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TRAINING MANUAL FOR EXECUTION PROCEEDINGS

**(IN COMPLIANCE OF DIRECTIONS GIVEN BY HON'BLE APEX COURT
IN RAHUL S. SHAH VS. JINENDRA KUMAR GANDHI AIR 2021 SC 2161)**

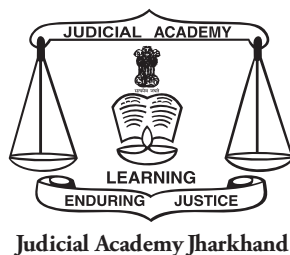
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Preface

Hon'ble Supreme Court of India, in case of **Rahul S Shah vs Jinendra kumar Gandhi on 22 April, 2021**, has been pleased to highlight the malaise of abuse of procedural provisions and discussed as to how remedies provided for preventing injustice are actually being misused to cause injustice by preventing a timely implementation of orders and execution of decrees. The Hon'ble Supreme Court has issued directions/ instructions/ guidelines to executing courts and trial courts and observed that training of court personnel is needed. Further, the Hon'ble Supreme Court has directed to the Judicial Academies to prepare manuals and impart training for court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.

Courts having decreed a remedy, it must follow up to ensure that it is being adhere to. When we move to society, it is sometimes heard from the mouth of the successful litigant as well as the wrongdoer in the society that a decree has been traveling a number of years and lastly the wining party loose their interest to execute as they think that it is not possible. Due to the said reason the persons who seek civil remedy knock at the door of wrongdoers and offer gratification for execution. It is high time the interest of bonafide civil litigants were saved and this is only possible when a court not only decree a remedy but also follow it up to ensure that it reaches it logical and fair conclusion.

Execution is the most important aspect of Civil justice. Success or failure of the system of Civil justice depends on the rate of success in executing the decrees of Civil Courts. Legislature has drafted and introduced exhaustive and exemplary provisions of execution in the code of Civil Procedure. There are as many as 106 rules in order 21 which deals with execution and from section 36 to 74 (both inclusive) embodied in the code of Civil Procedure. From the vast number of sections and rules a beginner might feel intimidated but in reality the work of execution is anything but complicated.

The thing is, as has been mentioned somewhere, a good vehicle is not to be badly driven. Procedure is but a safe vehicle of justice.

The executing courts issues orders/ writs/ warrants etc. and execution of those orders/ writs/ warrants are works of court personnel. Sometimes, delay is found intentional but sometimes delay in the execution is due to lack of skills to court staffs. Intentional delay may be stopped by strict actions but skills to court staffs may be developed by imparting them training and improving their knowledge. A skilled and trained staff can execute work easily, effectively and timely. The mode, manner and procedure of

the execution has been prescribed under sections 36 to 74 and Order 21 of the Civil Procedure code. Therefore, court staffs must be aware of those provisions of law, which are related with the procedure of execution works.

Thus in light of direction given by Hon'ble Apex Court in a judgment reported **Rahul S.Shah Vs. Jinendra Kumar Gandhi & Others, AIR 2021 SC 2161** this training manual is being prepared by Judicial Academy Jharkhand through which a continuous training be ensured to the court personnel/ staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.



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Training manual in compliance of directions of Hon'ble Apex Court in Rahul S. Shah Vs. Jinendra Kumar Gandhi, AIR 2021 (SC) 2161

Compilation of Relevant Provisions with Regard to Execution of Order and Decree

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Chapter - 1

Introduction and Principles with regard to execution proceedings

Introduction:

Execution is the last stage of any civil litigation. It is a medium by which a decree holder (DHR) compels the judgment debtor (JDr) to carry out the mandate of the decree or order as the case may be. It enables a decree holder to recover the fruits of the judgment. The execution is complete when the decree holder gets actual relief awarded to him by the court of law through judgment, decree or order.

Execution has not been defined in the code the expression execution means enforcement or implementation or giving an effect to the order or judgment passed by the court of justice. The expression execution simply means the process for enforcing or giving effect to the judgment of the court. The principles governing execution of decree and orders are dealt in Sections 36 to 74 and Order 21 of Civil Procedure Code.

Hon'ble Apex Court in Ghanshyam Das v. Anant Kumar Sinha (AIR 1991 SC 2251) dealing with provision of the code relating to execution of decree and orders, observed in following words –

“ so far as the question of execution of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors, as the case may be.”

Order XXI of the CPC is the lengthiest order provides detailed provisions for making an application for execution and the manner that, how they are to be entertained and decided.

Principles with Regard to Execution of Decree:

Principles with regard to execution of decree and order can briefly be summarized as under –

- Provision of CPC relating to execution of decree and order are made applicable to both Appeal and Suit.

- A decree may be executed by the court which passed the judgment and decree or by some other court which is having competency to implement the judgment passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree holder (a) by delivery of any property which was in possession of judgment-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgment-debtor (c) by arrest and detention (d) by appointing a receiver (e) in such other manner which depends upon nature of relief granted by the court.
- Upon the application of decree-holder, the court may issue “percept” to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the “legal representative” of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- Where immovable property has been sold by the court in execution of a decree such sale shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

Section 38 of the Code specifies that, a decree may be executed either by the Court who passed it or by the Court to which it is sent for execution. Section 37 defines the expression ‘Court which passed a decree’ while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

Whereas an objection to attachment or claim to attach property if made by a third party, the objector may either proceed by an application under this rule before the

executing Court or he may bring a suit to Establish his objection. His failure to proceed by an application under this Rule is no bar to a separate suit. The object of this rule is to give a speedy and summary remedy, but this rule does not deprive him of his remedy by Way of suit.

The claim petition is to be tried like a suit and the burden of proof lies on the claimant to lead evidence if the claim petitioner fail to lead evidence in support of his claim the court cannot be found fault with especially after the original and appellate court have also confirmed the dismissal.

In claim petition, the burden is on the claimant to prove that on the date of attachment, he has some right, title or interest or was in Possession of property attached. If the claimant is succeeded in proving that fact, then burden is shifted on decree-holder to prove that the objector was not the owner or holds any interest for judgment-debtor. In a suit filed by a third party to the litigation, burden of establishing right, title or interest in the property is upon the plaintiff.

Conclusion

From the above discussion it clearly appears that execution is the enforcement of decrees and orders by the process of Court so as to enable the decree-holder to realize the fruits of the decree. Order 21 contain elaborate and exhaustive provision for execution of decrees and order, by taking care of different type of situation, Courts have to provide effective remedies not only to the decree holder and judgment-debtors but also to the objectors and third parties.

Chapter - 2

Law and Procedure with regard to Execution of Decree and Orders

The law relating to execution of decree is contained in Section 36 to 74, Sections 82 and 135 and order 21 of the Code of Civil Procedure. The execution work is most important and at present much attention is not given to expedite to execution of decrees. The reason is that the process for execution of decrees is not issued in time and there is inordinate delay in the implementation of order besides frequent adjournments by the courts without assigning any reason for giving the adjournments.

To whom execution application may be made

Section 38 of the code enacts that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 37 defines the expression “court which passed the decree” and the following courts fall within the said expression:-

- (i) The court of first instance which actually passed the decree;
- (ii) The court of first instance in case of appellate decrees;
- (iii) Where the court of first instance has ceased to exist, the court which would have jurisdiction to try the suit at the time of execution; and
- (iv) Where the court of first instance has ceased to have jurisdiction to execute the decree, the court which at the time of execution would have had jurisdiction to try the suit.

The execution application may, therefore, be filed in the court concerned as mentioned above. Execution Clerk should check up while scrutinizing the application whether the court is competent to execute the decree.

Who may apply for execution (Rule 10)

The following persons may apply for execution of a decree:-

- (i) Decree holder,
- (ii) Legal representative of the decree-holder, if the decree-holder is dead,

- (iii) Representative of or a person claiming under the decree-holder,
- (iv) Any person claiming under the decree-holder; and
- (v) Transferee of the decree-holder.

Against whom execution may be taken out

Execution may be taken out against the following persons:-

1. Judgment-debtor.
2. Legal representatives of the judgment –debtor, if the judgment debtor is dead. (They shall, however, be liable to the extent of the property of the deceased judgment-debtor which has come to their hands:”
3. Representative of or the person claiming under the judgment-debtor.
4. Surety of the judgment-debtor.

Application for execution

When the decree becomes final an application for execution of decree is to be made in the prescribed st proforma (Form No. 6 of Appendix E to the 1 Schedule of CPC) to the court which passed the decree 24 33 EXECUTION OF DECREE containing interalia, the following information as required by Rule 11 (2) or Order 21):

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any, appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustments of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

- (g) the amount with interest(if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs(if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the Court is required whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.

The application shall also be accompanied by a certified copy of the decree to be executed by the Court.

Where an application is made for attachment of movable property belonging to a judgment-debtor but not in his possession, the application for execution must be accompanied by an inventory of the property to be attached, containing a reasonable accurate description of the same.

Where the application for attachment of the growing crop it shall specify the time at which it is likely to be harvested.

Where the application is for attachment of immovable property of the judgment-debtor, it shall contain

- (a) the description of such property sufficient to identify the same, and
- (b) the specification of the judgment debtor's share or interest therein.

Where the application is for arrest and detention in person of the judgment-debtor; it shall state or be accompanied by an affidavit stating the grounds on which arrest is applied for.

Where the application is for the attachment of land the D.H. shall file a latest certified copy of jamabandi and khasra girdawri up to date clearly indicating the share and the actual land falling in the share of the Judgment Debtor.

Procedure in execution:

Section 51 to 54 talks about procedure in execution or mode for execution:

- **Section 51:** this section gives the power to court to enforce the decree in general. This section defines the jurisdiction and power of the court to enforce execution. Application for execution of decree under this section may be either oral (order 21 rule 10) or written (order 21, rule 11). Party has to choose the mode of implementation of decree. Court may execute decree as per the choice prayed by the decree-holder or as court may think fit.
- **Mode of executing decree under section 51:** (a) By delivery of any property specifically decreed. Property may be movable or immovable (b) By attachment and sale of the property or by sale without attachment of the property. (c) by arrest and detention. (d) by appointing a receiver. (e) is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d).
- **Section 52** deals with a case where the decree is passed against the legal representative of the judgement-debtor.
- **Section 52 (1)** empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand. For application of this clause the decree should have passed against the party as the legal representative of the deceased person, and it should be for the payment of money out of the property of the deceased.
- **Section 52 (2)** empowers a creditor to execute his decree against the legal representative personally if he fails to account for the properties received by him from deceased person.

- **Exception to section 52:**

1. Court can implement the decree against the personal property of the legal representative provided if he is avoiding, neglecting or evading to make the payment from the property of deceased.
2. Where he has misutilized the property of deceased and where the legal representative has alienated the property of the deceased person.

- **Section 53: Liability of ancestral property.**

No legal representative should be held personally accountable where the suit has been filed against a joint Hindu family unless he has received some property of joint Hindu family.

Under pious obligation if has received the property of joint Hindu family then will be held liable. Where the decree has been passed against Karta, no execution be made against the son under pious obligation if the decree is passed after partition. Event after partition a son can be held liable if suit was pending before partition.

The son will be held accountable if after the death of Karta the decree has been executed and son has distributed the property of Karta among themselves. The member of joint Hindu family will be held liable if Karta has taken debt for moral purpose or family purpose.

The nature of suits determines how decree should be implemented.

Illustration: a promissory note has been executed by the father for the purpose of borrowing money. After the death of father the creditor instituted proceeding against son.

Where suit is filed basing on promissory note first it will be seen that whether suit is maintainable or not- if it is filed within three year then the suit will be maintainable. General rule is that son will be held liable if they have received ancestral property.

Where the son is not having knowledge about execution of promissory note, in such case will not be held liable even though has received the ancestral property.

