

## **JURISDICTION AFTER THE SHIP HAS SAILED**

If Admiralty action is initiated by filing a suit and an order of arrest is obtained and the ship sails out before the order of arrest is effected, the ship may be arrested if she returns back under the general rule of perpetuatio jurisdictionis.

The principle of admiralty jurisdiction is grounded in the unique nature of maritime claims and the enforcement of such claims, often through the arrest of ships. The situation where a ship has sailed out of the territorial waters after an admiralty action has been initiated and an order of arrest has been obtained but not yet effected raises critical questions about the jurisdiction of the court and the enforceability of maritime claims.

### **Perpetuatio Jurisdictionis: A General Rule**

The concept of perpetuatio jurisdictionis is a well-established principle in admiralty law. It essentially means that once a court acquires jurisdiction over a matter, it retains that jurisdiction even if subsequent events would have otherwise divested it of such jurisdiction. In the context of ship arrest, this doctrine implies that if a ship departs from the territorial waters after an admiralty action has been filed but before the arrest order is effected, the court's jurisdiction remains intact, and the ship can be arrested upon its return.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ('Admiralty Act, 2017') governs admiralty actions in India. Section 5 of the Act grants the High Courts admiralty jurisdiction over various maritime claims and provides the court with the authority to issue orders for the arrest of a vessel. The Admiralty Rules, which operate alongside the Act, also

support the continuation of jurisdiction once established, even if the vessel temporarily departs from the court's territorial waters.

Legal Framework: Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The Admiralty Act, 2017, grants the court power to arrest a vessel within its jurisdiction in actions in rem. According to Section 5(1), the court's jurisdiction attaches at the time of filing the suit, and this attachment remains effective despite subsequent events, such as the vessel's departure from the court's territorial waters. Under Section 5(2), the court has the authority to order the arrest of a ship that is within its territorial waters or will soon arrive within its jurisdiction. Hence, the doctrine of *perpetuatio jurisdictionis* implicitly supports this statutory provision, allowing for the arrest of the vessel even if it temporarily escapes the court's reach.

Furthermore, Section 5(3) of the Admiralty Act, 2017, supports the arrest of a vessel when the action is in rem and the vessel in question belongs to the defendant who is liable for the maritime claim. If the vessel escapes before the arrest is effected, the court can still enforce the order upon its return.

Case Law: Indian and UK Jurisprudence

Indian Jurisprudence

Indian courts have consistently upheld the principle of *perpetuatio jurisdictionis* in admiralty matters. The Bombay High Court, in *M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd.* (2002), observed that the admiralty court's jurisdiction attaches at the time of the institution of the suit, and this jurisdiction is not lost merely because the vessel has left territorial waters. The court highlighted that the arrest order can be enforced when the vessel re-enters the jurisdiction, reinforcing the doctrine of perpetuation of jurisdiction.

Similarly, in *M.V. Polaris Galaxy v. Owners and Parties Interested in the Vessel M.V. Polaris Galaxy* (2015), the Calcutta High Court reiterated that once jurisdiction is invoked by filing a suit, the court retains the power to arrest the vessel if it re-enters its territorial waters, despite having sailed away prior to the arrest order being executed.

#### UK Jurisprudence

In the United Kingdom, admiralty courts have historically supported the principle that once jurisdiction is established, it is not lost by the vessel's departure. In *The Kalisti* (1996), the English Admiralty Court emphasized that the court's jurisdiction persists once the claim is filed, even if the ship has left the jurisdiction. The court held that the arrest order could be executed upon the vessel's return to port.

Similarly, in *The Varna* (1995), the court confirmed that jurisdiction is not affected by the departure of the vessel, provided that the initial action was validly commenced within the jurisdiction. The court's reasoning in these cases revolves around the need to maintain effective jurisdiction over maritime claims and ensure that claimants are not prejudiced by the temporary absence of the vessel.

#### Unreported Cases

Unreported decisions, particularly those involving interlocutory applications, have also reaffirmed the principle of *perpetuatio jurisdictionis*. Courts have adopted a pragmatic approach, allowing claimants to arrest vessels upon their return, despite their initial escape from the court's reach. These unreported cases often involve scenarios where the vessel had been alerted to the arrest order and deliberately sailed away, only to be arrested later when it returned to the jurisdiction.

#### Analysis and Conclusion

The principle of *perpetuatio jurisdictionis* is vital in maintaining the integrity of admiralty law, particularly in the context of ship arrest. The Admiralty Act, 2017, and accompanying rules provide a strong statutory framework supporting this principle in Indian law. Jurisprudence from both India and the United Kingdom consistently reinforces that once a court's jurisdiction is established over a maritime claim, it continues despite the vessel's temporary departure from the jurisdiction.

From a practical perspective, shipowners often try to evade arrest by sailing their vessels out of the jurisdiction. However, the courts' persistent jurisdiction ensures that such tactics do not defeat the rights of claimants. Therefore, if a ship sails out before an arrest order is executed, the claimant can pursue the arrest of the vessel if and when it returns, ensuring that justice is served and maritime claims are effectively enforced.

*Perpetuatio jurisdictionis* ensures that the jurisdiction of the admiralty court persists despite the vessel's departure. This principle is firmly supported by statutory provisions under the Admiralty Act, 2017, and by a rich body of case law from both Indian and UK courts.