

CHAPTER-LX

SPECIAL JURISDICTION: ADMIRALTY JURISDICTION

RULES FOR REGULATING THE PROCEDURE AND PRACTICE IN CASES BROUGHT BEFORE THE HIGH COURT UNDER THE ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017.

1063. Definitions.—(1) In this Chapter, unless there is anything repugnant in the subject or context:

- (a) "Suit in rem" means an Admiralty action in rem;
- (b) "Court" means the High Court of Judicature at Bombay;
- (c) "Judge" means a Judge of the court exercising admiralty jurisdiction and powers under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017;
- (d) "Limitation action" means a suit commenced for setting up a limitation fund under the Merchant Shipping Act, 1958 as amended from time to time;
- (e) "Officer designated by Registrar-General" means the Admiralty Registrar of the court;
- (f) "Registry" means the office of the Registrar(O.S.)/Prothonotary and Senior Master;
- (g) "Sheriff" means Sheriff of Mumbai or Deputy Sheriff or other officer who may be appointed to execute the process of the court;
- (h) "Suit" means any suit, action or other proceeding instituted in the court in its admiralty Jurisdiction.

(2) The words and expressions used herein but not defined and defined in the Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017 and the Merchant Shipping Act, 1958 shall have the meanings respectively assigned to them in those Acts.

1064. Institution of suits.—A suit shall be commenced by a plaint signed and verified according to the provisions of the Code of Civil Procedure, 1908 and by these rules.

1065. Admiralty Suit Register.—All suits filed in the admiralty Jurisdiction of this Court, whether *in rem* or *in personam*, shall be entered in a book to be kept in the registry called "Admiralty Suit Register" in which the number of the suit and the names of the parties will be entered including the name of the ship or its sale proceeds.

1066. Application to arrest ship in a suit in rem.—If the suit is in *rem*, an application for arrest of any ship proceeded against shall be made to the court and shall be supported by an affidavit. The affidavit shall state the nature of the claim and that it has not been satisfied. It shall also state the nationality of the ship to be arrested and the port at which it is to be arrested and whether a valid caveat against arrest has been filed.

1067. Undertaking in damages.—A party applying under Rule 1066 shall give an unconditional and irrevocable undertaking in writing to pay such sum of money or kind of security in such sum and upon such terms as may be determined by the court for any loss or damage which may be incurred by or caused to the defendant or any other party as a result of the arrest of the ship and for which the plaintiff may be found liable. This undertaking shall not stand discharged or released notwithstanding any order permitting the suit to be withdrawn.

1068. Execution of warrant of arrest of ship.—

- (a) A ship may be arrested under a warrant of arrest issued pursuant to an order of arrest made by the court.

(b) Unless otherwise ordered by the court, a warrant of arrest shall be issued pursuant to an order of arrest made by the court and may be executed only by the Sheriff.

(c) The court may dispense with issue or service of any warrant of arrest if the circumstances so require, in which event the ship shall be deemed to be arrested upon service of the order of arrest made by the court. The order of arrest shall be served in the same manner as a warrant of arrest on in such other manner as the Judge may direct.

1069. Arrest of ship not to prevent loading/discharge, etc.—The arrest of a ship shall not prevent loading and/or discharging of cargo or the ship being shifted within the port limits under directions of the Port Authority.

1070. Service of writ of summons, or warrant of arrest, when dispensed with in a suit in rem.—In a suit in rem no service of writ of summons or warrant of arrest shall be required, when the advocate for the defendant agrees—

(a) to accept service having entered a caveat or otherwise; or

(b) to give security or to pay money into court; or

(c) where the warrant of arrest or the order of arrest is served on the ship.

1071. Service of writ of summons or warrant of arrest or order of arrest in a suit in rem how effected.—

(a) In a suit in rem, writ of summons, warrant of arrest or order of arrest shall be served on the ship against which the suit is brought.

(b) Service shall be effected by serving the original writ of summons or warrant of arrest or order of arrest on the master of the ship or as otherwise directed by the Judge.

(c) The plaintiff shall serve a copy of the plaint and all other proceedings and documents upon the advocate who claims to represent the ship or its owner upon the advocate giving an undertaking to enter appearance on behalf of the ship and/or its owner.

