

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUIT NO.816 OF 2017**

Sinica Graeca Shipping Limited, a company incorporated)
under the laws of the Marshall Islands having its)
Corporate office at Trust Company Complex, Ajeltake)
Road, Ajeltake Island, Majuro Marshall Islands)
MH96960)Plaintiff

Vs.

M T CHEMROAD MEGA (IMO 9228318) a vessel flying)
the flag of Panama together with her hull, engines, gears,)
tackles, bunkers, machinery, boats, apparel, plant,)
furniture, fixtures, appurtenances, equipment and)
paraphernalia on board presently lying and being at)
Jawaharlal Nehru Port, Navi Mumbai through her owner)
and all persons claiming to be interested in the vessel)
)Defendant

**WITH
COMMERCIAL SUIT NO.98 OF 2015**

North Star Marine Limited, a company registered under)
foreign laws having office address at Hunkins Waterfront)
Plaza, Suite 556, Main Street, Charleston, Nevis 4)
)Plaintiff

Vs.

1. M V XING AN DA (INO No.8307507))
a vessel flying the flag Panama together with her hull,)
tackle, engines, gears, plant, machinery articles, things,)
apparel, equipment, stores and other paraphernalia on)
board, at present lying in the port and harbour of)
Bhavnagar, State of Gujarat in Indian territorial waters)
within the Admiralty Jurisdiction of this Hon'ble Court.)
)
2. XING AN DA SHIPPING LIMITED)
a company registered under foreign laws having its)
office address at P.O. Box 957, Offshore Incorporation)
Centre, Road Town, Tortola, British Virgin Islands)
)
)Defendants

Mr. R.V. Narichania, senior advocate a/w. Mr. Arjun Mittal and Mr. Ruchir

Goenka i/b. Bose and Mitra and Co. for plaintiff in COMS/816/2017.

Ms. P.H. Kantharia, Government Pleader a/w. Ms. Deepali Patankar, Honorary Assistant to the Government Pleader for office of the Deputy of Sheriff of Mumbai in COMS/816/2017.

Mr. Prasad Shenoy a/w. Mr. Aman Rungta i/b. Crawford Bayley and Co. for plaintiff in COMS/98/2015.

None for defendants in COMS/98/2015.

Mr. S.D. Chitgopikar, Deputy Sheriff of Mumbai present.

CORAM : K.R.SHRIRAM, J.

DATE : 17th JANUARY, 2018

ORAL JUDGMENT :

1 These two suits are totally unrelated. They have been tagged together and heard today is because a very important issue that arises time and again in admiralty suits has to be decided. The issue relates to payment of poundage to the Sheriff of Mumbai under the table of fees which forms part of the Bombay High Court (Original Side) Rules.

2 The issues can be split as under :

(i) In a case where, before the Sheriff of Mumbai executes the warrant of arrest issued by the Admiralty Registrar or before he serves the order of arrest passed by this Court in cases where warrant of arrest has been dispensed with, the parties settle the matter, whether the Sheriff will be entitled to any poundage?

(ii) In a case where, order of arrest has been served or warrant of arrest has been executed/levied against the vessel, parties have entered into an Agreement to refer the disputes either to arbitration or submit to the jurisdiction of a Court other than this Court, may be in a different

country and have exchanged letters of undertaking to pay such amount as awarded by the Arbitrator or the Court, whether any poundage is payable?

COMMERCIAL SUIT NO.98 OF 2015

3 This suit relates to a transaction for sale and purchase of defendant vessel, wherein plaintiff (purchaser) advanced an amount of USD 4,92,602/- to owner of defendant vessel, viz., defendant no.2 (the seller) towards purchase of defendant vessel. As defendant no.2 failed to honour its obligations under the suit contract, plaintiff was constrained to initiate these proceedings seeking to recover refund of principal sum of USD 4,92,602/- and further sum of USD 1,27,389/- towards interest, cost and damages. An application seeking arrest of defendant no.1 vessel was moved on 4th August, 2015 and the Court was pleased to pass an order of arrest of defendant no.1 vessel at around 3.30 p.m. By the time the authenticated copy of the order of arrest was made available to plaintiff's advocates, plaintiff's advocates received instructions stating that the disputes have been sorted out between plaintiff and defendant no.2, who was the owner of defendant no.1 vessel, and therefore, there was no need to arrest defendant no.1 vessel and if the order of arrest has already been passed, then not to execute the order. Consequently, plaintiff did not serve the order of arrest upon any of the authorities, viz., Port or Customs and did not even request the Sheriff of