- **Section 54: Partition of estate or separation of share.**

Section 54 comes into play when a decree has been passed for partition, or for the separate possession of a share of an undivided state paying revenue to the government, that is the partition of the state or share will be made by the collector. However if the collector refuses to make the partition of the revenue paying property, the civil court can do so. To attract the provision of this section it is not necessary that the plaintiff should ask for the division of government revenue.

Section 54 deals with a case where though the civil court has the power to pass a decree yet it is not competent to execute the same. Under this section the execution of decree shall be made by collector.

Procedure for processing the execution application

When an execution application is moved before the Court passing the decree, the execution Clerk or in his absence the Ahlmad would verify the particulars of the application and shall report as to whether such a decree has been passed by the said Court or not. The particulars of which are required to be written in the execution application as required vide Order XXI Rule 11(2) CPC and no column has been deleted and information concealed.

The execution Clerk/Ahlmad shall also verify whether earlier the D.H. had moved some execution applications and if so whether the same were executed fully or partly. If any payment on the basis of the previous execution application had been made or recovered, the same shall also be mentioned in the report. The execution clerk/Ahlmad would also report if there is any stay issued by the Higher Court and if the 34 appeal was filed and if so whether the decree has been set aside or reversed.

The execution clerk/Ahlmad shall also report whether the court has the jurisdiction to execute the decree meaning thereby whether the decree was passed by the said court or by an officer who has been declared successor of the said Court. If the court has received the application on transfer it shall also be reported whether there is any mention in the execution application to show that the property subject matter of the decree falls or the JD resides in the jurisdiction of the executing Court.

The detailed report about these facts shall be submitted to the Presiding Officer who shall thereafter pass an order for its registration and also to issue process as required by law.

The execution file would then come back to the execution Clerk/Ahlmad who shall enter it in the register for execution of decrees. He shall fill in the various columns of the register against the entry of the execution application. He shall thereafter issue the process as ordered by the Presiding Officer, get the same signed from the Presiding Officer or such other person authorized to sign the same.

The process so issued shall be entered in the register and shall be delivered to the Nazir for execution whose signatures shall be obtained in token of handing over the said process. The execution Clerk/Ahlmad shall also make an endorsement below the order of the Presiding Officer to the effect that the process has been issued and shall also put a date on which it was issued. so as to keep record of the case in which the process has been issued so that it is not re-issued in the same case or not issued at all in other cases. The execution file shall thereafter be placed in the peshi for the said date for which it has been fixed.

Transfer of execution application

Where the DH requests for transfer of the execution application to some other Court, the decree is to be sent directly to the said Court whether such Court is situated in the same state or in some other state as required by rule 5. However, if there is more than one officer at the place to which the decree is to be sent for execution, the decree shall be sent either to the District Judge of the said district or to the Civil Judge (Sr. Division) who shall on receipt of the decree entrust it to the Court for execution.

While sending the decree on transfer, the execution clerk/Ahlmad is to attach a copy of decree and prepare a certificate to the effect that the satisfaction of the decree has not been obtained by execution in that Court and in case of part satisfaction it shall be mentioned as to what part of the decree has been executed and what remains to be executed. This certificate shall be prepared on a separate sheet of paper and shall be signed by the Presiding Officer or such other officer competent to sign it.

A copy of the order passed by the Court directing the transfer of the decree to the said court for execution shall also be sent to the said Court.

When transferee court receives such a decree, the decree and the certificates attached therewith shall be considered to be proof thereof and further process would be issued on its basis. However, the Presiding Judge can ask the decree holder to file certified copies of such orders as he deems fit.

- (A) **Transfer of decree-** The situation of transfer of decree generally arises in case of a decree of restitution of conjugal rights and the party against whom it is to be executed resides outside the jurisdiction of the court that passed the decree. Further, where a decree for realization of money from the judgment debtors and the judgment debtor resides as well as their properties are situated outside the territorial jurisdiction of the court that passed the decree.
- (B) Procedure where court desires that its own decree shall be executed by another court- The court sending the decree for execution shall send- (a) A copy of the decree, (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied and (c) a copy of any order for execution of the decree, or if, no such order has been made, a certificate to that effect.
- (C) Sub Section 9 of Section 11 of the Industrial Dispute Act, says that every award, order or settlement arrived before the Labour court or Tribunal has been made executable as per the provisions of Order XXI CPC as decree of the Civil Court. Further, Section 11(10) of the Industrial Dispute Act, provides that the civil court shall have jurisdiction to execute the award, order or settlement as if it were a decree passed by it. On receiving of the award transmit by the Labour court or the Tribunal to the Civil Court for Execution, such award be registered as execution case and proceed further in the manner provided in the CPC for execution of decrees and order.

Notice to show cause against execution application

Rule 22 of Order 21 CPC provides for the issue of show-cause notices to persons against whom execution applied for in certain cases. As a general rule the law does not require any notice to be issued for execution. In the following cases, however, such notice must be issued:

- (i) Where an application is made two years after the date of decree or more than two years after the date of the last order made on any previous application for execution; or
- (ii) Where an application is made against the legal representative of the judgment-debtor; or

- (iii) Where an application is made for the execution of a decree passed by any of the superior courts of any reciprocating territory; or
- (iv) Where an application is made against the assignee or receiver in insolvency ; or
- (v) Where the decree is for payment of money and the execution is sought against the person of the judgment-debtor; or
- (vi) Where an application is made against a person who has furnished security or given a guarantee for the performance of a decree or for the restitution of property or for the payment of money to tender him personally liable or to sell his property; or
- (vii) Where the transferee or assignee of the decree-holder makes an application

However, if the fresh execution application is filed within 2 years of the dismissal of earlier execution application in the same case, no notice would be necessary to be issued. The court may dispense with the notice if it considers that the issuance of notice would cause unreasonable delay or would defeat the ends of justice. (*Vasan Rao Vs. E. Raj Reddy* , 2003 (1) ALD 726).

Jurisdiction for execution of Decree and Order

Section 38 of the Code specifies that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 defines the expression 'Court which passed a decree' while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

U/s.37 the expression Court which passed the decree is explained. Primarily the Court which passed the decree or order is the executing Court. If order or decree is appealed against and the appellate Court passes a decree or order, even then the original Court which passed the decree or order continues to be treated as Court which passed decree. The Court which has passed the decree or order ceased to exist or ceased to have jurisdiction to execute the decree already passed, then the Court which will be having a jurisdiction upon that subject matter, when application of execution is made will be the competent Court to execute the decree.

Merely because the jurisdiction of the Court which has passed the decree is transferred to another Court due to transfer of territorial area, the jurisdiction to execute

the decree passed by such a Court is not ceased. However, the Court to whom the transfer of territorial area is made, will also have a jurisdiction to conduct the execution of decree or order. (Sec.37). Sec. 38 contemplates that a decree may be executed either by the Court which passed it, or by the Court which it is sent for execution. However the execution on judgment debtor is criteria of executing Court of territorial jurisdiction.

As a general rule territorial jurisdiction is a condition precedent for a court to execute decree. Neither the court which passed the decree nor the court to which it is sent for execution can execute it in respect of property lying outside territorial jurisdiction. However if the bond is executed before a court it remains in operation till formally discharged by registrar of concerned court. Another important point is that a decree passed by court without jurisdiction is nullity and its invalidity can be set up whenever and wherever it is sought to be enforced even at the stage of execution. A defect of jurisdiction whether pecuniary or territorial strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by consent of parties. Generally an executing court is not required to go behind the decree and it has to execute the decree as it is. It can however examine the issue whether the decree was passed by a court without jurisdiction and may not execute the decree if it finds so. The objection as to dispute on jurisdiction has to be taken at earlier stage and when the judgement debtor did not raise objection on receiving execution application, the execution can be proceeded with. From the point of view of delays the opportunity to challenge at the stage of execution sometimes opens another round of litigation. Objections as to such jurisdictions are raised in mechanical manner, which deprives the decree holder of the fruits of the decree. In respect of territorial jurisdiction, if it is lacking the decree cannot be executed. The court which passed a decree may on the application of the decree holder send it for execution to another court of competent jurisdiction under the provisions relating to transfer of decree.

Chapter - 3

Types of Decree and Their Modes of Execution

Different types of decrees for execution are as under:

- 1) **Money decree:**
- 2) **Decree for specific movable property : order 21 rule 31**
- 3) **Decree for specific immovable property: order 21 rules 35 & 36**
- 4) **Decree passed against a firm : order 21 rule 50.** A decree also can be executed against partners of firm whose names were not mentioned in the plaint in their individual capacity only after obtaining leave of the decretal court as provided in order 21 rule 50 (2) of CPC.
- 5) **Decree for specific performance by execution of a document or a negotiable instrument: order 21 rules 32 & 34.** In execution of a decree for specific performance by executing a document, the decree holder has to deposit the amount as per terms of the decree, draft of the document to be executed by the judgment debtor and also the amount required for the general stamps.
- 6) **Decree for unascertained amount: order 21 rule 42.** It provides for attachment in cases where future rent, mesne profits or damages for use and occupation or such recurring amounts which have to be ascertained as per 3 the preliminary decree to prevent the judgment debtor from alienating his properties before final ascertainment and passing of a preliminary decree. 7) **Decree for restitution of conjugal rights: order 21 rule 33**
- 8) **Execution of cross decrees: order 21 rule 18.** In such a case a person holding a decree for higher amount can execute decree after giving credit to the amount payable to the judgment debtor in the other decree and proceed against him for the remaining amount.

Mode of Executions :

1. By arrest and detention in civil prison (sections 51, 55 to 69, 135, 135 (A), order 21 rules 37 to 40 of CPC and rule 241 of CPC.

2. By attachment and sale of movable properties.(order 21 rule 43).
3. By attachment and sale of standing crop and agricultural produce (order 21 rules 44& 45)
4. By attachment of debt, share or other movable property not in the possession of judgment debtor (order 21 rule 46-otherwise known as garnishee proceedings).
5. By attachment of salary of government servant (order 21 rule 48)
6. By attachment of salary of private employees (order 21 rule 48A)
7. By attachment of debtor's share in a partnership firm (order 21 rules 49 & 50)
8. By attachment of a negotiable instrument (order 21 rule 51)
9. By attachment of a decree obtained by the judgment debtor in another case (order 21 rule 53)
10. By attachment and sale of immovable property (order 21 rules 54 to 69)

Execution of Money Decree:- Decree for Specific Movable Property

- A. Money order credit slip
- C. Arrest, Imprisonment and Release
- D. Execution by Another court
- B. Attachment and Sale

Process for execution of decree for payment of money

Every decree for payment of money may be executed by the detention in civil prison of the judgment debtor or by attachment and sale of his property, or by both. If the application is for the execution of the decree, for payment of money by arrest and detention of the judgment debtor, the court may issue a show cause notice to the JD as to why he should not be committed to civil prison.

The warrant of arrest in execution shall be in the prescribed proforma No.13 of Appendix E of CPC. The warrant of arrest shall be addressed or endorsed to an officer of

the Court to bring the JD before the Court. **It shall also be mentioned in the warrant that if the JD pays the said amount mentioned in the warrant along with the costs specified, he shall not be arrested.**

Before issuing the warrant of arrest of the J.D, the 1 payment of subsistence allowance for such portion of the current month as remain un-expired before the judgment-debtor is committed to the civil prison shall be deposited in the court by the applicant and subsequent payment shall be made to the officer in charge of the civil prison. The scales of the monthly subsistence allowance are to be fixed by the State Govt. under Section 57 according to rank, race and nationality of the J.D. The execution Clerk/ Ahlmad shall obtain the orders of the Judge to fix the subsistence allowance monthly allowance of the JD, which is available with the jail authorities.

