

RELEASE OF ARRESTED PROPERTY (SHIP)

Property arrested under a warrant may be ordered to be released.

- (i) at the request of the plaintiff, before an appearance in person or a Vakalatnama is filed by the defendant; or
- (ii) on the defendant paying into Court the amount claimed in the suit; or
- (iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or
- (iv) on any other ground that the Court may deem just.

Property arrested under a warrant shall only be released under the authority of an instrument issued by the Prothonotary and Senior Master, to be called a release, unless the same has been dispensed by the court.

The release when obtained shall be lodged with a praecipe in the office of the Sheriff or Marshal by the party obtaining the same who shall also at the same time pay all costs, charges and expense attending the care and custody of the property whilst under arrest, and the Sheriff or the Marshal shall thereupon release the property.

In cases where the arrested ship is released on security being furnished for the plaintiff's claim, the suit, unless compromised, will proceed to trial and judgment in the normal course.

Problems are, however, encountered in those cases where the ship is not released, usually because of the owner's bankruptcy and the master and crew have also abandoned the ship. The Marshal or the Sheriff or the other officer

who has the custody and care of the ship is expected to take steps involving expenses for protecting the ship and its equipment; he has to provide a skeleton crew in accordance with the requirements of the port regulations in order to maintain an anchor watch and to tend to the lights to be exhibited between sunset and sunrise in compliance with the Collision Regulations; and to keep the ship up to full sea-going standards, entailing over and inspection of machinery and watchmen to prevent thefts of valuable equipment and fittings.

The Marshal's or the Sheriff's office does not have either the personnel or the wherewithal to undertake these measures in order to prevent undue deterioration and reduction of the ship's value. The arresting party will be called upon to provide the marshal/sheriff with funds to meet the expenses involved and, in the event of failure to do so, the marshal/sheriff will report the matter to the court and apply for directions with respect to the ship. On the report coming up for consideration after notice to the arresting party and interveners, if any, the court may order the arrested ship to be released.

In such a situation, it is appropriate for any other party who was an intervener in the suit, especially a mortgagee with a high ranking priority, to volunteer to provide the marshal/sheriff with funds to engage a caretaker, usually a firm of marine surveyors, to undertake the said measures. The court may be moved to make the appropriate order appointing the caretaker and directing that the expenses incurred shall be a first charge on the proceeds of sale of the ship to be paid first out of the sale proceeds to the party advancing them, regardless of the priority ranking of its claim and irrespective of the result of its own suit. The advocate of the arresting plaintiff and/or intervener advancing the funds should ensure that this provision is specifically included in the order.

Following its arrest, the ship is usually released from arrest after security has been provided by the ship owner or any interested parties for the claim. The security may be in the form of a bail bond, a payment of money into court, a

bank guarantee or a letter of undertaking (LOU) from the ship owner's protection and indemnity club (P.& I. Club). The security is seen as replacing the arrested res, thereby precluding re-arrest in most cases. The amount of security is set by the court in its discretion, but the general principle is a sum sufficient to cover the claimant's "reasonably arguable best case", together with interest and costs, not exceeding the value of the arrested vessel. A final judgment in the claimant's favour may be enforced against the substituted security, just as it could have been against the arrested ship. Although the arrest of his ship may have grave effects on the ship owner's business, it is not usual for the courts to impose any requirement on the plaintiff/claimant to put up countersecurity to guarantee the defendant against losses which the latter may incur as a result of the arrest, although countersecurity is sometimes ordered, in the court's discretion, under order XXV Rule 1 of Code of Civil Procedure, 1908 for Security for Cost. Security for Cost may be required from the Plaintiff at any stage of a suit, the court may either of its own motion or on application of any defendant, order the plaintiff, for reasons to be recorded, to give within time fixed by it security for payment of all cost incurred or likely to be incurred by any defendant provided that such an order shall be made in all cases in which it appears to the court that a sole plaintiff is, or (when there are more plaintiffs' than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs' possess any sufficient immovable property within India other than property in suit.

Any person desiring to prevent the release of any property under arrest shall file in the registry a praecipe, signed by himself or his advocate, who may be acting for him, requesting that a caveat be entered against the release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Release Book."