Mumbai to execute it. The order of arrest, therefore, never came to be served upon either the vessel or any of the authorities and Sheriff did not do anything. Therefore, no arrest or seizure or detention or attachment of first defendant vessel was executed/levied. It is the case of Shri Shenoy, counsel for plaintiff, that no poundage, therefore, is payable.

4 Shri Shenoy submitted that this Court in ***Malpani Brothers Vs. Ramjidas Shyamlal Saboo and Anr.***¹ has held that poundage can be levied only where there is actual attachment or seizure and plaintiff is not liable to pay any poundage to the Sheriff when there is no attachment or seizure or arrest even if an order of arrest has been passed by the Court. Shri Shenoy added that plaintiff will not be liable to pay any poundage to the Sheriff even if plaintiff recovers any amount from defendant as such amount has been received without the actual arrest or attachment of the property. Shri Shenoy submitted that it is only where actual seizure is effected or where actual attachment is levied or where there is actual arrest of the vessel and thereafter, if any amount is realised, that the Sheriff, under the existing Rules, can demand poundage.

5 In response, Ms. Kantharia, Learned Government Pleader, in fairness submitted that she cannot, as an Officer of this Court, disagree with the submissions made by Shri Shenoy. Ms. Kantharia stated that the

1. 1987 MH.L.J. 223

judgment of this Court in *Malpani Brothers* (Supra) is quite clear on this aspect. Therefore, my answer to issue no.(i) as raised above, will be in negative.

COMMERCIAL SUIT NO.816 OF 2017

6 This suit relates collision damage. On or about 17th August, 2017 a collision occurred between first defendant vessel – *m.t. Chemroad Mega* and another vessel – *m.v. Sinica Graeca* in the waters of Malaysia/ Indonesia. Each party had a claim for loss and/or expense and/or damage arisen out of or in relation to the collision.

On 18th August, 2017, an *in rem* action was commenced by plaintiff against first defendant vessel (*m.t. Chemroad Mega*) in the High Court of Malaya at Kuala Lumpur but before the arrest could be effected, *m.t. Chemroad Mega* sailed.

On 24th September, 2017, an *in rem* action was commenced by the owners of *m.t. Chemroad Mega* against *m.v. Sinica Graeca* in the High Court of the Republic of Singapore and *m.v. Sinica Graeca* was arrested. On 25th September, 2017, an *in personam* action was commenced by the owners of *m.t. Chemroad Mega* against the interests of *m.v. Sinica Graeca* in the High Court of the Republic of Singapore. On 3rd October, 2017, to procure the release of *m.v. Sinica Graeca* from arrest in Singapore, *m.v. Sinica Graeca* interests provided security to *m.t. Chemroad Mega* interests in

the form of two Letters of Undertaking (LOU), one issued by Aspen Insurance UK Limited in the sum of USD 6,477,000/- and one issued by The United Kingdom Mutual Steam Ship Assurance (Europe) Limited in the sum of USD 2,159,000/-.

On 11th November, 2017, plaintiff (*m.v. Sinica Graeca* interests) filed the present suit and arrested *m.t. Chemroad Mega*.

7 Thereafter, parties have entered into two Agreements, both dated 14th November, 2017, one is called “Collision Jurisdiction Agreement” under which parties agreed to refer their respective claims for determination under English Law and jurisdiction with unrevised 1996 Protocol Limits of Liability to apply to their respective claims. The second agreement is called “Side Agreement” under which the Letters of Undertaking issued by both the parties to secure each others claims would be replaced by the mutual promises and obligations reflected in the Side Agreement. Under this Side Agreement, the original LOU's issued by *m.v. Sinica Graeca* interests to be returned and to be replaced with security in an identical sum, responsive to a judgment of the English High Court, and subject to English Law and English High Court jurisdiction. Upon the provision of security by *m.t. Chemroad Mega* interests in the total sum of USD 15,000,000 inclusive of interest and cost, *m.t. Chemroad Mega* was to be released from arrest and this suit was to be discontinued. As per the Side