If the amount to be recovered does not exceed Rs.2, 000/-, no order for detaining the JD in civil prison can be made. However, if the amount is between Rs.2,000/- to Rs.5,000/- the JD can be detained for six weeks and if the amount is more than Rs.5,000/ he can be detained up to three months

The JD shall be released from detention as and when the amount due from the JD including the costs is paid in the jail or the decree is otherwise satisfied or the DH makes a request to release him or the DH does not pay/deposit the subsistence allowance.

Proceedings on appearance of JD in obedience to notice or after arrest

When the JD appears in pursuance to a notice to show cause, the Judge will hear both the parties, take such evidence as is produced and during this period either the JD may be detained in custody of an officer of the court or released on surety and may also give the JD an opportunity of satisfying the decree.

No warrant of arrest can be issued against a woman to detain her in civil prison in execution of a decree for payment of money (Section 56).

Issue of precept

The court may issue precept under Section 46 to any other court for attaching the property of the JD. However, this attachment would remain in force only for two months unless the period is extended by an order of the Court, which passed the decree, or during the period; the decree has been transferred to such court.

Examination of judgment-debtor as to his property: Where a decree for payment of money remains unsatisfied for a period of 30 days, the court may, on the application of decree holder, by order, require the JD or where the JD is a Corporation, any officer, thereof, to make an affidavit stating the particulars of the assets of the JD. The affidavit shall be in form no. 16-A of Appendix-E. In case of the disobedience the court may direct the person disobeying the order be detained in civil prison, for a period not exceeding 3 months unless before the expiry of such term the court directs his release.

In case of money decree legal representatives of deceased decree holder have to produce a succession certificate. The only exception is that if it is proved to be a joint Hindu family decree. No succession certificate is necessary in mortgage claims and charge claims.

Attachment of property

A decree may also be executed on the application of the decree- holder by attachment and sale, only sale without attachment of property. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void. A decree may have to be executed by attachment and sale of JD's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.D. to comply with the decree, or to expose him to a penalty in case of disobedience. Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the J.D. has attachable interest in the property, and that the property is not exempt from attachment.

Properties which are liable to attachment and sale in execution of a decree:-

1. Lands 2. Houses or other buildings 3. Goods 4. Money 5. Banknotes 6. Cheques 7. Bills of exchange 8. Hundis 9. Promissory notes 10. Government securities 11. Bonds or other securities for money 12. Debts 13. Shares in corporation and 14. All other salable property whether movable or immovable.

Execution by attachment of growing crops

Growing crop shall not be attached at any time less than 20 days before it is likely to be fit to be cut or gathered. When crop is attached warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been cut or gathered, on the threshing floor, on the house in which the J.D. resides, and shall also be sent to the Collector. Order for attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered. The J.D. may be allowed to cut and gather the crop and if he fails the D.H. may be allowed to do the needful.

Execution by attachment of salary and allowance

In case of attachment of salary and allowances, the first one thousand rupees and $\frac{2}{3}$ of the remaining amount cannot be attached. However, in case of the decree for maintenance $\frac{1}{3}$ of the salary is exempt from attachment. The warrant for attachment shall be sent by the concerned staff of court to the disbursing officer specifying as to what amount of the salary is to be attached, what amount is due from the JD and how the attached amount should be forwarded to the court. A letter in this respect should be issued to the officer responsible for disbursing the salary informing to it the orders passed by the court and to forward the said amount to the Court every month till the payment of the specified amount is received.

Execution by attachment and sale or sale without attachment of any property

A decree may be executed by attachment and sale or sale without attachment of any property. Section 65 to 73 and rules 64 to 94 of Order 21 deals with the subject relating to sale of movable and immovable property. Before ordering sale, the court has to decide whether it is necessary to bring entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and decree to be satisfied is small the court must bring to sale only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder or as the case may be for the time being enforced the decree.

Enforcement of decree against Legal representative:

Section 52 (1) empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand. For application of this clause the decree should have passed against the party as the legal representative of the deceased person, and it should be for the payment of money out of the property of the deceased. Section 52 (2) empowers a creditor to execute his decree

against the legal representative personally if he fails to accounts for the properties received by him from deceased person. Section 53: Liability of ancestral property - No legal representative should be held personally accountable where the suit has been filed against a joint Hindu family unless he has received some property of joint Hindu family. Under pious obligation if he has received the property of joint Hindu family then will be held liable. Where the decree has been passed against Karta, no execution be made against the son under pious obligation if the decree is passed after partition. Even after partition a son can be held liable if suit was pending before partition. Section 54: Partition of estate or separation of share. Section 54 comes into play when a decree has been passed for partition or for separate possession of a share of an undivided estate paying revenue to the government. Section 54 deals with a case where though the civil court has the power to pass a decree yet it is not competent to execute the same. Under this section the execution of decree shall be made by collector.

Execution by attachment and disposal of movable properties:

A decree may have to be executed by attachment and sale of J.D.'s property. The attachment of movable property, other than agricultural produce, in possession of judgment debtor is to be made as per provisions of O.21 R 43 of C.P.Code by actual seizure. The attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof. However, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

When the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment debtor or of the decree holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person as the "custodian". However, if the custodian fails, after due notice, to produce such property at the place named by the court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him:-

- (a) the custodian shall be liable to pay compensation to the decree holder, judgment debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

- (b) such liability may be enforced— (i) at the instance of the decree holder, as if the custodian were a surety under section 145; (ii) at the instance of the judgment debtor or such other person, on an application in execution; and
- (c) any order determining such liability shall be appealable as a decree.

Execution by delivery of specific movable property :

When the decree directs delivery of specific movable property, the court would have indicated the amount to be recovered as an alternative if delivery of specific movable property cannot be effected. If delivery of such property cannot be effected by seizure or by detention of JD in civil prison or attachment of his other property, the court may award to the D.H. the amount indicated in the decree. If no such amount is indicated in the decree, the executing court would fix such compensation as it thinks fit and award to D.H.

Execution of decrees against person in military service: When any officer or soldier actually serving Government in military capacity is a party to a suit and cannot obtain leave of absence for prosecuting or defending a suit, he can appoint some other persons to act on his behalf by an authority in writing given in the manner prescribed in Order XXVIII of the Code of Civil Procedure. He is provided by his Unit Commander with a certificate to enable him to obtain priority of hearing. This certificate must be presented by him in person to the Court.

Under Section 28 of the Army/Air Force Act, no arms, clothes, equipment, accoutrements or necessities of any person subject to either of these Act nor any animal used by him for the discharge of his duties can be seized, nor can his pay and allowances or any part thereof be attached by direction of any civil or revenue Court or revenue officer in satisfaction of any decree or order enforceable against him. Section 29 of the Army/Air Force Act provides that no person subject to either of these Acts, so long as he belongs to the Armed Force, can be arrested for debt under any process issued by, or by the authority of a civil or revenue Court or a revenue officer. Where, inspite of the above any such arrest is made, the Court of the revenue officer concerned on receipt of a complaint by such person or by his superior officer to that effect, may discharge him and award reasonable costs to the complainants. The costs may be recovered in like manner as if they were awarded to him by a decree against the person obtaining the processes. No Court-fees are payable for the recovery of such cost.

Decree for specific performance for restitution of conjugal rights, or for an Injunction:-

Order XXI Rule 32 CPC deals with provisions regarding Execution of Decree for specific performance for restitution of conjugal rights, or for an injunction as :-

- (a) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [in the case of a decree for the restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.
- (b) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.
- (c) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such pro be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.
- (d) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property-sold has been made, or if made has been refused, the attachment shall cease.
- (e) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Execution of the decree of restitution of conjugal rights is very difficult. The Court though is competent to pass a decree of restitution of conjugal rights, but it is powerless to have its specific performance by any law. The non-compliance of the issued decree results to constructive destruction on the part of the erring spouse. Decree of restitution of conjugal rights could be passed in case of valid marriages only. In a decree of restitution, the party, against whom the decree is passed, cannot be compelled physically to restore cohabitation. A Court is not competent to direct that the wife or husband be, bodily handed over to other spouse and restrain him or her of liberty until he or she is willing to render him or her conjugal rights. As per provisions of the present Act, the aggrieved party can move a petition for a decree after one year from the date of the passing of the decree and the competent Court can pass a decree of divorce in favour of the aggrieved party. Another advantage the aggrieved wife can have from this provision is that she can claim maintenance from husband.

Decree for Execution of documents , or endorsement of negotiable instrument:-

Rule 34 of Order XXI prescribes the provisions relating to- Decree for execution of document and endorsement of negotiable instrument. There are six sub rules in this rule. This rules are as under :-

- (1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.
- (2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.
- (3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.
- (4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.
- (5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :—

“C.D., Judge of the Court of (or as the case may be), for A.B. in suit by E.F. against A.B.”and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

- [(6)(a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorized in this behalf by the Court, shall cause the document to be registered in accordance with such law.
- (b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.
- (c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

When an objection is to be filed on behalf of the judgment debtor under sub rule (3) of rule 34 of Order XXI, the executing court have required to pass an order to the effect, with respect to the draft of a document or of an endorsement, such order is appealable under order XLIII rule 1 (i) of the code of Civil Procedure.

Execution of decree for specific performance of contract : In execution of a decree for specific performance of a contract notice was served upon the judgment -debtor who did not appear. Draft sale deed was not served upon him. Sale deed was executed by the court. Judgment debtor cannot now raise objection that draft deed was not served upon him unless he can show prejudice. Service of draft deed upon the judgment debtor as contemplated under order 21 rule 34(3) is directory.

In execution of a decree for specific performance of a contract draft sale deed is served upon the judgment -debtor who files objection against the draft, court must consider the objection.

Execution of decree by attachment of immovable property.

If the property attached is immoveable, the JD would be prohibited by an order under Order 21, Rule 54 from transferring or charging the property in any way, prohibiting all persons from taking any benefit from such transfer or charge. The JD shall be required to attend the court on the specified date and a proclamation shall be prepared in prescribed proforma and issued on or near the property by beat of drum or

some other customary mode about the attachment and copy of the order shall be affixed on a conspicuous part of the property, another copy at the court house, the third copy shall be sent to the Collector of the District or the Gram Panchayats, if the property is land, and the fourth copy is to be returned to the Court with report of Process Server specifying the manner in which the above acts have been performed.

The order shall also require the judgment debtor to attend the court on the specified date to take notice of the date to be fixed for setting the terms of proclamation of sale to be issued under Order 21 Rule 66 CPC.

Removal of attachment after satisfaction of the decree—

As per Order 21, Rule 55, in the following circumstances, the attachment may be terminated:

- (1) When all the costs and charges of the decretal amount are paid into the Court.
- (2) Satisfaction of the decree is otherwise made through the Court or certified to the Court.
- (3) The decree is set aside.
- (4) On furnishing the required security by the J.Dr.
- (5) By compromise between the parties.
- (6) By an express order withdrawing or putting an end to the attachment.
- (7) By sale of the attached property in execution of the decree.
- (8) By abandonment of the attachment by the decree-holder. The modes in which various properties may be attached are as given below:-

TYPE OF PROPERTY	MODE OF ATTACHMENT
1. Movable property in possession of judgement debtor	by actual Seizure and sale if the property is subject to speedy and natural decay.
2. Movable property not in possession of judgement debtor	by order prohibiting person in possession from giving it to judgement debtor.
3. Negotiable instrument	by actual seizure and bringing it to court.
4. Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.
5. Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.
6. Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.
7. Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.
8. Partnership property	by making an order of 1. Attaching the interest share of the partner and partnership. 2. Appointing a receiver of the share. 3. Directing production of accounts. 4. Ordering sale of such interest.
9. Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court
10. Decree for payment of money or Sale in enforcement of a mortgage or a charge.	By an order of such court.
11. Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.
12. Immovable property	By an order prohibiting judgement debtor from charging or transferring it.