1072. Caveat against arrest of ship.—

(a) Any person desiring to prevent the arrest of any ship shall file in the registry a praecipe, signed by himself or his Advocate, who may be acting for him, requesting for entering caveat against the arrest of such ship and undertaking to enter appearance in person or by vakalatnama in any suit that may be instituted against such ship and undertaking to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay into the registry such sum. The caveat shall contain the name, address and email address of the caveator and/or his advocate, as the case may be. Caveat against issue of a warrant or order of arrest of such ship shall thereupon be entered in a book to be kept in the registry, called "Caveat Warrant Book". The Caveat Warrant Book shall state the amount of security that the Caveator has undertaken to provide as per the praecipe.

(b) The fact that there is a caveat against arrest in force shall not event a party from applying for a warrant or order of arrest and the ship to which the caveat relates, arrested without notice to the Caveator. Where any ship with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant or order of arrest, the person at whose instance the caveat has been entered may apply to the court by way of an interim application for an order under this rule and, on the hearing of the application, the court, unless it is satisfied that the person procuring the arrest of the ship had a good and sufficient reason for so doing, may order discharge of the warrant or order of arrest and may also order such person to pay to the applicant, damages in respect of the loss suffered by the applicant as a result of the arrest.

1073. Caveat against release of arrested ship.—Any person desiring to prevent the release of any ship under arrest shall file in the registry a praecipe, signed by himself or his advocate, who may be acting for him, requesting for entering caveat against the release of such ship. The caveat shall contain the name, address and email address of the caveator and/or his advocate, as the case may be, and the nature and amount of the claim of the caveator. Caveat against the release of the ship shall thereupon be entered in a book to be kept in the registry, called “Caveat Release Book” containing details referred to above.

1074. Caveat against payment out of sale proceeds of ship.—Any person desiring to prevent payment out of court of any money in court representing the proceeds of sale of any ship shall file in the registry a praecipe signed by himself or his advocate who may be acting for him, requesting for entering caveat against payment out of court of such proceeds of sale. Caveat against payment out of court of such sale proceeds shall thereupon be entered in a book to be kept in the registry, called the “Caveat Payment Book”. The caveat shall mention the amount, nature and details of the claim of the caveator and details of any suit or proceedings in respect thereof. Such details shall be entered in the Caveat Payment Book.

1075. Ship not to be released and payment out of sale proceeds of ship not to be made unless notice is given to the caveator.—No ship arrested under a warrant or order shall be ordered to be released and no payment out of sale proceeds of any ship shall be made, unless two working days’ notice is given to the person who has filed a caveat against the release of the ship or caveat against payment out of sale proceeds of the ship and whose caveat is valid at the time of giving such notice.

1076. Duration of caveat.—A caveat, whether against the issue of a warrant or order of release of ship or payment of money out of its sale proceeds, shall be valid for six months from the date of its entry. The period of validity of a caveat shall not be extended, though the caveator shall not be prevented from entering of successive caveats.

1077. Withdrawal of caveat.—A caveat may be withdrawn by the party on whose behalf it has been entered, but the praecipe to withdraw the caveat shall, unless otherwise permitted by the Admiralty Registrar, be signed by the person who signed the praecipe for entering the caveat.

1078. Discharge and setting aside of caveat.—

(a) A caveat against release of any ship shall stand discharged upon an order for release of the vessel provided two working days’ notice prior to the application for release of the arrested ship is given to the caveator.

(b) An application to set aside a caveat may also be made by an interim application supported by an affidavit.

(c) The party delaying the release of any ship by entry of a caveat shall be liable to be pay costs and damages in respect of the loss suffered by the applicant by reason of the delay caused due to the entry of the caveat, unless he shall show, to the satisfaction of the court, good and sufficient reason for having entered the caveat.

1079. Service of plaint and proceedings on party entering caveat.—Any person before applying for arrest of any ship shall serve a copy of the plaint upon the party on whose behalf the Caveat has been entered in the caveat Warrant Book or upon his advocate and make a statement to that effect in the affidavit in support of the application for arrest.

