

CREW WAGES PAID BY P&I CLUB POST-ARREST OF THE VESSEL WITHOUT PRIOR LEAVE OF THE COURT WILL NOT BE TREATED AS SHERIFF'S EXPENSES

Authors: Amitava Majumdar (Raja), Ruchir Goenka

Lately, there has been considerable jurisprudence of what constitutes "Sheriff's expenses" in an action involving the arrest of a Vessel. In this article, the authors shall endeavour to focus on a recent pronouncement of the Bombay High Court wherein a request of the P&I Club for treatment of wages paid to post the arrest of a Vessel came to be rejected. In the case of Irwin Edmund Sequeira and Ors. v MV Karnika , an application was filed before the Bombay High Court on behalf of the Protection & Indemnity Club ("**the Club**") requesting the Court to treat its expenses incurred post-arrest without leave of the Court as Sheriff's expenses. In the instant case, an application was filed to treat the wages paid to the crew members by the Club as Sheriff's expenses and disburse the same, in priority from the sale proceeds.

Despite the arrest, the crew members had been rendering their services till the date of their repatriation for the safety and preservation of the Vessel. The shipowner failed to discharge its obligation to pay the wages and provide essential supplies to the crew. The crew approached the Club and the Club, despite the cancellation of insurance coverage, arranged the supply of the essentials to the crew on humanitarian grounds. The Club argued that the provision of financial security to the crew stems from the Maritime Labour Convention ("**the Convention**") as well as from the Merchants Shipping (Maritime Labour) Rules, 2016 ("**the Merchant Rules**").

Aquarius III wherein the absence of leave of the Court was not pressed into service to deny the legitimate claim of treating the expenses as the Sheriff's expenses. The defence to these arguments by the Port, a lien holder was that the Merchant Rules will not be applicable as the Vessel was flying the Bahamas flag. Furthermore, it is the settled principle of law that the maritime lien cannot be transferred without prior leave of the court. The reliance was placed on The Pentone and The Leoborg No. 2 asserting that the Club cannot claim priority on the strength of the provisions contained in Section 9(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.



**BOSE & MITRA
& CO.**

Lawyers for
Shipping & Trade

12th Floor,
Sakhar Bhavan,
230, Nariman
Point, Mumbai

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The Court while deciding the matter referred to Rule 1084 of the Bombay High Court (Original Side) Rules, 1980 ("**the Original Side Rules**") which states that if expenses are necessary to safeguard the vessel and crew while it is under arrest, the sheriff must report to the Court. The Court may then direct a party to provide funds to cover the expenses, which will be considered Sheriff's expenses. These expenses must be paid in priority to the Sheriff from the sale proceeds of the vessel.

If a party has provided funds to cover these expenses, they are entitled to be paid in priority. While discussing Swedish Club, the Court stated that it is a settled position of law that a maritime lien cannot be transferred without the Court's permission to protect the lien holder's interests. However, if the Court grants permission for the transfer, the restriction on inter-party transfer is lifted. The Court held that provisions contained in Maritime Labour Convention govern the present situation thereby rejecting the argument of the Vessel's flying flag being Bahamas. The Court further held that post-arrest, a res is custodia legis.

Usually, expenses related to the res are incurred with the Court's prior approval and, more often than not, under the aegis of the Sheriff. However, this does not mean that the Court cannot approve expenses incurred as Sheriff's expenses without its prior approval. If necessary, the Court may direct that such expenses, even if incurred without approval of the Court, be treated as Sheriff's expenses to ensure the survival of the vessel and crew. However, this decision is based on the circumstances of the case and the principle of balancing equities.

Hence, Rule 1084 of the Original Side Rule cannot be read in such fashion as to constrict its application only to a Report by the Sheriff. The Sheriff's report is not the only way to supply necessities, nor is it peremptory in nature. The judgment throws light on the position that treating post-arrest expenses incurred by the Club as Sheriff's expenses, in the absence of leave of the Court or a Sheriff's Report lies at the discretion of the Court. However, the time of payment and disbursement holds significance when it comes to the exercise of such discretion. Therefore, in the instant case, the Court was not inclined to treat the Club's expenses as Sheriff's expenses before the determination of priorities.



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Lawyers for
Shipping & Trade

12th Floor,
Sakhar Bhavan,
230, Nariman
Point, Mumbai