Agreement, the Singapore proceedings as well as Malaysian proceedings were also to be discontinued. Under the Agreement, *m.t. Chemroad Mega* interests also agreed to pay a sum of GBP 150,000 in respect of legal costs incurred by plaintiff because post collision on 20th August, 2017 plaintiff had made suggestion and offered *m.t. Chemroad Mega* interests that all issues relating to the collision could be referred to English Court jurisdiction but defendant declined to accept that suggestion resulting in plaintiff having to go looking for *m.t. Chemroad Mega* to Malaysia, India and to other jurisdiction. It should be noted that plaintiff's Protection and Indemnity (P & I) Club has also given a counter security to defendants' P & I Club to pay such sum as damages as will be awarded by the English Court.

8 According to plaintiff, since there is no payment of money realised under the two Agreements, the question of paying any poundage to the Sheriff does not arise. Shri Narichania submitted that the facts in this case are almost identical to the facts in the case of ***Seabird Marine Limited Vs. m.v. Kota Berani and Ors.***² in which case this Court has concluded that no poundage is payable. Shri Narichania also submitted that this Court in ***Great Pacific Navigation (Holdings) Corporation Ltd. Vs. m.v. Tongli Yantai***³ has held that the Sheriff is entitled to claim poundage, in the event

2. Admiralty Suit No.20 of 1992 unreported oral order dated 8th October, 1992

3. 2014 (5) Mh. L.J. 359

of claim being satisfied, compromised or settled upon the amount of such satisfaction, compromise or settlement. Therefore, to calculate the amount payable as poundage, the Court has to look for, is the amount of satisfaction or compromise or settlement as received by plaintiff from defendant in full or part satisfaction of the order. The amount that has to be considered for calculating poundage is the amount of satisfaction or compromise or settlement that plaintiff has received and in this case, as there is no amount received by plaintiff, the Court cannot even calculate the poundage payable because 1% of zero will still be zero. Shri Narichania submitted that plaintiff and defendants have entered into only Jurisdiction Agreement with Side Agreement wherein they have agreed to refer all their disputes to English Court and English law to apply and there is a possibility that plaintiff may not succeed in the proceedings before the English Court. If the English Court comes to a conclusion that plaintiff is not entitled to any claim, but on the contrary plaintiff has to pay damages to defendants for the collision, the question of satisfaction or compromise or settlement of plaintiff's claim or plaintiff having recovered any money would not arise and, therefore, there is no question of paying any poundage.

9 So far as the submissions made by Shri Narichania on behalf of plaintiff in Commercial Suit No.816 of 2017 are concerned, Ms. Kantharia

submitted that a Division Bench of this Court in ***State of Maharashtra Vs. Quesham Bonyad Ship Management Co. Ltd. and Anr.***⁴ has concluded that the liability to pay poundage arises the moment the ship is arrested by the office of Sheriff on the basis of order of arrest made by this Court and, therefore, in case where ship is arrested and after its arrest, there is a settlement, there is no scope to say that poundage is not payable.

10 Ms. Kantharia further submitted that because the order of arrest of *m.t. Chemroad Mega* was executed or levied by the Sheriff of Mumbai, plaintiff was able to obtain security by way of the Side Agreement and also make defendants agree to the Collision Jurisdiction Agreement and if tomorrow, plaintiff succeeds in the proceedings to be filed in the English Court or there is a compromise or settlement, the reason for success or compromise or settlement and for consequent recovery of amount under the Letter of Undertaking is only because the Sheriff levied or executed the warrant of arrest. Ms. Kantharia submitted that 1% poundage will be the amount that plaintiff may recover in the English proceedings or later compromise or settlement.

