

BOMBAY HIGH COURT RULES

PART III of Bombay High Court (Original Side) Rules

ADMIRALTY JURISDICTION

RULES FOR REGULATING THE PROCEDURE AND PRACTICE IN
CASES BROUGHT BEFORE THE HIGH COURT UNDER THE
COLONIAL COURTS OF ADMIRALTY ACT, 1890

(53-54 VICTORIA CH.27)

927. Definitions - In this part, unless there is anything repugnant in the subject or context.

- (1) "The Court" means the High Court of Judicature at Bombay;
- (2) "Judge" means a Judge of the said Court;
- (3) "Judge in Chambers" means the Judge hearing Admiralty matters in Chambers;
- (4) "Prothonotary and Senior Master" means the Admiralty Registrar of the Court;
- (5) "Registry" means the office of the Prothonotary and Senior Master;
- (6) "Sheriff" means the Sheriff of Bombay or the Deputy Sheriff or other officer who may be appointed to execute the process of the Court;
- (7) "Suit" means any suit, action or other proceeding instituted in the Court in its Admiralty Jurisdiction.

928. Institution of Suits - A suit shall be commenced by a plaint signed and verified according to the provisions of the Code of Civil Procedure, 1908.

929. Caveat against arrest of property - Any person desiring to prevent the arrest of any property 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 arrest of the said property and undertaking to enter an appearance in person or a Vakalatnama in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay such sum into the registry. A caveat against the issue of a warrant for the arrest of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

930. Caveat against release of arrest property - 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."

931. Caveat against payment out of sale proceeds of property - Any person desiring to prevent the payment out of Court of any money in Court representing the proceeds of sale of any property 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 payment out of Court of the said proceeds of sale. A caveat against the payment out of Court of such sale proceeds shall thereupon entered in a book to be kept in the registry, called the "Caveat Payment Book".

932. Duration of caveat - A caveat, whether against the issue of a warrant, the release of property, or the payment of money out of the registry, shall be valid for six months from the date of its entry.

The period of validity of a caveat shall not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

933. Withdrawal of Caveat - A caveat may be withdrawn by the party on whose behalf it has been entered, but the praecipe to withdraw the caveat shall, unless otherwise permitted by the Prothonotary and Senior Master, be signed by the person who signed the praecipe for entering the caveat.

934. Application to set aside a caveat - An application to set aside a caveat shall be made by Chamber Summons supported by affidavit.

935. Copy of plaint in suit against property to be served before filing plaint, on party who has entered caveat - Any person instituting a suit against any person in respect of which a caveat has been entered in the "Caveat Warrant Book" shall, before filing the plaint, serve a copy thereof upon the party on whose behalf the caveat has been entered or upon his Advocate and annex to the plaint a statement of such service.

936. Party entering caveat to give security on filing of plaint - Within three days from the filing of the plaint, the party on whose behalf the caveat has been entered shall, if the sum in which the suit has been instituted does not exceed the amount for which he has given the undertaking, give security in such sum or pay the same into the registry, or if it exceeds the amount, give security in the sum in which the suit has been instituted or pay the same into the registry.

937. On default suit may proceed ex-parte - After the expiration of three days from the filing of the plaint, if the party on whose behalf the caveat has been entered shall not have give security in such sum or paid the same into the registry, the plaintiff may apply to the Prothonotary and Senior Master to set down the suit forthwith for hearing as an undefended suit: Provided that the Court may on good cause shown and on such terms as to payment of codes

as it may impose extend the time for giving security or paying the money into the registry.

938. Judgment or the claim and enforcement of payment - When the suit comes before the Court, if the Court is satisfied that the claim is well founded, it may pronounce judgment for the amount which appears to be due, and may enforce the payment thereof by order and attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

939. Property may be arrested notwithstanding caveat - The fact that there is a caveat against arrest in force shall not prevent a party from getting a warrant of arrest issued and the property to which the caveat relates, arrested.

