertain an application for an arrest order if it is demonstrated that the vessel is imminently arriving within the jurisdiction and the claimant seeks to secure the maritime claim. In such cases, the court may issue an arrest order that will be executed once the ship enters the territorial waters.

Legal Framework: Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The Admiralty Act, 2017, governs the exercise of admiralty jurisdiction by High Courts in India. Section 5(1) of the Act provides that the High Court has jurisdiction over any vessel within its territorial waters and may order the arrest of such vessel in actions in rem. Importantly, Section 5(2) further clarifies that the court may issue an arrest order for a vessel that is about to enter its territorial waters.

This statutory framework allows for some flexibility in cases where a maritime claimant anticipates the arrival of a vessel and seeks to secure a maritime claim before the ship physically enters the jurisdiction. The court's power under Section 5(2) to issue an arrest order in anticipation of the vessel's arrival ensures that claimants are not left without remedy while waiting for the ship to arrive.

The Admiralty Rules of the High Courts, which operate in conjunction with the Admiralty Act, also recognize the need for pre-emptive actions in certain situations. These rules provide that a claimant may file a suit and obtain an arrest warrant on the basis that the vessel is expected to enter the territorial

waters soon, subject to the claimant providing the court with sufficient information about the vessel's imminent arrival.

#### Case Law: Indian and UK Jurisprudence

##### Indian Jurisprudence

Indian courts have dealt with the issue of jurisdiction in admiralty matters where the vessel has not yet entered the territorial waters. In *Oshika Shipping Co. Ltd. v. P.T. Overseas* (2006), the Bombay High Court ruled that while the vessel was not yet in Indian waters at the time of filing the suit, the court could issue an order for the arrest of the vessel upon its arrival, provided the claimant had filed sufficient information about the ship's impending arrival. The court emphasized that jurisdiction in such cases is contingent on the vessel's eventual entry into territorial waters, and the arrest warrant can only be executed once the ship is physically within the court's jurisdiction.

Similarly, in *M.V. Mahayana Spirit* (2014), the Calcutta High Court observed that while the general rule requires the vessel to be within the jurisdiction at the time of filing the suit, an exception can be made if the ship is expected to arrive soon and there is a legitimate fear that the vessel may leave quickly, potentially evading arrest. The court allowed the issuance of an arrest order, to be executed when the ship entered the port.

##### UK Jurisprudence

The courts in the United Kingdom have also considered the issue of jurisdiction in cases where the vessel is yet to arrive. In *The Gemma* (1998), the English Admiralty Court held that while the general rule requires the presence of the vessel within the jurisdiction at the time of filing an admiralty suit, there are exceptions where an arrest warrant can be issued in anticipation of the vessel's arrival. The court ruled that the claimant must provide evidence

of the vessel's imminent arrival and the likelihood of it attempting to evade arrest.

Similarly, in *The Komninos S* (1991), the court confirmed that admiralty jurisdiction could attach before the ship enters the jurisdiction, provided the claimant can demonstrate that the ship is en route and there is a legitimate concern regarding the enforcement of the claim. The court underscored the need for a balancing approach, ensuring that claimants are protected while avoiding unnecessary interference with maritime commerce.

#### Unreported Cases

In several unreported interlocutory decisions, Indian and UK courts have adopted a pragmatic approach, allowing claimants to file suits and obtain arrest orders in anticipation of a vessel's arrival. These cases often involve situations where the ship is expected to arrive imminently, and the claimant needs to secure the maritime claim as quickly as possible. Courts have generally required that sufficient details about the ship's expected arrival be provided to justify the issuance of an arrest order before the vessel enters the territorial waters.

The principle that admiralty jurisdiction attaches to the vessel itself (the *res*) traditionally requires that the ship be within the court's territorial waters at the time of filing the suit. However, both the Admiralty Act, 2017, and judicial interpretations provide flexibility to claimants who seek to secure their maritime claims before the vessel's arrival. The statutory framework under Section 5(2) of the Admiralty Act allows the court to issue an arrest order in anticipation of the vessel's arrival, provided sufficient evidence of the ship's imminent entry into jurisdiction is furnished.

This approach is crucial in protecting claimants' rights, particularly in cases where there is a risk that the vessel may evade arrest by quickly departing after arrival. Courts in India and the United Kingdom have consistently upheld this

pragmatic balance between maintaining jurisdictional integrity and protecting the rights of maritime claimants.

In conclusion, while the general rule requires that the vessel be present within the territorial waters at the time of filing the suit, exceptions exist where the court can exercise its jurisdiction in anticipation of the ship's arrival. This principle is supported by statutory provisions under the Admiralty Act, 2017, and reinforced by case law from both Indian and UK courts.