

APPRAISEMENT AND JUDICIAL SALE

The usual order passed by the court is either on the judgment or pendente lite is that the property be appraised and sold by the admiralty Marshal or the Sheriff. Appraisement is the official valuation of the ship by a court appointed valuer in order to prevent the ship from being sold at too low a price. The Marshal or the Sheriff is not allowed to sell the ship for less than the appraised value without the order from the court. If there are no offers or if the offer is below the appraised value of the ship an order of the court will be necessary if it is established that the appraised value is no longer realistic, the court will consider the potential interest of all the claimants against the fund.

When the court orders that a ship be sold, the sale is of the ship together with all property which is on board the ship, including her bunkers, other than property which is owned by someone other than the owner of the ship.

The terms and conditions for auction sale of the ship are finalised by the marshal/sheriff and are made available to intended bidders. Advertisements/Notice for auction sale of the ship are published globally, normally in two international shipping newspaper and two newspaper in India.

Judicial sales of vessel usually occur in situations where the vessel has been arrested by a claimant.

The application of the court's jurisdiction to order a judicial sale of vessels is best expressed in the principles laid down by Mr. Justice Brandon in *The Myrto* [1977] 2 Lloyd's Rep 243, where the learned judge said that an English court is usually asked to order a sale of a ship in circumstances where the respondent/shipowner does not appear in the proceedings or appears but does not defend the claim. If the claim is defended and the

respondent/shipowner oppose the making of a judicial sales order, the learned judge was of the view that the English court should not order the judicial sale of the vessel except if there is “good reason” for doing so. The learned judge went on to say that what would constitute a “good reason” would be the prospect of heavy and continuing costs of maintaining the vessel under arrest over a long period, with the consequence that there is reduction in the value of the plaintiff’s security for their claim.

“I accept that the Court should not make an order for the appraisal and sale of a ship *pendente lite* except for good reason, and this whether the action is defended or not. I accept further that, where the action is defended and the defendants oppose the making of such an order, the Court should examine more critically than it would normally do in a default action the question of whether good reason for the making of the an order exists or not. I do not accept, however, the contention put forward for the owners, that the circumstances that, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with consequent substantial diminution in the value of the plaintiffs’ security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale. On the contrary I am of opinion that it can and often will do so.”. If, for example, a vessel was arrested as security for a claim and the respondent/shipowner does not maintain the vessel while she is under arrest, the court will view the vessel as security that is gradually reducing in value because of the falling value of a vessel that is not maintained. If the court is satisfied that it will take time before the court is able to give judgment on the claim and is satisfied that as a consequence, the gradual reduction in value of the vessel means that there is a significant reduction in the security for the claim, it can decide to order the judicial sale of the vessel.

The relevant central Act of Parliament empowering the High Court to sell property is Section 122 of the Indian, Code of Civil Procedure 1908 (the

“Code”), Order XXXIX rule 7 in The First Schedule and Section 94 of the Code.