Adjudication of claims and objections to attachment of property

Rule 56 to 63 of Order 21 deal with adjudication of claims to and objections to attachment of property. Where the property is attached in execution of a decree there may be objections to such attachment either by a party or his representative or by a third party. Since all questions arising between the parties to the suit in which the decree under execution has been passed or their representatives relating to the execution, discharge or satisfaction of the decree are to be determined by the court executing the decree and not by a separate suit, the executing court has to investigate the claims and settle them finally in execution proceedings to avoid protracted litigation. Detailed provisions, therefore, have been made in the Code.

After attachment, if no objections are filed against attachment of the property, the Execution Clerk will submit the file to the Executing Court on the date fixed in the order of attachment whereby the JD was also given a notice of the specified date to appear when the terms of the proclamation of sale are to be settled. The execution will be listed in the cause list as well.

As per Order 21, R.58, Where claim petition is filed, the sale may be postponed. The claimant or objector should satisfy the Court that at the date of the attachment, he had some interest in, or was possessed of, the property which has been attached. If the Court considers that the claim application was designedly or unnecessarily delayed, no such investigation shall be made. The order made under this rule shall have the same force as if it was a decree. If the property attached has already been sold, no such claim or objection shall be entertained. Under this rule, all questions (including questions relating to right, title or interest in the property attached) arising between the parties or their representatives, relevant to the adjudication of the claim or objection, shall be determined the Court with the claim or objection and not by separate suit. Useful rulings as to this provision. If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable. Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment.

Objection to attachment of property under Order XXI, Rule 58, are frequently responsible for great delay in the disposal of the execution cases. Such objections are at times collusive and should be scrutinised with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Rules 58 and 59 of Order XXI. Adjudication of any claim or objection is appealable like a decree. When the Court dismisses any claim or objection under Order 21 Rule 58(1), the party may file an application under Section 151 CPC for restoration and for re-investigation

or he may also file a suit under Order 21 Rule 58(5) within one year from the date of dismissal for default. It should be noted if an objection appears to have been “designedly or unnecessarily delayed” (or where, before the claim is preferred or objection is made, the property attached has already been sold), the Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 28 CPC for the purpose.

Execution of decree for immovable property :

Rule 35 and 36 of order XXI are related to decree for immovable property but there is a distinction between both. The “possession” referred in in sub rules (1) and (3) of order XXI, rule 35 is **Khas or actual possession**, while the “possession” referred to sub-rule (2) and 36 is formal or **symbolical possession**.

Rule 35 of order 21, laying down the provision with regard to Decree for immovable property, which reads as under:

- (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
- (2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by a fixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.
- (3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

This rule describes the mode of obtaining possession- For possession of vacant land the court can order the removal or demolition of the constructions made during the pendency of the suit.

Decree for delivery of Immovable property when in the occupancy of tenant.

Rule 36 of order 21CPC deals with Decree for delivery of immovable property when the same is in occupancy of tenant. Rule 36 reads as “Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property”.

Where property has been leased out for raising construction and subletting shops, the landlord obtained eviction decree, but did not implead sub-tenants as party in the case even opposed their impleadment, the sub-tenants are not bound by the eviction decree as they are not rank trespasser, they cannot be evicted, the mode of execution of decree would be only symbolic possession. (Ratan Lal Jain Vs. Uma Shanker Vyas, AIR 2002 SC 804)

There was a decree for delivery of possession against tenant only. No decree against sub-tenant was passed since he was not party to the suit. So execution case against the sub-tenant was dismissed. This dismissal will not operate as a bar to a subsequent execution petition against the tenant nor an application of removal of obstruction against the sub-tenant. (Ameena Vs. Sundaram (1994) 1 SCC 743).

Reciprocal execution of decrees by courts in India and foreign countries

Any decree passed by any Civil Court established in any part of India to which provisions of this Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends. 19

Under this section, read with sections 44 and 45, the Indian courts have power:

- i) to execute decrees of those Indian courts to which the Code does not apply, such as Schedule Districts;
- ii) to execute decrees of civil courts outside India, which are established by the authority of the Central Government;

- iii) to execute the decrees of revenue courts in any part of India, to which the provisions of the Code do not apply; and
- iv) to execute decrees of Indian courts in the state to which the state government has notified that s. 45 would apply.

Section 45 contemplates courts established by the Central Government. The words any part of India to which the provisions of this Code do not extend, have been constructed to include the sovereign states like former Indian states to which the Code could not be extended.

Chapter – 3(A)**Execution by Attachment and Sale**

After the attached property is ordered to be sold by public auction in execution of a decree the Court shall cause proclamation of intended sale under Order 21 Rule 66 to be made in the language of the court giving the following details:-

- (i) time and place of sale;
- (ii) property or a part thereof to be sold;
- (iii) revenue, if any assessed from the property;
- (iv) encumbrance if any to which the property is liable;
- (v) amount to be recovered
- (vi) such other particulars which the court considers material for the purchaser.

The proclamation of sale shall be drawn and prepared by the Execution Clerk/Ahlmad in form No.29 of Appendix-E of CPC after notice to the decree holder and the J.D. No fresh notice is necessary where the notice has already been given while issuing order of attachment under Order 21, Rule 54 CPC for this purpose. One thing has to be kept in mind that the entire property mentioned in the decree in the list provided by decree holder or the property which has been attached is not required to be sold. Only so much of the property is to be sold which is sufficient to satisfy the decree. This fact has specifically to be mentioned in the proclamation of sale.

All these facts must be stated by the decree holder in the application submitted by him seeking an order for sale. The application shall be verified under his signatures and these facts as to whether the whole of the property is required to be sold or a portion of it would be sufficient to satisfy the decree. The encumbrances on the property and the amount for the recovery of which the sale is to be effected shall be mentioned in the said application. A notice of that application should be issued to the JD to settle the terms of sale upon which it will be determined as to how much property should be sold and only that portion is to be mentioned in the sale warrant which is to be sold (Rule 66).

The proclamation for sale shall also be issued by Executing Court in the same manner with four copies. Different dates can be given for proclamation at the court

house and for proclamation at the spot. The court can also direct that the proclamation should be published in the official gazette or in a local newspaper or in both. The costs of publication shall be recovered from the JD as costs(Rule 67).

The proclamation at the spot or the court house should be affixed at least more than 15 days before the actual date of sale in case of immovable property and 7 days in case of moveable property. The period of 7 or 15 days shall be counted from the date on which the copy of the proclamation is affixed on the court house (Rule 68).

If the sale is adjourned or stopped under Rule 69 for a period of more than 30 days then a fresh proclamation shall have to be issued unless the JD consents to waive it. The fresh proclamation shall be issued by Executing Court in the same manner as mentioned earlier.(Rule 69).

If the decree holder has been permitted to bid or to buy property, intimation in this respect shall be issued to the officer holding the auction. The amount for which the property is sold to the decree holder shall be set off against the amount due from the JD (Rule 72).

In the same manner a mortgagee cannot bid for sale without the leave of the court. However, in case of a mortgagee the reserve price is to be fixed which ordinarily should not be less than the amount due for principal, interest and costs in respect of the mortgagee.(Rule 72A).

No permission can be given to the officer or other person having a duty to perform in connection with the sale to bid or purchase the property in the auction either directly or indirectly (Rule 73).

In case of sale of immovable property by public auction the price of each lot shall be paid at the time of 38 sale and in default of payment the property shall be re-sold forthwith.(Rule 77). The possession of the property shall be delivered to the purchaser and a direction shall be given in the sale warrant to this effect.

If the sale is of immovable property, the purchaser shall pay at the spot 25% amount of the purchase money to the officer or the person conducting the sale and in default thereof, the property shall be resold. However, if the decree holder purchases the property and is entitled to set off the purchase money, the requirement of deposit of 25% of the purchase money shall be dispensed with and a note in this respect is required to be given in the direction issued to the person conducting sale through the permission given to the decree holder (Rule 84).

If the remaining amount being 75% of the purchase money is not deposited in the court within 15 days of the sale, the purchaser shall not be entitled to any refund and the entire amount can be forfeited to the Govt. In that eventuality the property shall be re-sold.(Rule 85 & 86)

Setting aside sale

Rule 89 to 92 deal with setting aside of sale. When a property is sold in execution of a decree, an application for setting aside sale may be made under these provisions by the persons affected and the grounds mentioned therein. Such an application has to be made within the prescribed period of limitation. But an application to set-aside sale of immovable property cannot be made on any other ground not covered by Rules 89 to 92.

In case of manifest illegality in conducting the sale, the court can take proceedings suo moto and set aside the sale even after the period of limitation prescribed therefore

Confirmation of sale

No sale of immovable property shall become absolute unless the Court confirms it. Where no application to set aside the sale is made under rules 88, 90 or 91 or where such an application is made and it is disallowed by the Court, the court shall make an order confirming the sale and thereupon the sale shall become absolute.

Certificate of sale

After the sale has become absolute the court shall grant a certificate in favour of the purchaser. It shall bear the date on which the sale became absolute and specify the property sold and the name of the purchaser. Such certificate is conclusive in nature. The certificate shall be issued in form; No.38 of Appendix E CPC. And will be stamped, at the expenses of the purchaser, in conformity with the provisions of Chapter II, Part B, and Article 18 of Schedule 1A of the Indian Stamp Act II of 1899 as amended by Punjab Act, VIII of 1922. When the terms of the certificate have been finally settled, the draft shall be signed by the Judge and placed with the record of the execution proceedings and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. No draft certificate should in any case be drawn up until the stamp duty required by law has been paid.

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation. A copy of the certificate, whether the property sold be land or other immovable property, and without regard to

the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated, to be filed in his supplementary Book No.1.

Delivery of possession

The purchaser can obtain possession of the property only if he has obtained a sale certificate under Rule 94. On the application for possession the court would issue an order to put the purchaser in possession of the property by removing any person who refuses to vacate the same. This order for possession shall be in form No.39, Appendix E of CPC. A note to this effect has to be given on the warrant of possession (Rule 39 95). However if the property is in possession of a tenant who cannot be ejected, the symbolic possession alone would be given to the purchaser by affixing a copy of the certificate of sale at some conspicuous place on the property and by beat of drum or other customary mode that the interest in the property which was held by the judgment debtor has been transferred to the purchaser. In such cases a specific note has to be given on the warrant of possession that actual possession shall not be delivered and only symbolic possession is to be delivered (Rule 96).

Execution of decree for specific performance

In the case of a decree for specific performance of a contract, a notice is to be issued to the JD to perform the decree. If the JD does not come forward, the decree holder would be required to prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court. This draft shall be served on the judgment debtor along with a notice calling for his objections, if any, within the time fixed by the Court. If the judgment debtor submits objections, the court shall decide the same and the draft shall be altered in accordance with that. The court will then appoint the local commissioner with the power to execute the document before the competent authority (like sale deed, mortgage, lease deed etc.) on behalf of the judgment debtor. A direction shall be issued to the JD to perform the desired acts and a copy of the draft approved by the court shall be sent along with the notice (Rule 34). Executing court will ensure its compliance.

If the decree was for specific performance of the agreement for sale and possession and after the execution of the sale deed in accordance with the above procedure the decree holder shall be entitled to get possession, if he is not already in possession of the suit property covered by the sale deed. Thereafter the decree holder can make an application to the court for delivery of the possession, if he is not already in possession

of the property. The court will issue warrant of possession and the decree holder will be put into possession as aforesaid.

After the sale deed has been got executed and possession delivered to the decree holder, the amount of sale, deposited in the court by the decree holder shall be paid to the JD after deducting the costs of the suit and the expenses incurred in getting the sale deed executed through the local commissioner.

If the decree is for joint possession a specific note shall be given on the warrant of possession that the actual physical possession is not to be given and only symbolic possession is to be given. The symbolic possession is to be delivered by affixing a copy of warrant at conspicuous place on the property and proclaiming by beat of drum or other customary mode at some convenient place, the substance of decree (Rule 35).