Ms. Kantharia submitted that Clause 5 of the table of fees provided “Poundage on every debt levied or in the event of the claim being satisfied, compromised or settled upon the amount of such

4. Appeal No.397 of 2009 in Notice of Motion No.2565 of 2008 in Admiralty Suit No.5 of 2008 dated 16th/19th December, 2016 (unreported).

satisfaction, compromise or settlement”. Therefore, if the claim of plaintiff is satisfied by the English Court or there is compromise or settlement, then that satisfaction of plaintiff's claim has to be linked to the arrest order being executed/levied by the Sheriff of Mumbai and poundage payable will be 1% of that amount. Ms. Kantharia submitted, as that amount is yet to be determined, plaintiff should be directed to secure Sheriff's claim for poundage. In the affidavit in reply, this such amount has been explained to be the difference between security provided by or on behalf plaintiff and security provided by or on behalf of defendant. Ms. Kantharia submitted that that cannot be the amount but though it is not stated in the affidavit in reply, security should be for USD 1,50,000/- being 1% of USD 15,000,000/- which is the maximum amount to which defendants have limited their liability, under the Side Agreement.

11 There are four judgments before this Court for consideration, viz., in the order of vintage, *Malpani Brothers* (Supra), *Kota Berani* (Supra), *Tongli Yantai* (Supra) and *State of Maharashtra* (Supra). The fifth judgment which finds a mention in *State of Maharashtra* (Supra), viz., ***Peerless General Finance and Investment Co. Ltd. Vs. Swan Mills Ltd. and Ors. and Sheriff of Mumbai***⁵ has not been made available to this Court. Both Shri Narichania and Ms. Kantharia stated that they have not been able to

5. Chamber Summons No.399 of 2000 in Suit No.787 of 1997

obtain a copy of this judgment.

12 Before we proceed further, it will be useful to reproduce Rule 474, 475 and 476 of the Bombay High Court (Original Side) Rules and the same read as under :

474. 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 realized 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 filling this precipe, if the payment has been made through his office or he has been informed of it by the execution creditor.

475. Advocate to file in Sheriff's Office copy of order releasing judgment-debtor or raising attachment.—

When an order is passed releasing a judgment-debtor or raising an attachment, the Advocate on record for the party at whose instance the order is made shall file a certified copy thereof in the Sheriff's Office and shall inform the Sheriff whether there has been any satisfaction, compromise or settlement and, if so, for what amount and also whether poundage has been paid in respect thereof.

476. Satisfaction not to be entered without Sheriff's certificate.—

Where warrants in execution have been lodged with the Sheriff, no satisfaction in full or 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.

13 The table of fees payable to Sheriff of Mumbai, which is part of the Bombay High Court (Original Side) Rules, reads as under :

“5. Poundage 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. 1%”

14 In *State of Maharashtra* (Supra) the facts were that after the vessel was arrested, plaintiff and defendant had entered into terms to refer all disputes to mediation and thereafter, by consent, the order of arrest was vacated. While ordering the vessel to be released, the Single Judge of this Court had said “The Sheriff’s poundage, if any, to be paid by plaintiff, as per Rules. The suit allowed to be withdrawn with no order as to costs.”

Alongwith the letter dated 4th March, 2008 addressed by the advocate for plaintiff in that suit to the Sheriff of Mumbai, a copy of the order of release dated 3rd March, 2008 and a cheque in the sum of Rs.3,99,800/- drawn in favour of the Sheriff of Mumbai was also sent. There was no statement in the forwarding letter that the amount was being paid under protest or without prejudice to the rights and contentions. Subsequently, plaintiff in that suit took out a notice of motion for a direction against the Sheriff of Mumbai to refund the amount of Rs.3,99,800/- on the ground that after the poundage was paid, they realised that no poundage was payable in light of the order passed by the Single Judge of this Court in *Kota Berani* (Supra). The Single Judge, who heard the notice of motion, allowed the notice of motion and the State went in appeal against the said order. The Division Bench came to a

conclusion that the liability to pay poundage arises the moment the ship is arrested by the office of Sheriff on the basis of order of arrest made by this Court and in case where ship is arrested and after its arrest, there is a settlement, there is no scope to say that poundage is not payable or that the poundage which is paid should be refunded. Paragraph 17 of the said judgment reads as under :

17. Firstly, the liability to pay poundage arises the moment the ship is arrested by the office of Sheriff on the basis of order of arrest made by this Court. We have already quoted Clause 5 of the schedule. Therefore, in case where ship is arrested and after its arrest, there is a settlement, there is no scope to say that poundage is not payable or that the poundage which is paid should be refunded. There is no provision in the Original Side Rules empowering the Court to relax the requirement of Sub Rule (1) of Rule 474.

