

## **RESTRICTIONS TO INVOKE ADMIRALTY JURISDICTION**

There are restrictions to invoke Admiralty Jurisdiction in following cases

- a. When the matter can be adjudicated in arbitration and there is a specific arbitration clause, the matter should be proceeded in arbitration (although a ship can be arrested as security in arbitration) ;
- b. If the ship belongs to Government of Foreign State, in that event consent of the Central Government in India would be required to proceed against the vessel and its owners.;
- c. Action in rem against the Government of India in respect of claims against the Government or arrest, detention or sale of ships or cargo or other property belonging to the Government unless notice under section 80 (1) of the Code of Civil Procedure is complied with;
- d. Personam actions are not allowed in case of collision until a proceedings previously brought by the Plaintiff in any foreign court against the same defendant in respect of the same cause of action have been discontinued or otherwise come to an end.

Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts, there are specific restrictions on the invocation of admiralty jurisdiction in India. While the Act provides broad powers to High Courts with admiralty jurisdiction, it also imposes limitations in certain scenarios, ensuring that the exercise of admiralty jurisdiction is consistent with established legal principles, international law, and procedural fairness.

- a. Arbitration Agreements and Admiralty Jurisdiction

One of the primary restrictions on invoking admiralty jurisdiction arises when the dispute between the parties is subject to an arbitration agreement. Arbitration is recognized as an alternative dispute resolution mechanism, and courts are generally required to respect the parties' contractual agreement to arbitrate disputes. This is consistent with the Arbitration and Conciliation Act, 1996, which mandates that courts refer parties to arbitration when a valid arbitration agreement exists.

However, under admiralty law, the arrest of a ship can still be sought as security for the arbitration proceedings. Section 9 of the Admiralty Act, 2017 allows for the arrest of a vessel to provide security for a maritime claim, even if the underlying dispute is subject to arbitration. The purpose of this provision is to prevent the defendant from frustrating the arbitration by removing the ship from the jurisdiction, thereby protecting the claimant's interests.

Case Law:

*MV X-Press Annapurna v. Mediterranean Shipping Company SA* (2018 SCC Online Mad 2285): The Madras High Court upheld the principle that the presence of an arbitration clause does not prevent a claimant from seeking arrest of a vessel for security in respect of arbitration proceedings.

*Front Ace Shipping Ltd. v. M.V. Kua Tian and Others* (2007 (3) GLR 2534): The Gujarat High Court clarified that the existence of an arbitration clause does not bar a court from exercising admiralty jurisdiction for the purpose of securing the claim by way of arrest of the vessel.

#### b. Sovereign Immunity and Foreign Government Vessels

When the vessel in question belongs to a foreign state, special rules of sovereign immunity apply. The principle of sovereign immunity prevents legal actions from being taken against a foreign state or its assets without the

consent of the foreign state. This principle is recognized in both domestic and international law, including the United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004.

In India, Section 12 of the Admiralty Act, 2017, specifies that before proceeding against a ship belonging to a foreign government, consent from the Central Government is required. This consent is necessary to ensure that the proceedings do not violate principles of international comity and respect for foreign sovereignty.

Case Law:

Naval Staff of the Ministry of Defence v. B.P. Bhattacharya (1986 Supp SCC 346): In this case, the Supreme Court of India addressed the issue of sovereign immunity and held that no legal proceedings can be initiated against a foreign state or its property without the express consent of the Central Government.

Dr. Martin F. D'Souza v. The Chief of the Naval Staff (2022 SCC OnLine Bom 486): The Bombay High Court reiterated that the consent of the Central Government is mandatory for proceeding against vessels belonging to a foreign government.

c. Actions in Rem against the Government of India

Under Section 12 of the Admiralty Act, 2017, a ship or property belonging to the Government of India is immune from arrest, detention, or sale in proceedings initiated in rem. Additionally, claims against the government must follow the procedures prescribed in the Code of Civil Procedure, 1908 (CPC). Specifically, Section 80(1) of the CPC requires that notice be served upon the government prior to instituting any suit against it. Failure to comply with this notice requirement renders the action incompetent.

The rationale behind this restriction is to protect government property from seizure and to provide the government with an opportunity to settle the claim amicably or defend itself in court.

Case Law:

State of Kerala v. V.R. Kalliyankutty Amma (AIR 1999 SC 1305): The Supreme Court held that non-compliance with Section 80(1) of the CPC renders a suit against the government unsustainable, emphasizing the mandatory nature of the notice requirement.

Secretary of State v. Sunderlal ILR (1914) 36 All 314: This case established the principle that proceedings against government property must adhere strictly to procedural requirements, including the issuance of notice under Section 80 of the CPC.

#### d. Restriction on Personam Actions in Collision Cases

In cases of collision, actions in personam are restricted where the plaintiff has already initiated proceedings in a foreign court against the same defendant in respect of the same cause of action. Admiralty courts are cautious to avoid multiple proceedings on the same matter, which could lead to conflicting judgments and unnecessary litigation.

Section 13 of the Admiralty Act, 2017, outlines the procedural limitations on actions in personam in collision cases, ensuring that plaintiffs do not engage in forum shopping or pursue parallel litigation across multiple jurisdictions.

The restriction is rooted in the principle of res judicata, which prevents parties from re-litigating the same issues after they have been adjudicated by a competent court.

Case Law:

Anderson v. The Great Indian Peninsula Railway Co. (AIR 1921 PC 124): This Privy Council case recognized the restriction on multiple actions in personam, emphasizing that courts should not entertain new actions when prior proceedings on the same cause of action are pending.

The City of Mecca (1881) 6 PD 106: This English case established the principle that once an action in personam is commenced in a foreign court, the same action cannot be pursued in a different jurisdiction without discontinuing the earlier proceedings.

The invocation of admiralty jurisdiction in India is subject to specific restrictions designed to ensure procedural fairness, respect for arbitration agreements, adherence to sovereign immunity principles, and avoidance of multiple actions on the same cause of action. These restrictions are codified in the Admiralty Act, 2017, and are further reinforced by relevant case law. Admiralty courts in India, while empowered to grant powerful remedies such as ship arrest, must exercise their jurisdiction in accordance with these limitations, thereby balancing the rights of claimants with the procedural safeguards provided to defendants, foreign states, and the Government of India.