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P&I CLUB'S RIGHT TO SUBROGATION AS SHERIFFS' EXPENSES UNDER BOMBAY HIGH COURT RULES

SUBROGATION

A division bench of the Bombay High Court in *The Swedish Club vs V8 Pool Inc.* And Ors settles law pertaining to whether the Protection & Indemnity Club's contractual obligation of payment towards crew wages accrued after the arrest be treated under the heads of Sheriff's expenses and/or a maritime lien.

Owners of the vessel abandoned the ship upon arrest, and the crew brought it to the notice of the P&I Club ("Club"). The Club made an interim application indicating its readiness to pay the crew wages and in sync with Maritime Labour Convention, 2006 (MLC), the Club sought leave of the Bombay High

Court with its stand that such payments are to be considered as Sheriff's expenses/ maritime lien. Additionally, the Crew on board also sought an order to treat their wages that has been accruing post the arrest to be treated as Sheriff's expenses. On rejection of the orders by the Single judge, the aforementioned matters came up in appeal before the division bench of the Bombay High Court.

The Club based its contention seeking leave under Rule 1084 of the Bombay High Court (Original Side) as per which the costs (post arrest wages to the crew) incurred on

maintaining the vessel must be treated as sheriff's expenses, enabling the Club to claim these payments later in first priority from the sale proceeds of the vessel. Further, it is to be noted that MLC casts an obligation on the Club under Regulation 12 of Standard A2.5.2 to provide financial security to assist seafarers in the event of their abandonment, and it also concomitantly gives the Club the right to subrogation, for reimbursement of post arrest expenses incurred by it for wages by treating it as Sheriff's expenses. Only a party who pays the crew with leave of the court can claim under Rule 1084, without



THOUGHT
for the MONTH

FREEDOM IS NOT WORTH
HAVING IF IT DOES NOT
INCLUDE THE FREEDOM TO
MAKE MISTAKES

MAHATMA GANDHI



which the crew's rights in its wages cannot be assigned/ subrogated. The Crew was in consonance with the submissions made by the Club.

The counsel for the arresting party contended that the single judge was justified in its ruling as it was mandatory for the Club to make payment of wages to the crew members under the MLC. The Club was not a volunteer and hence could not be eligible for benefits as a volunteer would have under such circumstances. The counsel went ahead to say that the Club in fact failed to discharge its obligation to pay promptly as laid down under MLC.

The division bench of the Bombay High Court held in favour of the Club and stated that as per Rule 1084, crew wages accrued post the arrest of the vessel can be rightly treated as Sheriff's Expenses. As per the Court, Clause 12 of Standard A2.5.2 of the MLC specifically provides that the rights of the crew members will be subrogated/assigned to the P&I Club on making such payment. If the crew members are entitled to claim their post arrest wages as Sheriff's expenses, so is the P&I Club who has paid them those wages. If the crew members are entitled to claim pre-

arrest wages as a maritime lien, so is the P&I Club. Further, the ruling went on to lay down guidelines relating to abandonment of ship to safeguard interests of seafarers from being stranded without aid for long periods.

Undoubtedly, the judgement is extremely crucial for seafarers of abandoned vessels who can be subjected to hardships with no means of sustenance. The guidelines laid down if followed promptly in the future could protect the interest of the parties aforementioned and they would not be put at disadvantageous position or with unintended consequences.

SHIP ARRESTS: THE LEGAL PROCEDURES AND CONCEPTS IN THE INDIAN MARITIME LAW



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'Ship Arrests' - is a phrase that has been appearing on the news for quite some time. In technical terms, a ship arrest is a legal procedure that prohibits a ship or a maritime vessel

from trading or sailing until the reason for arrest has been clarified. This is an exclusive jurisdiction that is provided to an admiralty court (a tribunal with jurisdiction over aspects of Marine law)

to hold a vessel to obtain a maritime claim. The definition of arrest refers to the detention of a Maritime vessel by a judicial process to receive a Maritime claim but does not comprise a seizure of the vessel in execution or gratification of a judgment. The meaning arrives from Article 2 of the International Convention Relating to the Arrest of Sea-Going Ships in 1952. 77 of the world's countries based their law on this act dating back to 1952, while ten other countries referred to the 1999 International Convention on Arrest of Ships.

Looking back, the ship arrests in India were based on the: Admiralty Court Act 1861, the Admiralty Court Act 1890, and Admiralty Court Act

1891. Before India received the gift of independence, it abided by the Admiralty Court Act, 1890- the High Court of Bombay (Mumbai), Madras (Chennai), and Calcutta (Kolkata). These courts were given the same power as the High Court in England under the Admiralty Court Act 1861. Years after independence, the case of M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd expanded the scope of the Admiralty court in the year 1993. The Admiralty Act was brought to action in 2018, revoking the act from 1861. Today, most states in India have the power to issue detention to ships. In this article, the concept of ship arrest will be discussed in terms of the Indian Maritime Law.

