

Poundage is nothing but a fee or a charge and in admiralty matters the Sheriff is to be paid poundage of one percent

SHIP ARREST IN INDIA

July 2012, Published by Brus Chambers, Advocates & Solicitors, Mumbai, India

Sector: Admiralty, Shipping and Maritime

Ms. Afia SenGupta, associate with Indian law firm BRUS CHAMBERS, studies payment of poundage in Admiralty matters becomes payable only when the machinery of the office of Sheriff of Mumbai is invoked and not otherwise.



The Indian perspective on admiralty law talks about the Sheriff of Mumbai being an apolitical titular authority. The Sheriff basically is an officer of the high court and the nominal head of that department of the high court which carries out functions like attaching, sealing properties and auctioning them if the need arises and also summoning people amongst other functions. Executive powers come along with this position.

Poundage is nothing but a fee or a charge and in admiralty matters the Sheriff is to be paid poundage of 1 percent. However there is a classic dispute arising in this regard. Does the Poundage have to be paid upon a service being rendered by the Sheriff or in all cases is a question which has yet not been concretely answered.

In the matter *Ecohidrotechnika LLC v. Black Sea and Azov Sea Production & Operating Administration of Shipping & Anr*, the Sheriff of Mumbai filed a report after the plaintiffs in an affidavit resisted the 1 percent claim of poundage. In this matter this was a major controversy and the rules regarding the sheriff's fee were studied. In this matter no ship/property was arrested or seized by any specific court order but was the enforcement of a foreign award and an injunction was granted in the matter. However the Sheriff's claim was that based upon the said injunction the Sheriff had issued

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certain letters based on which the ship was detained and this entitles him to claim the poundage.

Rule 927(6) and (7) defines a Sheriff as meaning to be the Sheriff of Bombay or the Deputy Sheriff or other officer appointed for executing the process of the Court. Rules 445 to 486 of The Bombay High Court Original Side rules deal with the liability of the Sheriffs Poundage

Rule 474 states that Liability for Sheriff's poundage. -

Liability for Sheriff's poundage. - (1) In cases where a person is arrested or property is attached, the party or the Advocate on record for the party at whose instance the arrest was made or the attachment levied shall be liable to the Sheriff for his fees or poundage, as the case may be.

(2) Any amount received by the judgment-creditor from the judgment-debtor in full or part satisfaction of a decree or order in respect of which a warrant of arrest or a warrant of attachment has been executed shall be presumed to have been realised under the warrant, if the warrant is merely suspended and not dead.

(3) Where the execution-creditor or his Advocate on record receives direct any installment or other sum ordered to be

paid by the Judgment-debtor in full or part satisfaction of the decree or order, he shall file a precipe in the Sheriff's office informing him of the payment made.

(4) The Advocate on record shall be responsible for filing this precipe, if the payment has been made through his office or he has been informed of it by the execution-creditor.

Rule 476 further states that Satisfaction not to be entered without Sheriff's certificate.- Where warrants in execution have been lodged with the Sheriff, no satisfaction in full or in part of any decree or order in any suit or matter shall be entered thereon without the production of a certificate of the Sheriff that no poundage, is due to him.

The table of fees payable to the Sheriff clearly states that Rs 30 is payable for serving every injunction, order or rule and every process not otherwise provided for and the poundage of 1 percent is on every debt levied by execution including an attachment before judgment or in the event of the claim being satisfied, compromise or settled upon the amount of such satisfaction, compromise or settlement.

It was stated in this judgment that the Sheriff is not entitled to the Poundage in this case taking into consideration the above mentioned table of fees and the facts and circumstances of the case wherein no order of arrest was made or property attached and the matter was settled by a consent term between the parties.

The Additional Report given by the Sheriff of Mumbai in the matter

"It is because of this act of Sheriff of Mumbai, that the dredger was detained and the petitioner was able to settle the matter and realized the amount in their Arbitration Petition which was for execution and enforcement of the Foreign Award dated 10.12.2008. As soon as the Order is communicated to the Port authorities, the said dredger is detained in view of the order of injunction. It is not necessary that only in Admiralty Suit, the Sheriff is entitled for poundage. In all types of Suit in which the machinery of the office of Sheriff of Mumbai is invoked for the purpose of executing and enforcing the decree/Award/Order and accordingly the amount is realized either by sale or settlement between the parties or otherwise the office of the Sheriff of Mumbai is entitled to the poundage at the rate prescribed by the Bombay High Court Original Side

The table of fees payable to the Sheriff of Mumbai High Court, Original Side will apply on every debt levied by execution including an attachment before judgment or in the event of the claim being satisfied, compromised or settled upon the amount of such satisfaction, compromise or settlement."

In the given case, the court has held that the Sheriff is entitled for 1% of the poundage on the claimed, compromised or settled amount. The claim of 1% Poundage

by the sheriff is well within the frame work of law and the record cannot be said to be without jurisdiction or authority.

On analyzing and assessing the above it appears that poundage becomes payable only when the machinery of the office of Sheriff of Mumbai is invoked and not otherwise. Therefore if and when there is direct service like that is practiced at Ahmedabad High Court effecting order of arrest or injunction of a vessel poundage payment liability does not arise. However this interpretation is absolutely technical till date and an appropriate legal interpretation of circumstances when poundage is payable to the Sheriff needs to be yet given.

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