If on the application of the D.H. the court has ordered to deliver possession by breaking open the lock or door of any property, the warrant of possession must contain this endorsement on it so that the possession is delivered by breaking open the lock and door (Rule 35).

Execution of decree by Garnishee Order

Garnishee means a judgment-debtor's debtor. He is a person who is liable to pay a debt to a judgment-debtor or to deliver any movable property to him. A garnishee order is an order passed by a Court ordering a garnishee not to pay money to the judgment-debtor because the latter is indebted to the garnisher.

The primary object of a garnishee order is to make the debt due by the debtor of the judgment-debtor available to the decree-holder in execution without driving him to a suit.

Garnishee proceeding is a process of enforcing a money judgment by the seizure or attachment of debts to accruing due to the judgment-debtor which found part of his property available in execution. Before using attachment, the Court may issue notice to garnishee. Such notice calls upon garnishee to pay the amount to satisfy the decree or to show cause why he should not do so. If garnishee makes payment in the Court, it will amount to hurray discharge of his debts. A garnishee has right to show cause why such debts is not payable or why he should not be called upon to make the payment in the Court. If the garnishee disputes the liability, it shall be decided as if it were and issue in a suit and upon determination of such issue, the Court can make order as deemed fit.

Chapter – 3 (B)**Execution of a decree by Arrest and Detention**

The provision under CPC dealing with arrest and detention for executing a decree are substantive from Sec. 51 to Sec. 59, read with procedural provisions Order 21 Rule 30 to Order 21 Rule 40.

A judgement debtor may be arrested in execution of any decree on any day at any hour with certain conditions to it provided in Section 55 of CPC. The conditions are:

- Must be brought before the court as soon as possible, and his detention may be in the civil prison of the district.
- No dwelling house to be entered after the sunset or before sunrise.
- No outer door of the dwelling house must be broken to enter the house unless the house is in possession of judgement debtor and he refuses to open it.
- If the room is in actual possession of women who is barred by customs to be in public, the officer must give reasonable time to her to withdraw and may enter the room for the purpose of making arrest.
- If the arrest is made where the decree in execution is a decree of money and the judgement debtor pays the amount of decree and cost of arrest to the officer arresting him, the officer must release him at once.

The court before issuing a warrant of arrest must ensure that a notice has been issued to the judgement debtor providing him with an opportunity to explain the reasons for not complying with the court orders. If the court is satisfied by any means, that the judgement debtor may abscond the jurisdiction of the court and any other reasons which would cause in delay of execution of decree, then the court may order for arrest of judgement debtor.

When the court issues a warrant of arrest of judgement debtor, it shall direct the officer entrusted with its execution to bring the judgement debtor with convenient speed. If the decial amount along with the interest and cost if any of which judgement debtor is liable to pay is paid earlier then the person should not be arrested. Every person should be given a reasonable opportunity to explain why he should not be arrested. The court

must ensure that arrest and detention should only be made if the judgement debtor is willfully defaulting and if the reason to not comply with the court order is not willful then the court may give a reasonable opportunity of showing cause why he should not be committed to the civil prison. Under Rule 40, the court has discretion to refuse the arrest and detention of a debtor who is unable to pay, if the court is satisfied that no useful purpose is served by sending the judgement debtor to civil prison.

It is the duty of the court to conduct the inquiry before order of arrest is passed; if the conclusion of the inquiry is pending then the judgement debtor be detained in the custody of an officer of the court. The judgement debtor can only be detained by the officer of the court for a period not exceeding fifteen days. If at any point the judgement debtor furnishes security to the satisfaction of the court, then the court may release him. The judgement debtor can only be arrested by the order of the court and not by mere presumptions of officer. The court can also order release of judgement debtor if the arrest is not based on a court order. Warrant without conducting an inquiry is not without jurisdiction if the court had sufficient reasons to believe that judgement debtor is willfully defaulting.

Where the judgement debtor denies that they have any means to repay the decretal amount and the decree-holder failed to bring on record any material regarding the source of income or cash in hand of the judgement debtor, then the order of arrest is not justified and the order of arrest cannot be issued. In ordering the arrest of a judgement debtor to the civil prison, the execution court should exhibit care and caution to ensure each step is contemplated under Section 51 and Order 21 of CPC is followed. When the judgement debtor gives sufficient reasons to court along with the bank statements and default made by him is neither mala fide nor can be called as deliberate refusal, at such point of time the order of arrest is not justified.

A judgement debtor shall not be arrested in execution of decree unless and until the decree-holder pays into court such sum as the judge may think fit in accordance with scales fixed under section 57 if no scale has been fixed. The monthly allowance fixed by the court shall be supplied by the party on whose application the judgement debtor has been arrested by monthly payments in advance before the first day of each month. The monthly allowance supplied by the decree-holder must be included in the cost.

The period of detention in civil prison for execution may be:

- If the amount to be recovered is five thousand or more, the period shall not exceed than the three months.

- If the amount to be recovered is exceeding the two thousand but below five thousand, then the period shall not exceed six weeks.
- If the amount to be recovered is less than two thousand, then no order of arrest to be made.

There are certain exemptions provided from arrest and detention in the execution of a decree:

- When the decree is of an amount less than two thousand.
- No women shall be arrested in execution of the decree for money.
- Judicial officers.
- Members of Legislative bodies.

Exemption to judicial officers and member of legislative bodies is not exhaustive and at any stage, the court can order for re-arrest. The immunity given to women is absolute and no women can be arrested in execution of money decree at any stage and other remedies for execution can be opted for.

The judgement debtor may be released any time when the decretal amount along with interest and cost is supplied to either to the court or the officer authorized to arrest. There has been no bar as to when and where the payment is to be made, if the payment is made at the time of arrest then also judgement debtor cannot be arrested. When the decretal amount mentioned in the arrest warrant differs with the actual amount to be paid, then also it does not provide the immunity to the judgement debtor from arrest.

The immunity has been given to judgement debtor from re-arrest depending upon his earlier period of arrest being already served, he may not be arrested. If the judgement debtor pleads to the court that he is exempted from arrest under section 135 then he is liable of re-arrest at a later stage, whenever the court may deem fit to arrest him. Additionally, if the judgement debtor was arrested but was later released by the court then he can be re-arrested.

The remedy of execution by arrest and execution is an extraordinary remedy, it is not punitive and neither the arrest waves off the right to comply with the court decree. It gives a realization to the decree-holder of the value of decree passed in his favour. It also protects the judgement debtor if he is not in the condition of complying with

the court order. Willful defaulters are liable to be arrested. This remedy is twofold as it protects the decree-holder as well as a judgement debtor. This remedy is not exhaustive, and it also prevents unusual harassment of judgement debtor, it also protects judgement debtor by giving subsistence allowance during his period of arrest. There has been ample opportunity given to judgement debtor to prove his intention for not complying with the decree. If the judgement debtor is not a willful defaulter then he may not be arrested and given an opportunity to rectify his mistake. Therefore, these provisions are not stringent.

Chapter - 4

Extract of Civil Court Rules of the High Court of Jharkhand with regard to Execution of Decrees

Rule 113 to Rule 137 of Civil Court Rules of the High Court of Jharkhand categorically deals with the provisions with regard to Execution of Decrees. It is worth to compile the extracts of aforesaid rules for the Court staff executing warrant of attachment of sale and other official duties for executing orders issued by the executing court.

Rule 113. Execution cases should receive as much attention as original suits and appeals. The Presiding Officer should see that the processes of the Court are not abused. All cases of fraud, negligence, suppression of processes and resistance to execution should be carefully scrutinized by him with a view to his taking such steps as may be necessary to prevent their recurrence.

Rule 114. The application for execution shall ordinarily be put up before the Presiding Officer for orders on the day following the day of its presentation, with all defects, if there are any, noted thereon and if a searching fee of Rs 1.00 has been paid by means of a Court-fee stamp affixed to the application, information available in the office which will enable the defects to be remedied shall also be noted on the back of the application.

- (a) A preliminary hearing of petition filed u/S 47 of C.P.C., in Execution Proceeding shall be made before admission and registering the same as Misc. Case.
- (b) Execution Case shall be treated as pending, until the installment of the Decreed Amount is paid.
- (c) Execution Case should be shown disposed off on the date when the sale is confirmed or on the date when the Stamps for the sale certificate is filed.

Rule 115. The attention of Courts is drawn to the provisions contained in Order. XXI, Rule 1, Code of Civil Procedure. It has now been made optional for the judgment-debtor to serve notice through Court or by registered post direct. No challan tendering the money should, therefore, be rejected by reason only of not being accompanied by forms of notice and process-fees.

Rule 116. Judgment-debtors desirous of sending decretal dues to the Court by postal money-order must use the green money-order form specially approved by the High Court for the purpose. They must fill in all the particulars indicated in the coupon of the money-order form. If any particular be not entered, the money order clerk or sub or branch post-master will refuse the money-order.

Payment under such money-orders will be made by book transfer. The provisions in Rules 11-23 in Parts II and III, Chapter XVII of the Board's Miscellaneous Rules, 1939; and of the Post Office Rules in respect of payment and adjustment of accounts of Government money-orders relating to the procedure to be followed in the Post Office and in the Treasury or Sub-Treasury in regard to the payment of moneyorders by book transfer should, so far as applicable, be followed in dealing with such money-orders. In the offices of the Court and the Treasury or Sub-treasury concerned, the following procedure shall be observed- -

- (a) The Treasury or Sub-treasury will send the money-order coupon and acknowledgment to the Court with its daily advice list in High Court Form No. (A) 9 and advice list of money-orders in form-G.M.O. On receipt thereof from the Treasury or Sub-Treasury the Accountant of the Civil Court will at once enter the amount in the Deposit Register and fill up columns 1, 2, 4 and 6 and enter "by money-order" in column 3 and in column 5 only, the suit or case number, leaving other particulars to be filled in later. He will then send the money-order coupon and acknowledgment to the Registrar-cum-Judge In-charge.
- (b) The Registrar-cum-Judge In-charge will scrutinize the tender in the manner laid down in Rule 538, Part X, Chapter I. If he finds the tender to be in order, he will sign the acknowledgment portion of the money-order form after obtaining orders of the Presiding Officer, the orders being written on the order-sheet and send it immediately to the post office for despatch to the remitter. The money-order coupon with his endorsement of correctness will be sent to the Accountant who will enter the remaining particulars in column 5 of the Deposit Register, prepare a money-order credit slip in the form prescribed below for his own record and return the money-order coupon with an endorsement of compliance to the Registrar-cum-Judge In-charge to be kept with the record.
- (c) If, on the other hand, the tender is found to be defective, the Registrar-cum-Judge In-charge will, under the orders of the Presiding Officer, make a note on the acknowledgment portion of the defects found stating that the amount will be transferred to the credit of the decree-holder on the date on which information to

cure defects is received, by post or otherwise and will then send the acknowledgment to the post office, and retain the coupon with the record. When the information necessary to cure the defect is received, the Registrar-cum-Judge In-charge should obtain the orders of the Presiding Officer on the order-sheet specifying the person to whose credit the amount is to be entered in the Deposit Register and should then send the coupon with necessary corrections to the Accountant for action as in sub-clause (b). If the particulars supplied be found to be still incomplete, the Court will not take any action not enter into correspondence about them.

- (d) For administrative purposes the deposits shall bear date, the date on which the deposit was made into the Treasury:

Money Order Slip

1. Name of the Court passing the decree or order.
2. Number of the suit or case and date of judicial decree or order (if any) under which the amount is tendered.
3. Name, father's name and address of person or persons on whose behalf the money is tendered.
4. Name, father's name and address of person or persons to whose credit the amount is to be placed in the Court's Books.
5. Amount tendered.
6. Deposit number and date in the Deposit Register.