1080. Party entering caveat to give security.—Within three working days from the service of the plaint and other proceedings, the party on whose behalf the caveat has been entered shall, give security for the sum specified in the caveat or the amount claimed in the suit, whichever is lower, or pay such sum into the registry.

1081. On default suit may proceed ex-parte.—After expiry of the period provided in Rule 1080, if the party on whose behalf the caveat has been entered shall not have given security in such sum or paid the sum into the registry in accordance with rule 1080, the plaintiff may apply to the court to set down the suit forthwith for hearing as an undefended suit:

Provided that the court may on good cause shown and on such terms as to payment of costs, as it may impose, extend the time for giving security or paying money into the registry.

1082. Judgment and enforcement of payment.—When the suit comes before the court, if the court is satisfied that the claim is well founded, it may pronounce judgment for the amount which appears to be due, and may enforce the payment thereof by order and attachment against the party on whose behalf the caveat has been entered, and by the arrest of the ship if it then be, or thereafter comes, within the jurisdiction of the court.

1083. Sheriff may apply for directions.—The Sheriff may at any time make a report to the court and apply for directions with respect to the ship under arrest in a suit. The court may direct notice of the application to be given to any person concerned with the ship before passing orders on the report.

1084. Sheriffs expenses.—In the event any expenses are required to be incurred by the Sheriff during the period of the arrest for the safety and preservation of the ship and its crew, the Sheriff shall make a report to the court and the court, shall after hearing the parties direct payment of such sums as the court may deem fit by any party the Sheriff for incurring such expenses, which shall be treated as Sheriffs expenses. These expenses shall be paid in priority to the Sheriff from the sale proceeds of the ship or by the defendant or other party seeking release of the ship as the case may be, and the same shall be reimbursed to the parties who have paid the amounts to the Sheriff in the first instance.

1085. Application for sale of arrested ship.—In a suit in rem, if the ship proceeded against has been arrested, the plaintiff may, at any time after service of writ of summons or warrant of arrest or order of arrest upon the defendant, apply to the court by way of an interim application for an order of sale of the arrested ship by the Sheriff and payment of sale proceeds into the registry to the credit of the suit.

1086. Interveners.—

(a) Where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that ship is in court, a person who has interest in that ship or money but who is not a defendant to the suit may, with the leave of the Judge, intervene in the suit.

(b) An application for grant of leave under this rule may be made ex-parte by an affidavit showing the interest of the applicant in the ship against which the suit is brought or in the money held in court.

(c) A person to whom leave is granted to intervene shall thereupon become a party to the suit and shall file an appearance in person or by vakalatnama within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(d) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be specified.

1087. Order for sale of ship and determination of priority of claims.—

(a) Where in a suit in rem the ship proceeded against is sold and the sale proceeds are paid into court, any party who has obtained or obtains a decree or judgment against such ship or proceeds of sale may apply to the court by interim application for an order determining the order of priority of claims against the proceeds of sale of such ship.

(b) All persons who have filed caveats against payment out of sale proceeds of the ship shall be joined in the interim application and be heard.

(c) The order of priorities shall be in accordance with the provisions of Sections 9 and 10 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 read with these rules.

(d) When an application is made under sub-rule (a), the Sheriff shall send for publication in such newspapers as the court may direct, a notice complying with the provisions of sub-rule (e).

(e) The notice referred to in sub-rule (d) shall state—

(i) that the ship (particulars to be specified) has been sold by an order of the High court in a suit in rem giving the number of the suit and the names of the parties to the suit;

(ii) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(iii) that the order of priority of claims against the sale proceeds will not be determined until after the expiration of the period (specifying it) specified in the order ;

(iv) that any person having a claim against the ship or the proceeds of sale thereof, should file a suit to prove his claim before the expiration of that period.

(f) The Sheriff shall lodge in the registry a copy of each newspaper in which the notice referred to in sub-rule (e) has appeared.

(g) The expenses incurred by the Sheriff in complying with an order of the court under this rule shall be included in his expenses relating to the sale of the ship. Any expense incurred by the Sheriff, shall, at the first instance, be paid by the party at whose request the order under sub-rule (a) is made. The party shall be entitled to be reimbursed such expenses incurred from the sale proceeds paid into court after taxation by the Taxing Master of the court or as directed by the court.