As plaintiff had paid Rs.3,99,800/- as poundage the Court directed to return that amount to Sheriff of Mumbai, who had refunded the amount pursuant to the order of the Single Judge.

15 The Division Bench, while deciding the appeal, however, has also considered *Malpani Brothers* (Supra) and *Kota Berani* (Supra). The Division Bench has not come to a conclusion or held that *Malpani Brothers* and/or *Kota Berani* as erroneous or requires/has to be set aside. The Court has come to a conclusion in the facts of that case that where ship is arrested and after its arrest, there is a settlement, poundage has to be paid. Perhaps the Division Bench assumed that plaintiff recovered large amount of money from defendants, otherwise why would they pay a large sum of almost

Rs.4 lakhs as poundage. Further, in *State of Maharashtra* (Supra) facts were different in as much as parties were referring their disputes to mediation and not to arbitration or another Court, where the claim had to be adjudicated.

16 Shri Narichania, counsel for plaintiff is also in agreement with the conclusion of the Division Bench. Shri Narichania also agrees that where there is a settlement, poundage has to be paid but such settlement has to be where the goods have been turned into money. Shri Narichania submitted that in a situation like in the present case, where *m.t. Chemroad Mega* was arrested, there is no goods which have been turned into money. In other words, Shri Narichania submitted that plaintiff has not recovered any money by virtue of the arrest. Plaintiff has only managed to get defendant agree to Jurisdiction Agreement and obtained a Side Letter whereby the P & I Club of *m.t. Chemroad Mega* will pay in case plaintiff succeeds in the English proceedings damages upto a maximum of USD 15,000,000/-. There is no guarantee that plaintiff may succeed. Shri Narichania submitted that only when there is money paid under the settlement Agreement does poundage become payable and *Kota Berani* (Supra) is on identical facts where this Court has come to a conclusion that no poundage is payable in such cases where no money is received but parties agreed to refer the disputes to a different jurisdiction.

17 In *Kota Berani* (Supra) plaintiffs obtained a judge's order for arrest of first defendant vessel on 28th September, 1992 and pursuant to that order, the vessel was arrested by the Sheriff of Mumbai. Subsequently, on 7th October, 1992 by consent of plaintiffs and defendants, the order of arrest was vacated as a compromise was arrived at between plaintiffs and defendants under which the claim of each party against the other was to be determined exclusively by the High Court of Justice in England and each party will provide security in respect of the other's claim in a form reasonably satisfactory to the other. By consent, the order of arrest was ordered to be vacated subject to conditions of the question of liability of fees or poundage payable to the Sheriff which was kept open to be decided after hearing the office of the Sheriff. In that case also plaintiffs had submitted that though there was an order of arrest of the ship there was no realisation of the amount and the compromise is only to have the matter decided by the High Court of Justice in England. The Court also accepted that there was no passing of money between the parties. The Court accepted the submissions of the counsel that the Sheriff has not levied the debt in that case so as to be entitled to poundage under the statute until the goods which are seized have been turned into money. The Court concurred with the view of the Single Judge in *Malpani Brothers* (Supra) wherein the view, while interpreting the provisions of Clause 5 of table of fees read with Rule 474, 475 and 476, was that plaintiffs were not liable to

pay any poundage to the Sheriff against the amount received by them where such payments were received without the actual attachment of the properties of the judgment-debtor and that it is only where the actual seizure is effected or the actual attachment is levied and thereafter if the amount is realised the Sheriff under the existing Rules can demand poundage. The Court accepted the submissions of the counsel that though the Sheriff can be said to have seized the vessel as a result of the warrant issued by this Court and levied the warrant, plaintiffs have not been able to realise the money which they claimed in the suit and for being paid poundage, the money must be realised and that too as a result of execution including the attachment as provided in the table of fees (Item No.5) must be satisfied completely and if any of the condition is not satisfied, no poundage can be claimed by the Sheriff. The Court directed the Sheriff to issue a certificate to the effect that no poundage was due to him. The Sheriff did not challenge that order and that order attained finality. It will be useful to reproduce here paragraphs 8 and 9 of *Malpani Brothers* (supra) which read as under :