Accountant

Rule 117. The temporary deputation of the Presiding Officer of a Court to some other station does not necessarily mean an abolition of his Court and the Judicial Officer placed in charge thereof during such absence becomes, subject to the question of pecuniary jurisdiction and special powers, if any, the Presiding Officer also of that Court in addition to his being the Presiding Officer of his own Court. Thus all decree passed by the latter in the cases belonging to the file of the first named Court may be executed by that Court presides over by the officer sent on deputation when he returns.

Attachment

Rule 118. An officer deputed to attach movable property should be furnished with a certificate stating the period for which the fee required under Part V, Chapter I, Rule 376, has been paid, and he shall give notice thereof to the judgment-debtor or other person at whose instance he remains in possession at the place of attachment and if such person shall desire that the property shall remain at that place for a longer period, he shall be bound to pay into Court in advance the further fee required by the second paragraph of Note 1 to that Rule.

Rule 119. A register should be maintained by the Nazir in the prescribed Form No. (R) 13A showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R) 13B, for ordinary movables and live-stock attached in execution cases.

Sale

Rule 120. Every application for an order for sale shall in addition to the particulars required by Order XXI, Rule 66, clause (3), state everything known or believed by the person verifying the same to exist which relates to the nature or affects the value of the property and shall further state that he is not possessed of any further information regarding it.

Rule 121. Every application for the sale of immovable property shall, in addition to other particulars required, state the area of the land involved.

Rule 122. If, after the sale proclamation under Order XXI, Rule 66, has been published, any written communication regarding the property to be sold which it considers material for purchasers to know is received by the Court, the Court shall cause the same to be read out when the property is put up for sale.

Rule 123. The selection of local newspapers in which sale proclamation may be published under Order XXI, Rule 67, rests with the Principal District Judge. The name or names of the papers selected shall be notified to the public and to the Subordinate Courts.

Rule 124. Subject to the proviso in Order XXI, Rule 43, sales of property in execution of decrees in the several Courts of each district (not being Courts of Small Causes) shall be held and commenced at a certain day of each month to be fixed by the Principal District Judge.

Rule 125. All property, except property of the nature specified in the proviso to Order XXI. Rule 43, of the Code or Rule 129 of this Chapter, to be sold at each place of sale, shall be entered in lists for each place, the lists of movable and immovable properties being distinct. The lists shall be so prepared as to contain in regular order each item of property to be sold in execution of the decrees of each Court severally. Such lists shall be stuck up in the Courts where the sales are to be held in the case of movables not less than seven days, and in the case of immovables not less than 15 days, before the date fixed for the commencement of each set of sales.

Rule 126. At the stated hour each fixed date the sales shall be commenced, and shall be carried on in the order stated in the lists, above mentioned. No sale shall continue after sunset; but the sales shall be held from day to day, except when the Court is closed and until the lists are finished : Provided that this Rules shall not interfere with the adjournment of any particular sale according to law. (See Order XXI, Rule 69.)

Rule 127. The same days shall not ordinarily be fixed for the sale of movable and immovable property.

Rule 128. Except as regards property of the kind mentioned in the next succeeding Rule, sales in execution of decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court in the immediate presence of the Presiding Officer. Where this is not possible the sales may be held in another place within the Court premises to be selected by the Presiding Officer.

Rule 129. All sales of live stock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets shall, unless the Court otherwise directs, be held at such market in the neighborhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expenses in conveyance and carriage.

Rule 130. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act, XI of 1878; are sold by public auction in execution of decrees, the Court directing the sale, shall give due notice to the Magistrate of the district of the names and addresses to the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the Indian Arms Act.

Rule 131. Whenever the Civil Courts have occasion to sell, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, they shall, on confirming the sale forward a copy of the sale-certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

Rule 132. As soon as sale is made absolute and the auction-purchaser has filed the necessary sale certificate stamp under Order XXI, Rule 94 of the Civil Procedure Code, a sale certificate shall be prepared in the prescribed form and the fact shall be noted in the order sheet. The sale certificate shall be made ready within 21 days of the date of the filing of the sale certificate stamp. In addition to the original certificate, two more copies thereof shall be prepared, one of which shall be kept with the record and the other despatched to the Registration office as soon as the certificate is prepared. On each copy the amount of stamp duty paid on the original certificate under Article 18 of Schedule I of the Indian Stamp Act, 1899, shall be noted. Under Article 24 (a) of the same Schedule such copies do not themselves require to be stamped. The original certificate if undelivered should be kept with others in bundles of a convenient size in the custody of the Shirestadar and destroyed in the presence of Registrar and if there is no Registrar, in the presence of the Presiding Officer concerned after [one year] from the date of confirmation of the sale.

Rule 133. When a sale certificate is ready, notice thereof should be exhibited on the notice board in form no. (M) 17-A which shall remain pasted for a period of one week. At the end of every quarter the notices for the previous quarter will be destroyed.

Rule 134. The following particulars should be inserted in the sale certificates

- (1) The “addition” (as defined in Section 2 of the Indian Registration Act, 1908), of the person who is declared to be the purchaser;
- (2) Particulars sufficient to identify the property, as required by Section 22 (2) of the same Act;
- (3) The name of each registration sub-district in which any part of the property is situated;
- (4) The date on which the sale became absolute.

Arrest, Imprisonment and Release

Rule 135. As inconvenience and danger are likely to arise from the arrest under civil process of Railway servants, unless such previous notice be given as may enable measures to be taken to provide for the proper performance of their duties, all warrants issued by any Civil Court for the arrest of Railway servants should be entrusted for execution to a selected peon, who, if he finds on proceeding to execute the warrant that the immediate arrest of the Railway servant would occasion risk or inconvenience, shall make all arrangements necessary to prevent escape, and defer removing the person arrested from his post for at least twenty-four hours, giving immediate notice of the arrest to the nearest Station-Master.

Rule 136. Warrants for release should not be dispatched by a Court after sunset, or, if so dispatched, should be endorsed with instructions for release as early as possible next morning.

Note-The above provisions apply to witnesses arrested under a warrant and detained in the Civil prison.

Execution by Another Court

Rule 137. The attention of Courts is drawn to the provisions of Section 41 of Civil Procedure Code. There should be no unnecessary delay in carrying out the directions contained in that section.

Chapter – 5

Role of Court Staff (Sharistedars / Bench Clerks / Office clerks) dealing with application for execution of decree

Execution case is filed for execution of decree u/O XXI Rule II C.P.C. Contents of Execution petition as per format given under order XXI Rule II C.P.C.

The Execution case is also filed in centralized filing for registration. After registration the execution case is sent to the Court concern with a date fixed for admission with office note. The Bench Clerk will send the record to the Sharistadar for office note, if no office note as given by the Seristedar.

If the petition remains in order the same will be placed before the P.O. for admission and if there will be defective the D. Holder will be directed to remove the defects pointed out in the office note.

It is the duty of the ministerial staff (*Sheristadar*) to examine the execution petition on its filing, whether it is consonance with the above provisions and put a office note on the back of the first page of the execution petition. It is to be ensured by the office clerk of the concerned court in which the execution petition has been filed that immediately, on receipt of the application, the first order sheet is drawn taking the signature of the P.O. thereon and an office note/stamp report from the *sheristadar* is called for. Thereafter the record is to be placed before the P.O. for further proceeding.

When an execution application is moved before the Court passing the decree, the execution Clerk or in his absence the Ahlmad would verify the particulars of the application and shall report as to whether such a decree has been passed by the said Court or not. The particulars of which are required to be written in the execution application as required vide Order XXI Rule 11(2) CPC and no column has been deleted and information concealed.

The execution Clerk/Ahlmad shall also verify whether earlier the D.H. had moved some execution applications and if so whether the same were executed fully or partly. If any payment on the basis of the previous execution application had been made or recovered, the same shall also be mentioned in the report. The execution clerk/Ahlmad would also report if there is any stay issued by the Higher Court and if the 34 appeal was filed and if so whether the decree has been set aside or reversed.

The execution clerk/Ahlmad shall also report whether the court has the jurisdiction to execute the decree meaning thereby whether the decree was passed by the said court or by an officer who has been declared successor of the said Court. If the court has received the application on transfer it shall also be reported whether there is any mention in the execution application to show that the property subject matter of the decree falls or the JD resides in the jurisdiction of the executing Court.

The detailed report about these facts shall be submitted to the Presiding Officer who shall thereafter pass an order for its registration and also to issue process as required by law.

The execution file would then come back to the execution Clerk/Ahlmad who shall enter it in the register for execution of decrees. He shall fill in the various columns of the register against the entry of the execution application. He shall thereafter issue the process as ordered by the Presiding Officer, get the same signed from the Presiding Officer or such other person authorized to sign the same.

The process so issued shall be entered in the register and shall be delivered to the Nazir for execution whose signatures shall be obtained in token of handing over the said process. The execution Clerk/Ahlmad shall also make an endorsement below the order of the Presiding Officer to the effect that the process has been issued and shall also put a date on which it was issued, so as to keep record of the case in which the process has been issued so that it is not re-issued in the same case or not issued at all in other cases. The execution file shall thereafter be placed in the peshi for the said date for which it has been fixed.

After admission notice will be issued to the J. Dr on filing requisite by the D. Hr. on receipt of service report the B.C. will scrutinize the mode of service. Either personally, or on affixing note at the resident or return. The J.Dr will be ordered again and again until the service is effected property.

A decree can be executed according to its nature, viz.

1. decree for payment of money, decree for specific movable property,
2. decree for specific performance for restitution of conjugal rights, or for an injunction;

3. decree for execution of document or endorsement of negotiable instrument, decree for immovable property and decree for delivery of immovable property while in occupancy of tenant.

It is the duty of the court ministerial staffs to see the nature of the decrees when their execution is applied for so that essential steps on all the proceedings should be carried out carefully with a view to provide proper relief for the affected person and the process must make the proceedings effective and fast.

The execution case will proceed according to mode of assistant required as per Column 10 of the Execution petition.

Different kind of reliefs is prayed in the execution petition.

- (1) For realization of money X by attachment and sale.
- (2) For delivery of possession of immovable property.
- (3) For execution of Sale deed in a suit under specific performance of contract.
- (4) By detention in Civil Prison.

Procedure of Execution is different from each other.

In case of realization of money by attached of movable property after proper service attachment u/o 21 rule 30 C.P.C. will be issued to be bailiff of the Court Nazir Commanding there in to attach the movable given in the schedule of Execution petition if the amount in decree is not paid by the J. Dr.

In case of realization of decretal amount by attachment of immovable property the Court will issue attachment u/O XXI rule 54 C.P.C. which is a prohibitory order. The process of prohibitory attachment will be issued in four forms. Service of Prohibitory order is different from the attachment of movable property, Prohibitory order of attachment will be serve as under one copy of attachment will be pasted at the spot. The second copy of attachment will be hung up in the notice of the Deputy Commissioner, the third one will be posted at the notice board of the Principal District Judge and fourth will be returned to the court with endorsement of mode of service. The service report will be on solemn affirmation before the Nazir, Civil Court who is appointed oath commissioner as per 27 of the Civil Courts Rule Vol-I.

After service or prohibitory order of attachment a sale proclamation will be issued U/o XXI Rule 66 C.P.C. fixing a date of auction. The Sale proclamation should be served before 30 days the date of sale.

The Nazir, Civil Court will place the Sale Proclamation before the P.O. in the Izlas. After bid the presiding officer will knock down a hammer. If the P.O. will not satisfy by the bid will order for issue of a Sale proclamation a fresh.

The successful bidder is required to deposit 1/4th the bid amount with a pond-age fee of 1% of the bid amount.

As per rule the Dr. Hr. can also take part in the Bid Earnest money and pondage fee can be set off against the decretal amount if the Decree holder become the successful bidder.