(h) An application to extend the period referred to in sub-rule (e) (iii) shall be made by interim application in the suit in which any order for determination of priorities is sought, with notice to all persons who have filed a suit against the ship or its sale proceeds or have filed a caveat against payment of sale proceeds of the ship.

(i) If upon determination of the order of priorities it appears to the court that any party who has obtained a decree is entitled to be paid in priority over all other claims then such party shall be at liberty to file an interim application for payment out of the sale proceeds.

1088. Publication of notice inviting claims after sale of ship.—

Notwithstanding what is stated in Rule 1087 the court, on an application of any party who has a claim against the ship or its sale proceeds, may, after the sale proceeds are paid into court, direct the Sheriff to send for publication in such newspapers as the court may direct a notice in accordance with sub- Rule (e). Sub-rules (f), (g) and (h) shall apply to such notice.

1089. Release of arrested ship.—Subject to the provisions of this rule, a ship arrested may be ordered to be released:

(a) at the request of the Plaintiff, and after notice to all persons whose caveats entered in the Caveat Release Book are valid before an appearance in person or a vakalatnama is filed by the defendant; or

(b) on the defendant or an intervenor who has interest in the arrested ship, furnishing security -

(i) by paying into court the amount ordered by the court to be deposited by way of security in the suit; or

(ii) by providing a bank guarantee in the suit in accordance with Rule 1102 for such amount as may be ordered by the court; or

(iii) in such amount or in such manner as may be agreed between the parties.

(c) On any other ground that the court may deem just and proper on an application made for release of the arrested ship.

1090. Security by third party.—In the event security as provided in sub-rule (b) of Rule 1089 is furnished by an intervenor, such security will be available to the plaintiff in the event the plaintiff succeeds in the suit in respect of the claim against the ship and/or its owners.

1091. Return of security.—Nothing in these rules shall preclude a defendant from making an application to the court at any stage for return and/or reduction of any amount deposited in court or for return and/or reduction of security provided for release of the arrested ship.

1092. Order of Release of arrested ship.—A ship arrested under an order of arrest shall only be released by an order of the court and upon notice to the Sheriff of Mumbai and to all parties who may have filed a caveat against release of the arrested ship.

1093. Release by Sheriff on lodging praecipe with the order of release.—The order of release when obtained shall be lodged with a praecipe in the office of the Sheriff by the party obtaining the same and the Sheriff shall thereupon release the ship by taking all necessary steps in that regard and communicating the order of release to the relevant port and customs authorities as the case may be.

1094. Sale by order of the court.—Every sale ordered by the court shall, unless the Judge shall otherwise order, be made by the Sheriff in like manner as a sale of movable property in execution of a decree in an ordinary civil suit, and the Sheriff shall be entitled to receive fees or poundage as provided in Rule 1100.

1095. Procedure by Sheriff on sale of ship.—The Sheriff shall pay into court the gross proceeds of sale of any ship sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the Taxing Master of the court, to whom the same shall be transmitted by the Admiralty Registrar.

1096. Assessors.—

(a) The court may, if it thinks fit, and shall upon request of either party to the suit, summon for its assistance, in such manner as it may direct, two competent assessors who shall attend and assist the court in hearing any suit or cause relating to salvage, towage, or collision.

(b) The appointment of assessors shall be made by the court having regard to the nature of the suit and the qualification and experience of the person to be appointed.

(c) Every such assessor shall receive fees and expenses for his attendance as may be determined by the court and to be paid by such of the parties as the court may direct.

1097. Appearance before Taxing Master.—Any person interested in the proceeds may be heard before the Taxing Master on the taxation of the account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to accounts filed before the Commissioner for Taking Accounts.

1098. Payment of monies.—All monies to be paid into court shall be paid to the Admiralty Registrar.

1099. Payment of money out of court.—Money paid into court shall not be paid out of court except in pursuance of an order of the court.