8. I am afraid, that cannot be the construction of the said Rule. What the said Rule says that if a warrant is lodged in the Office of the Sheriff and thereafter a satisfaction of the decree in full or part has to be entered into in the Office, such an entry will not be made without production of a certificate from the office of the Sheriff that no poundage is due to him. It does not say that the Sheriff can demand his poundage and then only he can issue a certificate that no poundage is due to him. If in a given case, no poundage is due to him, he (i.e the Sheriff) must issue such a certificate. It could be that the warrant is just lodged in the Office of the Sheriff and no further

attempt whatsoever is made for the purpose of executing the decree or executing the warrant of attachment, and after a period of one year the warrant is returned and in between, out of Court, the Judgment-Debtor pays some amount to the Decree-Holder and the question arises as to making an entry with regard to the satisfaction of the decree. Certainly in such a case, there is no question of payment of any poundage. Mrs. Chagla says that in the present case the bailiff had gone to the place of the Judgment-Debtor. That does not mean that without seizure of the properties, the Sheriff can demand poundage. He is entitled to his fees and expenses as provided under "The Table of Fees", but not to any poundage.

9. The plain meaning of the words "Poundage on every debt levied by execution" would be the relevant factor. In that connection, I must compliment Mr. Thakkar who has done a good job in trying to trace the meaning of the said words. He has drawn my attention to an English Judgment in the case of *Thomas v. Sheriff of Middlesex*, reported in 1899 (1) Queen's Bench Division 460, and the relevant portion is as follows:

"Poundage is a fee which is given by the statute of Elizabeth. Now, the language of the statute left it an open question whether the Sheriff was entitled to poundage, because the word was simply "levy". It was decided - I forgot the name of the case - even earlier than *Miles v. Harris*, that the word "levy" in the statute meant "turning, the goods into money"; and Erie C.J, in giving judgment, said: "The question is, whether a seizure of goods under the fi. fa. is a levy within that statute. I am of the opinion that the Sheriff has not levied so as to be entitled to poundage under that statute, until the goods seized have been turned into money."

Mr. Thakkar has also looked into the meaning of the word "levy", which would all indicate "actual seizure". The relevant passage from *Halsbury's Laws of England* in Volume 17 (4th Edition) at para 446 is as follows:

"446. Sheriffs remuneration. The sheriff is entitled to (1) poundage, and (2) certain fees and expenses allowed him by statute or order of court under statutory authority, but no other remuneration or charge. In execution for money, the sheriff, in order to become entitled to his poundage, must levy (namely seize) and get the money. If he does not seize, he is not entitled to poundage, even though the money is paid or tendered to him after the writ has been delivered to him for execution."

Then again, in Volume 42 (4th Edition) at para 1147, it is stated:

"The Sheriff is also entitled to poundage where, after seizure, a payment is made by the debtor of a third person under the compulsion of the writ and the plaintiff agrees to withdraw the sheriff from possession in consequence of the compromise

between the parties."

Therefore, it is clear; despite any contrary practice, poundage can be levied only where there is actual attachment or seizure.

18 I am in respectful agreement with the findings of the Learned Single Judge in *Kota Berani* (Supra) and in any way, I am bound by the said judgment. Therefore, the parties having only agreed to have the matter decided by the High Court of Justice in England and since plaintiff has not recovered any amount (and possibly may not recover any amount as that would depend on the decision of the English Court) even though the Sheriff of Mumbai had executed or levied warrant of arrest, Sheriff of Mumbai will not be entitled to any poundage.

