

## **COSTS**

he court has the discretionary power to accept or reject the costs and does not exceed or overlook the limitations placed by the Code of Civil Procedure, 1908 with reference to costs in civil litigation.

Costs in admiralty litigation form a crucial aspect of the judicial process, where courts are vested with the discretionary power to award costs. The court's discretion, however, is not unfettered and must operate within the bounds of established legal principles and statutory frameworks. In India, the process is guided by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts, along with the Code of Civil Procedure, 1908 ("CPC"). These legal instruments provide a structured approach for awarding costs in civil litigation, including admiralty matters.

### **Discretionary Power of Courts in Awarding Costs**

The judiciary in admiralty cases, like other civil proceedings, retains discretion in awarding costs under Section 35 of the CPC. Courts consider various factors, including the conduct of the parties, the complexity of the case, and the equitable distribution of justice when determining costs. However, this discretion is bound by principles of reasonableness and equity, ensuring that it does not surpass statutory limitations.

Under the Admiralty Act, 2017, specific provisions provide guidance on the awarding of costs in admiralty proceedings. The court must assess the nature of the claim, the relief sought, and the behavior of the litigants throughout the proceedings. Section 10 of the Admiralty Act gives admiralty courts the authority to make orders for costs, taking into account the maritime nature of the dispute and the unique considerations in such cases.

## Code of Civil Procedure, 1908: Statutory Limitations

The CPC establishes general principles governing the awarding of costs in civil litigation, including admiralty matters. Under Section 35 of the CPC, courts can award costs, but this power is subject to certain constraints. The courts cannot award costs exceeding those incurred by the party unless justified by exceptional circumstances. Section 35A further allows for compensatory costs in cases of vexatious or frivolous litigation, reinforcing the need to deter parties from abusing the judicial process.

Indian courts have consistently held that while courts have the discretion to award costs, this discretion must be exercised judicially. In *Salem Advocate Bar Association v. Union of India* (2005) 6 SCC 344, the Supreme Court of India emphasized that the discretion to award costs should be exercised based on sound legal principles, considering the nature of the litigation and the behavior of the parties.

## Costs in Admiralty Proceedings: Global and Indian Jurisprudence

In admiralty law, the awarding of costs often reflects the unique challenges posed by maritime disputes, such as the arrest of ships, salvage claims, and cargo disputes. English law, which heavily influences Indian admiralty jurisprudence, also provides significant guidance on the awarding of costs in admiralty cases.

In *The Alkyon* [2008] EWCA Civ 1163, the English Court of Appeal reiterated that costs should follow the event, i.e., the unsuccessful party should bear the costs unless there are exceptional circumstances. This principle is often mirrored in Indian admiralty cases, where the courts balance the equitable distribution of costs against the conduct of the parties.

In India, courts have followed a similar approach in admiralty cases, ensuring that costs are awarded fairly and justly. In *M.V. Elisabeth & Ors v. Harwan*

*Investment & Trading Pvt. Ltd.* (1993 Supp (2) SCC 433), the Supreme Court recognized the need for equitable principles in admiralty matters, emphasizing that costs should reflect the fairness of the proceedings and not burden parties disproportionately.

#### Admiralty Act, 2017 and Admiralty Rules of the High Courts

The Admiralty Act, 2017 provides a specialized framework for dealing with maritime claims, including provisions for costs. The Admiralty Rules of the High Courts supplement this framework by setting out detailed procedural rules for admiralty courts, including guidelines on the awarding of costs.

Rule 48 of the Admiralty Rules of the Bombay High Court, for example, allows the court to make orders for costs in any manner it deems fit, provided that the orders are reasonable and justifiable within the context of the case. The courts may also consider the conduct of the parties, particularly in cases involving the arrest and sale of vessels, where the costs incurred can be significant.

The discretionary power of courts in awarding costs in admiralty cases is a fundamental aspect of civil litigation in India, guided by the principles enshrined in the CPC and the Admiralty Act, 2017. Indian courts, while enjoying discretion, must ensure that such discretion is exercised judiciously and in accordance with the established legal principles. The costs must not exceed the limitations placed by the statutory provisions, and courts should be mindful of the unique maritime context of the dispute.

The jurisprudence from India, England, and global perspectives underscores the importance of balancing judicial discretion with fairness, ensuring that costs are awarded equitably and in alignment with the maritime nature of the claims.