If the Bid amount comes less than the decretal amount in Dr. hr. is entitle to take fresh step for attachment.

If the Execution case is for delivery of possession writ of D.P. will be issued to the Nazir U/O 21 rule 35 C.P.C. commanding therein to remove the J.Dr. from the property and put the D.Hr. in possession. The Court can order delivery of possession by breaking the lock door bolt and by removing all abstraction u/o XXI Rule 35(3) CPC. After delivery of possession the Execution case will be dismissed on full satisfaction.

The Execution case is always dismissed either on full satisfaction or in part satisfaction or infructuous.

If the Decree is for execution of Sale deed under specific performance of contract there after proper service the Court will order for deposit of balance of consideration amount. Thereafter the Court will order to file draft sale deed. The draft sale deed will be served to the J. Dr. U/o 21 Rule 34(2) C.P.C. inviting objection if any against the draft sale deed. The objection filed, if any filed against the draft sale deed shall be registered as Misc. Judicial Case as per Rule 431 of Civil Courts Rule. After disposal of misc case original Sale deed on non-judicial Stamped assessed by the District sub-Registrar will be register. The Court can himself admit execution of sale deed or can depute his staff u/o 21 Rule 34 (6) C.P.C. After execution of sale deed the Execution case will be dismissed on full satisfaction.

If the relief is for arrest of the J.Dr. For Civil prison in that case after proper service u/o XXI Rule 2:2 C.P.C. notice to the J.Dr. will be issued u/o XXI Rule 37 C.P.C.

for objection if any against the arrest and detention in Civil prison. After disposal of objection writ of warrant of arrest will be issued to the Ball-iff of the Court, Nazir, Civil Court for execution of warrant of arrest. Under the Jharkhand Civil Court Rules Vol I the P. fee for warrant of arrest for civil prison P. fee and W/A is Rs. 150/- .

Before issue of writ of warrant of arrest the court will call for a report from the Jail authority regarding cost of one day Civil prison. The D.Hr. will deposit cost of Civil prison for the day D.Hr. wants to put the J.Dr. in Civil Prison.

After arrest and sent to Civil prison. The decree will be satisfied.

Again it is duty of court staff dealing with application of decree to point out the facts before the P.O. that whether the notice as such to be issued under order 21 Rule 22 C.P.C. is required or not. In this regard it is to be suggested that this rule may be followed in its letter and spirit at the time of stamp reporting / office note given by the Sheristadars on filing of the execution petitions, so that the P.O. shall take all endeavors to apply the provision at the first hearing of the applications of execution to quicken the proceeding.

The Judge shall sign every process issued in the execution or some other competent officer appointed in this behalf and the seal of the court shall be put thereon. The next date fixed in the case shall be specified on the process for the execution of the process and the date for the return of the process to the Court. It shall then be delivered to the proper officer i.e. the Nazir of Civil Court for service.

Chapter - 6**Execution Proceedings – Limitation Prescribed under The Limitation Act 1963**

Art No.	Description of application	Period of limitation	Time from which period begins to run
124	For a review of judgment by a Court other than the Supreme Court.	Thirty day	The date of the decree or order
125	To record an adjustment or satisfaction of a decree	Thirty day	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments	Thirty day	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor	Sixty days	The date of the sale
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.

135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, sch date.
136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the endorsement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrue

Chaper - 7**Execution of Decree : Guideline issued by Apex Court in case of
Rahul S. Shah versus Jinendra Kumar Gandhi and ors., 2021 SCC Online SC 341**

1. Having regard to the large pendency of execution proceedings, large number of instances of abuse of process of execution and legal complexities, in *Rahul S. Shah versus Jinendra Kumar Gandhi and ors.*, 2021 SCC Online SC 341: 2021 (2) JLJR (SC) 460, a three Judge bench of Hon'ble Supreme court by exercising jurisdiction under Article 142 read with Articles 141 and 144 of the Constitution of India has issued directions in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by the parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law. In the judgment it is specifically provided that all courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned direction:-
 - I. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third Party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
 - II. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
 - III. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to 1 avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
 - IV. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.
 - V. The Court must, before passing the decree, pertaining to Delivery of possession of a property ensure that the decree is unambiguous so as to not

only contain clear description of the property but also having regard to the status of the property.

- VI. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
- VII. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
- VIII. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
- IX. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other 2 expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
- X. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A of CPC.
- XI. Under section 60 of CPC the term in name of the judgment debtor or by another person in trust for him or on his behalf should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
- XII. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

- XIII. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree.
- XIV. In case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

Hon'ble Apex Court has further directed to adopt some measures to be adopted by the Trial court to play an active role in deciding all related issues to the subject matter during adjudication of suit itself in order to avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties and to ensure a clear unambiguous and executable decree be passed.

1. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.
2. It also becomes necessary for the Trial Court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the defendant. Thus, the Court may also take recourse to the following actions:
 - a) Issue commission under Order XXVI Rule 9 of CPC. A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the Court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the Court may also appoint a Receiver under Order XL Rule 1 to

secure the status of the property during the pendency of the suit or while passing a decree.

- b) Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.
 - c) Affix such notice on the said property.
 - d) Issue such notice specifying suit number etc. and the Court in which it is pending including details of the suit property and have the same published on the official website of the Court.
3. Based on the report of the Commissioner or an application made in that regard, the Court may proceed to add necessary or proper parties under Order I Rule 10. The Court may permit objectors or claimants upon joining as a party in exercise of power under Order I Rule 10, make a joinder order under Order II Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.
 4. If the above suggested recourse is taken and subsequently if an objection is received in respect of “suit property” under Order XXI Rule 97 or Rule 99 of CPC at the stage of execution of the decree, the Executing Court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued during trial. Such claims under Order XXI Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

Chapter - 8

Important Forms and Formats used in Execution proceedings

All staff of the civil courts dealing with the matters of execution proceedings like execution applications, processing of show cause notices, issuance of writ of delivery of possessions, attachment, sale, arrest before attachment, transfer of decrees to another court for execution, realization of money by auction sale etc. should be made acquainted with the forms as given in Appendix – E of C.P.C., which helps them to comply the directions of the execution court in speedy manner:-

Appendix-E

Form No.	Subject for which form is to be used	Relevant Provisions under C.P.C.
Form-No.1	Notice to Show Cause Why a Payment or Adjustment should not be Recorded as Certified	O.21,R. 2
No. 2	Precept	Section 46
No. 3	Order Sending Decree for Execution to another Court	O. 21, R. 6
No. 4	Certificate of Non-Satisfaction of Decree	O. 21, R. 6.
No. 5	Certificate of Execution of Decree Transferred to Another Court	O. 21, R. 6
No. 6	Application for Execution of Decree	0.21.R. 11
No.7		
	Notice to Show Cause Why Execution should not Issue	O. 21, R. 16
No. 8	Warrant of Attachment of Movable Property in Execution of a Decree for Money	O.21.R.30
No. 9	Warrant of Attachment of any specific Movable property or any share therein to handover the decree holder	O. 21, R. 31
No. 10	Notice to State Objections to Draft of Document	O. 21.R.34

No. 11	Warrant to the Bailiff to Give Possession of Land, etc.	O. 21, R. 35
No. 12	Notice to Show Cause Why Warrant of Arrest should not Issue	O. 21, R. 37
No. 13	Warrant of Arrest in Execution	O. 21, R. 38
No.14	Order Of Entrustment Of Judgment-Debtor To The Custody Of An Officer Of Court	O.21, R.40
No. 15	Order for the Release of a Person Imprisoned in Execution of a Decree	Sections 58, 59
No. 15A	Bond for Safe Custody of Movable Property Attached And Left In Charge of Person Interested And Sureties	Order XXI, rule 43
No. 15B	BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES	Order XXI, rule 43(1)(c)
No. 16	Attachment in Execution Prohibitory Order, where the Property to be Attached Consists of Movable Property to which the Defendant is Entitled Subject to a lien or Right of some other Person to the Immediate Possession thereof	O.21, R. 46
No. 16A	Affidavit of Assets to be made by a Judgment-debtor	Order XXI, Rule 41(2)
No. 17	Attachment in Execution Prohibitory Order, where the Property Consists of Debts Not Secured by Negotiable Instruments	O. 21.R.46
No. 18	Attachment in Execution Prohibitory Order, where the Property Consists of Shares in the Capital of a Corporation	O. 21.R.46
No. 19	Order to Attach Salary of Public Officer or Servant of Railway Company or Local Authority	O. 21.R.48
No. 20	Order of Attachment of Negotiable Instrument	O. 21, R.51
No. 21	Prohibitory Order, where the Property Consists of Money or of any Security in the Custody of a Court of Justice or Public Officer	O. 21, R. 52

No. 22	Notice of Attachment of a Decree to the Court which Passed it	O. 21, R. 52.
No. 23	Notice of Attachment of a Decree to the Holder of the Decree	O. 21, R. 53
No. 24	Attachment in Execution Prohibitory Order, Where the Property Consists of Immovable Property	O. 21, R. 54
No. 25	Order for Payment to the Plaintiff, etc., of Money, etc., in the Hands of a Third Party	O. 21, R. 56
No. 26	Notice to Attaching Creditor	O.21.R.58
No. 27	Warrant of Sale of Property in Execution of a Decree for Money	O. 21, R. 66

Form-No.1

Notice to Show Cause Why a Payment or Adjustment should not be Recorded as
Certified

(O.21,R. 2)

(Title)

Whereas in execution of the decree in the above-named suit. has applied to this Court that the sum of Rs. recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the..... day of..... 19..... to show cause why the payment/adjustment aforesaid should not be recorded as certified.

Given under my hand and the seal of the Court, this.....day of..... 20

Judge

No. 2

Precept

(Section 46)

(Title)

Upon hearing the decree-holder it is Ordered that this precept be sent to the Court of.....at..... under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed Schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

No. 3

Order Sending Decree for Execution to another Court

(O. 21, R. 6)

(Title)

Whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of..... at..... for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits, of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered: That a copy of this Order be sent to with a copy of the decree and of any Order which may have been made for execution of the same and a certificate of non-satisfaction. Dated the..... day of..... 20.....

Judge

No. 4

Certificate of Non-Satisfaction of Decree

(O. 21, R. 6.)

(Title)

Certified that no1 satisfaction of the decree of this Court in suit No..... of 19, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court. Dated the day of..... 20

Judge

1. If partial, strike out “no” and state to what extent.

No. 5

Certificate of Execution of Decree Transferred to Another Court

(O. 21, R. 6)

(Title)

Fill-up the details of decree, address of the parties and mode of execution required.

Signature of Maharir incharge

Signature of Judge

No. 6

Application for Execution of Decree

(0.21.R. 11)

In the Court of

I..... decree-holder, hereby apply for execution of the decree herein-below set forth:

Table no. 6 link

I..... declare that what is stated herein is true to the best of my knowledge and belief.

Signed..... decree-holder

Dated the day of..... 20

[When attachment and sale of immovable property is sought.]

Description and specification of property

The undivided one-third share of the judgment-debtor in a house situated in the village of..... value Rs. 40, and bounded as follows :-

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I..... declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed..... decree-holder

HIGH COURT AMENDMENT

Patna.-In Appendix E, in Form No. 6, in column 6, in heading, after the word "date" insert the words ", date of final Order passed on it".

No. 7

Notice to Show Cause Why Execution should not Issue

(O. 21, R. 16)

(Title)

To

Whereas has made application to this Court for execution of decree in Suit No..... of 19 on the allegation that the said decree has transferred to him by assignment 1 [or without assignment], this is to give you notice that you are to appear before this Court on the day of..... 20, to show cause why execution should not be granted.

Given under my hand and the seal of the Court, this day of..... 20

Judge.