Reasons and Procedures:

A ship is arrested for various reasons including non-payment and non-conformity. Any authority may exhibit a warrant of arrest on a Ship and an investigation, concerning the following matters:

- Collisions (this is when two Ships collide with each other when sailing, causing damage.)
- Salvage (this is a rescue operation for a Ship or cargo lost in the sea.)
- Loss of Life
- Injury
- Property Loss
- Violations of any customs, regulations, or norms
- Execution of decree

A domestic or foreign ship can only be arrested by any judicial authority with a maritime claim alone (no other claims will be required). A claimant will identify a certain claim and will request a ship arrest warrant for the same. A ship that is under the same jurisdiction cannot be arrested by the same claimant more than once.

Section 4 of the act states that "the High Court may exercise jurisdiction to hear and determine any question on a maritime claim,

against any vessel, arising out of any of the mentioned reasons." These reasons are more elaborated than the 7 common reasons for a ship arrest.

Laws that refer to the arrest of a Marine vessel are under Section 5 of the Admiralty Act, 2017. Once the claimant has proved the claim and the court finds it valid, it will order an arrest of the vessel within the jurisdiction. The Admiralty suit would be prepared based on the claimant's information, including the nature of claim and property, name of the claimant and ship, and if any security is required. The ship is then detained in the port or anchorage.

Prevention and Release:

With an issued warrant, the owner must appear to resolve the claim or challenge the arrest. The 2nd option is quite a rarity as it could lead to many losses, meanwhile in the 1st scenario, the ship is allowed to sail and is safely located in the port. If the owner is at fault, the ship is sold, and the money received is used to sort out the claim.

Some owners resort to challenging the arrest made. In such situations, owners may either opt to complete the vessel's journey by providing security. The arrest is questioned and the court rules in favor of the claimant. The security provided is used to settle matters. Another choice owner make is to let the vessel remain under arrest to challenge the claim.

The ship is only released if the arresting party or the court allows the procedure. A third-party involvement would require a contractual agreement with the owner to avoid any delays. Furthermore, a part of the costs must be paid by the 3rd party as well.

A ship arrest can be exhausting mentally and financially for the owner and physically damaging for the ship. It is crucial to be aware of certain measures that can be taken to avoid Ship arrest. Owners with ships that are used for commercial purposes often provide security and let the ship sail. While this may not prevent ship arrests,

it will reduce the impact of the same. Ship owners must know the possible areas where claims can be made to help prevent the possibility of ship arrests. Having sufficient knowledge of the claims will help owners be more cautious about any incorrect arrests being made. An arrest as such will lead to termination of the case and serious expenses to the claimant.

Sister Ship Arrest:

The concept of "Sister Ship" cannot be ignored in the discussion of Ship arrests. Sister Ships can be typically described as a ship that has identical designs and belongs to the same class as another ship. A famous example could be RMS Titanic and HMHS Britannic. As per the Admiralty Law, if the owner of the arrested and the similar ship is the same, a maritime claim can be initiated for the sister ship. Following Section 5 of the Act, sister ships can be arrested to receive a maritime claim against the offending ship. A point to consider is that the sister ship cannot be arrested regarding claims that involve ownership or possession.

The very first case of sister ship arrests in India was the case of Mariner IV, a Foreign Flag Vessel and Videsh Sanchar Nigam Ltd (plaintiff). The plaintiff sued the foreign flag vessel for monetary compensation. The vessel which was challenged was arrested- the challenge occurred as the court held the sister ship rather than the offending ship. It was then ruled stating that municipality laws will be given preference over international ones, however, considering such aspects don't have laws at the municipality level, the arrest of the sister ship will be authorized.

Conclusion:

Ship Arrests are the quickest and most efficient way to obtain security when ships enter national borders and for crisis management when disasters occur in sea. The law works to arrest the plaintiff in cases of reasonable

claims to avoid any further damage. It equally weighs the possibilities for a false accusation against the plaintiff and ensures the claimant bears the liability for the financial and physical damages incurred. It is, for this reason, a case of ship arrest

often takes variable lengths of time as the judgment must be right and fair. If the required actions are not taken by the owner, ships often stay in the port or anchorage for years. While the safety of the ship is guaranteed, it cannot be ignored there are chances

of physical depreciation. The most suitable action to take if a ship is arrested would be to reach out to a lawyer. Prevention is always preferred over the large sums of liabilities, thus ensuring the ship doesn't satisfy any claims before sailing is important.



HOT NEWS

SUPPLY CHAIN CHALLENGES TO THE MARITIME TRANSPORTATION SYSTEM

Inland maritime transportation systems (MTS) play major roles in domestic and international supply chains, with unique challenges

related to upstream and downstream sources disruption, accessibility and shifts in commodities, as well as demand and supply

imbalances. With a 20% on-time arrival statistic, the U.S. east coast serves as an example for the increasing appeal of inland waterways as a cost-effective, alternative, with Port of Cleveland traffic reportedly increasing 70% between 2020 and 2021. Secondary ports, energy transport and a desire to reduce carbon emissions along the entire value chain bring the inland MTS in greater focus.

Allison Bennett Irion, Argonne National Laboratory, will moderate a panel on this topic at the 2022 Maritime Risk Symposium on November 16, 2022. Speaking on this topic Jennifer States, Vice President of Projects and Strategy, Washington Maritime Blue, Seattle, WA and Eric Peace, Vice President Lake Carriers' Association, Westlake, Ohio.



Courtesy: www.marinelink.com

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