940. Remedy where property protected by caveat is arrested without good and sufficient cause - Where property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by Notice of Motion for an order for release of the property. The Court, unless it is satisfied that the party procuring the arrest of the property had good and sufficient reason for doing so, may order the release of the property and may also order the last mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

941. Application to arrest property in a suit in rem - If the suit is in rem an application for the arrest of the property proceeded against shall be made to the Judge in Chambers and shall be supported by affidavit. The affidavit shall state the nature of the claim and that it has not been satisfied. It shall also state the nature of the property to be arrested and if the property is a ship, the name and nationality of the ship. There shall be annexed to the affidavit a certificate of the Prothonotary and Senior Master certifying that search has been made in the Caveat Warrant Book and that no caveat has been filed against the issue of a warrant for the arrest of the said property.

A party applying under this rule shall give an undertaking in writing, or through his Advocate, to pay such sum by way of damages as the Court may award as compensation in the event of a party affected sustaining prejudice by such order.

Comments

This rule applies to any application for arrest in an Admiralty Suit, whether made expert or where the defendant is present. *Bank of Maharashtra vs. M. V. River Ogbese* AIR 1990 Bom, 107.

942. Nationality of the ship to be stated and notice to be given to Consul in suits for possession, wages or necessaries - In a suit for possession or for wages or in respect of necessaries supplied, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice of institution of the suit shall be given to the Consul of the State to which the ship belongs, if there be one resident in Bombay. A statement of service of such notice or a statement that there is no such Consul shall be made in the affidavit in support of any application for arrest of the ship. If the notice is served on the Consul, a copy of such notice shall be annexed to the affidavit.

943. Warrant with Court's leave though particulars wanting - The Judge in Chamber may in any case allow the warrant of arrest to issue though the affidavit or plaint may not contain all the required particulars, and in a suit for wages may also waive the service of the notice.

944. Sheriff to serve process - The Sheriff shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

945. Service of writ or warrant, when dispensed with in suit in rem - In a suit in rem no service of Writ of Summons or Warrant of arrest shall be required,

when the Advocate for the defendant agrees to accept service and to give security or to pay money into Court.

946. Service of writ of summons or warrant of arrest in a suit in rem. Service how effected -

(1) In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought.

(2) Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest.

(3-a) Where the property is cargo which has been landed or transhipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ of Summons or the warrant of arrest.

(3-b) Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian.

(4) Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

947. Sheriff may apply for directions - The Sheriff may at any time make a report to the Court and apply for directions with respect to property under

arrest in a suit. The Court may direct notice of the application to be given to any person concerned with the property before passing orders on the report.

948. Application for sale of arrested property - In a suit in rem if the property proceeded against has been arrested, the plaintiff may, at any time after service of the Writ of Summons upon the defendant, apply to the Court by Notice of Motion for an order that the arrested property be sold by the Sheriff and the sale proceeds be paid into the registry to the credit of the suit. The Court may make such order on the application as it may think fit.

949. Interveners -

(1) Where property against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has interest in that property or money but who is not a defendant to the suit may, with the leave of the Judge, intervene in the suit.

(2) An application for the grant of leave under this rule may be made ex-parte by affidavit showing the interest of the applicant in the property against which the suit is brought or in the money in Court.

(3) A person to whom leave is granted to intervene in a suit shall file an appearance in person or a vakalatnama therein within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(4) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be so specified.

950. Judgment for the plaintiff if claim well founded - When the suit comes up for hearing before the Court, if the Judge is satisfied that the plaintiff's claim is well founded, he may pass a decree for the plaintiff and may order the property proceeded against to be sold with or without previous notice and the sale proceeds paid into the registry to the credit of the suit or make such other order in the premises as he may think just.

951. Order for sale of property and determination of priority of claims -

(1) Where in a suit in rem the Court has ordered the property proceeded against to be sold, any party who has obtained or obtains a decree or order against the said property or the proceeds of sale thereof may -

(a) In a case where the order for sale contains the further order referred to in sub-rule (2), after the expiration of the period specified in the order under sub-rule rule (2) (a), or

(b) in any other case, after obtaining judgment, apply to the Court by Notice of Motion for an order determining the order of priority of the claims against the proceeds of sale of the said property.