19 Moreover, in *Tongli Yantai* (Supra) this Court has held that under Rule 474 (2) read with serial no.5 of the table of fees payable to the Sheriff of Mumbai, it is rather clear that the Sheriff is entitled to claim poundage only on the amount of satisfaction or compromise or settlement as received by plaintiff in full or part satisfaction of the settlement and the amount to be considered for calculating poundage is the amount of satisfaction or compromise or settlement that plaintiff has received. In this case, there is no amount received and, therefore, there is no way to calculate 1% as poundage either. The amount received by plaintiff pursuant to the order of arrest is zero and 1% of zero will be zero. The question that would arise is - The Sheriff having expended efforts and having executed

20 The table does not prescribed for any fees in a situation of this nature. The table of fees does not specifically prescribe the fees payable for executing the warrant of arrest on a vessel but where Sheriff is not entitled to poundage. Therefore, we will have to consider the catch-all or sweeping provision (every process not otherwise provided for) under the table of fees :

The Sheriff, therefore, will be entitled to a fee and expense of

21 On the submissions of Ms. Kantharia that plaintiff should be directed to furnish security in the sum of USD 150,000/-, being 1% of USD 15,000,000/-, which is the upper limit of security provided in the Side Agreement, I agree with Shri Narichania that such a security can be directed to be provided only if the Court comes to a conclusion that it does not agree with the conclusions arrived at in *Kota Berani* (Supra). As stated earlier, I am in respectful agreement with the conclusions of the Learned Single Judge in *Kota Berani* (Supra). I also agree with Shri Narichania that interim relief can only be granted in aid of the final relief. If this Court does not come to the conclusion that the Sheriff is entitled to poundage, the question of the Court directing plaintiff to deposit security for poundage does not arise. Therefore, the question of directing plaintiff to furnish any security also does not arise.

Issue no.(ii) is answered, accordingly in negative.

22 As I conclude, I felt I must express my views on this concept of payment of poundage. For that let us quote paragraph 6 of *Malpani Brothers* (Supra) which reads as under :

6. At the outset, my reaction was that the notion "poundage" itself was anachronistic and I wish the Rule had been totally deleted. It is rather surprising that after a heavy Court fee is paid and a decree is obtained, the Plaintiff should still pay a further poundage, which is nothing but a commission for the purpose of executing a decree through the office of the Sheriff. This is one of the Anglo-Saxon legacies which has continued without any justification whatsoever. In the past, it is possible that the Sheriffs Office was not paid any salary as such and perhaps it was not a part of the Department of the

Government, and in the absence of any other machinery for the purpose of executing a money decree, since the parties had to necessarily go through the Office of the Sheriff, the Sheriff was justified in demanding some commission by way of his fees. Today it is totally different. The Deputy Sheriff is an officer of the Government and all the staff and the bailiffs are paid their salaries. Whatever fees they are entitled to for the purpose of executing a decree, they can certainly take, it, but there can be no justification whatsoever for the purpose of demanding a commission over and above the fees and costs which the Sheriff's Office collects. However, I am not in a position to strike off that part of the Rule which relates to poundage. I hope that our Rules Committee will seriously reconsider this part of the Rules, and delete the same.

23 I am in respectful agreement with Suresh J. (as he then was).

My reaction also was that the notion "poundage" itself was obsolete or antiquated and I also wish the Rule had been totally deleted. It is rather surprising that after a heavy Court fee is paid (in this case Rs.3 lakhs) and a decree or an order of arrest is obtained, plaintiff should still pay a further poundage, which is nothing but a commission for the purpose of executing a decree or order of arrest through the office of the Sheriff. This is one of the Anglo-Saxon legacies which has continued without any justification whatsoever. In the past, it is possible that the Sheriff's Office was not paid any salary as such and perhaps it was not a part of the Department of the Government, and in the absence of any other machinery for the purpose of executing a money decree or order of arrest or attachment, since the parties had to necessarily go through the Office of the Sheriff, the Sheriff was justified in demanding some commission by way of his remuneration or fees. Today it is totally different. The Deputy Sheriff is an officer of the

Government and all the staff and the bailiffs are paid their salaries. Whatever fees they are entitled to for the purpose of executing a decree, they can certainly take it, but there can be no justification whatsoever for the purpose of demanding a commission over and above the fees and costs which the Sheriff's Office collects. However, I am not in a position to strike off that part of the Rule which relates to poundage. I hope that our Rules Committee will seriously reconsider this part of the Rules, and delete the same.

(K.R. SHRIRAM, J.)