1100. Table of Fees payable to the Sheriff.—The fees payable to the Sheriff of Mumbai for suits and matters covered by these rules shall be as follows:—

	Fees for or on	Rs.
a.	Fees for serving each summons or notice to a defendant or a witness.	Rs. 500.00
b.	Fees for executing a warrant of arrest or order of arrest.	Rs. 500.00
c.	Fees for serving any injunction, order or process not otherwise provided for.	Rs. 500.00

1101. Claims for compensation.—Any claim for payment of damages as compensation for any loss sustained by an order of arrest may be made by way of an interim application or suit or counterclaim.

1102. Security.—Unless otherwise ordered by the court or agreed by the parties, security shall be given by payment into court or by way of a bank guarantee.

1103. Claim for salvage of cargo.—Notwithstanding anything contained in these rules, in case of a suit for salvage, if there is a claim against cargo on board the ship or onshore, it shall be open to the claimant to institute a suit in *rem* against the cargo and the provisions of these rules shall apply *mutatis mutandis* to such suit as if the property to be arrested is cargo in place of the ship.

1104. These rules shall also be applicable to proceedings filed under the Merchant Shipping Act, 1958 as amended from time to time.

1105. For the purposes of Limitation of Liability under Part XA of the Merchant Shipping Act, 1958 the following shall apply:—

(a) *Limitation of Liability.*— Any application for limitation of liability filed under Part XA of the Merchant Shipping Act, 1958, as amended, shall be by way of a suit as contemplated in this Chapter.

(b) *Person seeking relief to be plaintiff.*— In a limitation action the person seeking relief shall be the plaintiff and shall be described in the plaint by his name.

(c) *Plaintiffs to make as defendant/s person/s with claims or possible claims.*— The Plaintiff shall make one or more or all known persons with claims or possible claims against him in respect of the casualty/occurrence to which the action relates, Defendant(s) to the Suit.

(d) *Defendant(s) to be named.*— All persons to be named as defendants, as provided under Sub Rule (c), must be named in the suit by their names. At least one defendant to the action must be named in the suit by his name but the other defendant(s) may be described generally (if not by their names).

(e) *Service of writ of summons.*—The writ of summons in a limitation action must be served on one or more of the defendants who are named by their names therein.

(f) *Publication of institution of suit.*—

(i) In addition to service of writ of summons, publication of the institution of the suit and the cause of action, reliefs claimed and the returnable date of writ of summons shall be made as prescribed in the court's general rules, the web site of the court, one vernacular newspaper at Mumbai and also in Lloyds List, London or Trade Winds, London or as directed by the court.

(ii) Where the casualty has arisen in a foreign country, the court may in its discretion direct that the publication must also be made in a local newspaper in that country.

1106. Affidavits of service.—The Plaintiff(s) shall within two weeks of the service of writ of summons and publication of the notice in compliance with sub-rule (f) file an affidavit of service in which the plaintiff(s) shall state the following :—

(a) The names and addresses of the defendants who have been served with the writ of summons along with proof of service attached thereto;

(b) Proof of publication as provided in Rule 1107 above.

1107. Publication of notice.—All public notices issued under these rules including notice for determination of priorities under Rules 1087 and 1088 and notice for sale of ship under Rule 1094 and notice of publication of limitation action under sub-rule (f) of Rule 1105 shall be published on the website of the court and also on the website of the Sheriff.

1108. Rules and practice of on the Original Side of court to apply, if not inconsistent with the rules in this Chapter.—The rules, practice and procedure of the court in the matter of suits and proceedings on the Original Side of the court shall, if not inconsistent with the rules in this part, apply to suits and proceedings on the Admiralty Side of the court.

1109. Forms of Admiralty Division to be followed.—

1. Caveat against arrest of vessel shall be in Form [139];
2. Undertaking to pay damages shall be in Form [140];
3. Judge's order for arrest of vessel shall be in Form [141];
4. Warrant of arrest shall be in Form [142];
5. Caveat against release of vessel shall be in Form [143];
6. Caveat against release of sale proceeds shall be in Form [144]

1110. Supersession of rules.—The rules contained in this Chapter shall apply to suits brought in the court in the exercise of its Jurisdiction under the Admiralty (Jurisdiction and settlement of Maritime Claims) Act, 2017 in supersession of all former rules.

High Court of Judicature At Bombay,
Dated 7th February 2020.

S. B. AGRAWAL,
Registrar General.

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