(2) Where in a suit in rem the Court orders the property proceeded against to be sold, it may further order -

(a) that the order of priority of the claims against the proceeds of sale of the property shall not be determined until after the expiration of ninety days or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;

(b) that any party to the suit or to any other suit in rem against the property proceeded against or the sale proceeds thereof may apply to the Court to extend the period specified in the order;

(c) that within seven days after the date of payment into Court of the proceeds of sale, the Sheriff shall send for publication in such newspapers as the Court may direct a notice complying with the provisions of sub-rule (3).

(3) The notice referred to in sub-rule (2) shall state -

(a) that the property (particulars to be specified) has been sold by the order of the High Court in a suit in rem giving the number of the suit and the names of the parties to the suit;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into Court;

(c) that the order of priority of the claims against the said proceeds will not be determined after the expiration of the period (specifying it) specified in the order for sale;

(d) that any person having a claim against the property or the proceeds of sale thereof, should apply to the Court for leave to intervene and prove his claim before the Court and obtain a decree before the expiration of that period.

(4) The Sheriff shall lodge in the registry a copy of each newspaper in which the notice referred to in sub-rule (2) (c) has appeared.

(5) The expenses incurred by the Sheriff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the property.

(6) An application to extend the period referred to in sub-rule (2) (a) shall be made by Notice of Motion, which shall be served on the parties to the suit and on all persons who have obtained leave to intervene in the suit.

952. Property not to be released unless notice is given to the Caveator - No property arrested under a warrant shall be ordered to be released, unless notice is given to the person who has filed a caveat against the release thereof and whose caveat is outstanding in the caveat Release Book.

953. Penalty for delaying release - A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the Court or the Judge in Chambers, good and sufficient reason for having entered the caveat.

954. Release of arrested property - Subject to the provisions of Rule 952, 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.

955. Instrument of release - 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.

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

957. Sales by order of the Court - Every sale under the decree of the Court shall, unless the Judge shall otherwise order, be made by the Sheriff in like manner as a sale of movable property in execution of a decree in an ordinary civil suit, and the Sheriff shall be entitled to receive the same fees and poundage as he would be entitled to in such a case.

958. Procedure by Sheriff on sale of property - The Sheriff shall pay into Court the gross proceeds of sale of any property sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the Taxing Master of the Court, to whom the same shall be transmitted by the Prothonotary and Senior Master for that purpose.

959. Appearance before Taxing Master - Any person interested in the proceeds may be heard before the Taxing Master on the taxation of the account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to accounts filed before the Commissioner for Taking Accounts.

960. Payment of moneys - All money to be paid into Court shall be paid to the Prothonotary and Senior Master.

961. Payment of money out of court - Money paid into Court shall not be paid out of Court, except in pursuance of an order of the Court or the Judge in Chambers.

962. Security for latent demands - Security for latent demands shall not, unless the Judge shall otherwise order be required on the payment of money out of Court.

963. Security - If security is to be given, it shall be given according to the rules and practice of the Court regarding the giving of security in suits filed on the Original Side of the Court.

964. Motions - Motions may be made either in Court or to a Judge in Chambers.

965. Fees of Officers, Sheriff and Advocates - The fees to be taken by the officers of the Court, by the Sheriff and by Advocates shall be as prescribed for proceedings under the Original Civil Jurisdiction of the High Court.

966. Rules and practice of the O.S. to apply, if not inconsistent with the rules in this part - The rules and practice of the Court in the manner of suits and proceedings on the Original Side of the Court shall, if not inconsistent with the rules in this part, apply to suits and proceedings on the Admiralty Side of the Court.

967. Forms of Admiralty Division may be followed - The forms used in the Admiralty Division of the Supreme Court in England under the Rules of the Supreme court, for the time being in force may be followed with such variations as the circumstances of each case may require.

968. Supersession of rules - The rules contained in this Part shall apply to suits brought in the Court in the exercise of its Admiralty and Vice-Admiralty Jurisdiction in supersession of all former rules.