No. 8

**Warrant of Attachment of Movable Property in Execution of a Decree for Money
(O.21.R.30)**

(Title)

To

The Bailiff of the Court,

Whereas was Ordered by decree of this Court passed on the day of.....19 in Suit No. of 19 to oav to the plaintiff. the sum of Rs. as noted in the margin: and whereas the said sum of Rs. has not been paid; These are to command you to attach the movable property of the said , as set forth in the Schedule hereunto annexed, or which shall be pointed out to you by the said and unless the said shall pay to you the said sum of Rs. together with Rs. the costs of this attachment, to hold the same until further Orders from this Court.

Decree

Principal

Interest

Costs

Cost of execution

Further interest

You are further commanded to return this warrant on or before the day of..... 20..., with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

Given under my hand and the seal of the Court, this..... day of..... 20,

Schedule

Judge.

No. 9

(O. 21, R. 31)

(Title)

To

The Bailiff of the Court.

Whereas was Ordered by decree of this Court passed on the day of..... 19 in Suit No..... of 19...., to deliver to the plaintiff the movable property (or a..... share in the movable property) specified in the Schedule hereunto annexed, and whereas the said property (or share) has not been delivered.

These are to command you to seize the said movable property (or a share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in this behalf. Given under my hand and the seal of the Court, this..... day of..... 20,

Schedule

Judge.

No. 10

Notice to State Objections to Draft of Document

(O. 21.R.34)

(Title)

To

Take notice that on the day of..... 20 the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of..... whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the..... day of..... 20, is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of property

Given under my hand and the seal of the Court, this day of..... 20,

Judge.

No. 11

Warrant to the Bailiff to Give Possession of Land, etc.

(O. 21, R. 35)

(Title)

To

The Bailiff of the Court.

Whereas the under mentioned property in the occupancy of..... has been decreed to the plaintiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

Given under my hand and the seal of the Court, this day of..... 20.....

Schedule

Judge.

No. 12

Notice to Show Cause Why Warrant of Arrest should not Issue

(O. 21, R. 37)

(Title)

To

Whereas has made application to this Court for execution of decree in Suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of..... 20...., to show cause why you should not be committed to the civil prison in execution of the said decree.

Given under my hand and the seal of the Court, this day of..... 20....,

Judge.

No. 13

Warrant of Arrest in Execution

(O. 21, R. 38)

(Title)

To

The Bailiff of the Court. Whereas was adjudged by a decree of the Court in suit No. of 19 .. ., dated the day of 20 ... , to pay to the decree-holder the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs together with Rs.. for the cost of executing this process, to bring the said defendant before the Court with all convenient speed.

Decree

Principal

Interest

Costs

Cost of execution

Further interest

You are further commanded to return this warrant on or before the . Day of 19 .., with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

Given under any hand and the seal of the Court, this .. day of .. 20.,

No.14

(O.21, R.40)

(Title)

To

The Officer in charge of the Jail at

Whereas who has been brought before this Court this day of..... . 19...., under a warrant in execution of a decree which was made and pronounced by the said Court on the..... day of..... 19, and by which decree it was Ordered that the said..... should pay.....; And whereas the said..... . has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby commanded and required to take and receive the said..... into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said..... shall be otherwise entitled to be released according to terms and provisions of Section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix 1 [* * *]per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

Given under my hand and the seal of the Court, this day of..... 20....,

Judge.

Order OF ENTRUSTMENT OF JUDGMENT-DEBTOR TO THE CUSTODY OF AN OFFICER OF COURT

[Order XXI, rule 40, sub rule (2) and the proviso to sub-rule (3)]

IN THE COURT OF THE OF

To

The Bailiff of the Court.

WHEREAS..... who has been brought before this Court, this day of19..../20..., under warrant in execution of a decree which was made and pronounced by said Court on the day of..... 19..../20.../ and by which decree, it was Ordered that the said judgment-debtor should pay Rs.....

And whereas the judgment-debtor has been Ordered to be kept in the custody of an officer of the Court pending the enquiry under Order XXI, rule 40, sub-rule (2).

And whereas the said judgment-debtor has to be given an opportunity of satisfying the decree and for this end this Court is of opinion that the said judgment-debtor may be left in the custody of an officer of Court.

You are hereby, commanded and required to take and receive the said judgment-debtor into your custody and keep him in that custody for period of..... days or until further Orders of this Court. You are hereby further informed that he is not to be allowed to go anywhere except in your company. You are further required to produce the said judgment-debtor before this Court at the expiration of the period specified, if the decree be no sooner satisfied.

GIVEN under my hand and the seal of the Court this..... day of19 ,.../20...

(By Order)

Central Nazir”

No. 15

Order for the Release of a Person Imprisoned in Execution of a Decree (Sections 58, 59)

(Title)

To

The Officer in charge of the Jail at.....

Under Orders passed this day, you are hereby directed to set free..... judgment-debtor now in your custody,

Dated.....

Judge.

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSONS AND SURETIES [Order XXIA, rules 3 (a) and 5]

IN THE COURT OF..... AT.....

Civil Suit No..... of

A.B. of.....;

Against

C.D.

of.....

Known all men by these persons that we, I, J. of, etc. and K.L. of..... etc. and M.N. of.....etc., are jointly and severally bound to the Judge of the Court of in Rupees..... to be paid to the said Judge, for which payment to be made we bind ourselves and each of us in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19..../20.... .

And whereas the movable property/livestock specified in the Schedule hereunto annexed has been attached under a warrant from the said Court dated the day of..... 19/20...., in execution of a decree in favour ofin Suit No of.....19/20...., on the file of and the said property has been left in the charge of the I.J.

Now the condition of this obligation is that if the above bounded I.J. (shall duly account for any loss which the owner of the property) livestock may suffer due to wilful negligence of the bounded and produce when required before the said Court all and every the property/ livestock aforesaid (and shall properly maintain and take due care of the livestock aforesaid) and shall obey any further Order of the Court in respect then this obligation shall be void; otherwise it shall remain in full force and be enforceable against the above bounded I.J. in the execution proceedings.

Signed and delivered by the above bounden in the presence of... .. “

No. 15A

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

(Order XXI, rule 43)

IN THE COURT OF..... AT.....

Civil Suit No..... of 19..../20.... ”

A.B. of.....

Against

CD. of.....

Know all men by these persons that we I.J. of, etc, and K.L. of, etc. and M.N. of, etc., are jointly and severally bound to the Judge of the Court of in rupees to be paid to the said Judge, for which payment to be made we bind ourselves and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of..... 19..../20....

And whereas the movable property specified in Schedule hereunto annexed has been attached under a warrant from the said Court, dated the..... day of 19..../20...., is execution of a decree in favour of..... in Suit No of..... 19..../20...., on the file of and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounded I.J. shall duly account for and produce when required before the said Court all and every property aforesaid and shall obey any further Order of the Court in respect thereof, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above bounden in the presence of”

No. 15B

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES

[Order XXI, rule 43(1)(c)]

IN THE COURT OF..... AT.....

Civil Suit No..... of 19.../20....

A.B.

of.....

Against

CD. of

Know all men by these presents that, we I.J, of etc., and K.L. of etc., and M.N. of etc., are jointly and severally bound to the judge of the Court of in Rupees to be paid to the said judge for which payment to be made, we

bind ourselves and each of us, in the whole our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this..... day of19..../20....

And whereas the movable property specified in the Schedule hereunto annexed has been attached under a warrant from the said Court, dated the day of..... 19..../20...., in execution of a decree in favour of in Suit No of 19..../20...., on the file of..... and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounden I.J, shall duly account for and produce when required before the said Court all and every property aforesaid and shall obey any further Order of the Court in respect thereof, then this obligation shall be void; otherwise it shall remain in full force and be enforceable against the above bounden I.J. in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I.J. were a surety for the restoration of property taken in execution of a decree.

Signed and delivered by the above bounden in the presence of.....”

No. 16

Attachment in Execution Prohibitory Order, where the Property to be Attached Consists of Movable Property to which the Defendant is Entitled Subject to a lien or Right of some other Person to the Immediate Possession thereof

(O.21, R. 46)

(Title)

To

Whereas has failed to satisfy a decree passed against..... on the..... day of..... 19 in Suit No..... of 19 in favour of..... for Rs.....; It is Ordered that the defendant be, and is hereby, prohibited and restrained until the further Order of this Court, from receiving from the following property in the possession of the said, that is to say,..... to which the defendant is entitled, subject to any claim of the said..... and the said is hereby prohibited and restrained, until the further Order of this Court, from delivering the said property to any person or persons whomsoever.

Given under my hand and the seal of the Court, this day of..... 20....,

Judge.

**1[No. 16A
Affidavit of Assets to be made by a Judgment-debtor**

Order XXI, Rule 41(2)]

In the Court of A.B..... Decree-holder.

vs.

C..... Judgment-debtor.

I..... of

State on = oath / solemn affirmation as follows:-

1. My full name is (Block Capitals)
2. I live at
- *3.1 am married/single/widower (widow)/divorced
4. The following persons are dependant upon me:-
5. My employment, trade or profession is that of carried on by me at I am a director of the following companies:-
6. My present annual/monthly/weekly income, after paying income-tax, is as follows:-
 - (a) From my employment, trade or profession Rs.....
 - (b) From other sources Rs.....
- *7. (a) I own the house in which I live; its value is Rs.
 I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.
 (b) I pay as rent the annual sum of Rs.....
8. I possess the following:-
 - (a) Banking accounts;
 - (b) Stocks and shares;
 - (c) Life and endowment
 - (d) House property;
 - (e) Other property;

(f) Other securities;

Give particulars.

9. The following debts are due to me:-

(give particulars)

(a) Form of

Rs.

(b) Fromof

Rs..... .(etc.)

Sworn before me, etc.]

No. 17

Attachment in Execution Prohibitory Order, where the Property Consists of Debts Not Secured by Negotiable Instruments

(O. 21.R.46)

(Title)

To

Whereas.....has failed to satisfy a decree passed against on the day of..... 19..., in Suit No. of 19..... in favour of until the further Order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,..... and that you, the said..... be, and you are hereby, prohibited and restrained, until the further Order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

Given under my hand and the seal of the Court, this day of 20...

Judge.

No. 18

Attachment in Execution Prohibitory Order, where the Property Consists of Shares in the Capital of a Corporation

(O. 21.R.46)

(Title)

To

Defendant and to..... Secretary of Corporation

Whereas ... had failed to satisfy a decree passed against... on the ... day of... 19 ..., in Suit No. of 19 in favour of. . ., for Rs.; It is Ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further Order of the Court, from making any transfer of.... shares in the aforesaid corporation, namely,.... or from receiving payment of any dividends thereon; and you,.. ., the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Given under my hand and the seal of the Court, this day of 20....

Judge.

No. 19

Order to Attach Salary of Public Officer or Servant of Railway Company or Local Authority

(O. 21.R.48)

(Title) To

Whereas....., judgment-debtor in the above-named case, is a (describe officer of judgment-debtor) receiving his salary (or allowances) at your hands; and whereas decree-holder in the said case, has applied in this Court for the attachment of the salary (or allowances) of the said to the extent of due to him under the decree; You are hereby required to withhold the said sum of. from the salary of the said in monthly instalments of and to remit the said sum (or monthly instalments) to this Court.

Given under my hand and the seal of the Court; this day of..... 20...

Judge.

No. 20

Order of Attachment of Negotiable Instrument

(O. 21, R.51)

(Title)

To

The Bailiff of the Court. Whereas an Order has been passed by this Court on the day of..... 19 ..., for the attachment of ...; You are hereby directed to seize the said..... and bring the same into Court.

Given under my hand and the seal of the Court, this day of..... 20...

Judge.

No. 21

Prohibitory Order, where the Property Consists of Money or of any Security in the Custody of a Court of Justice or Public Officer

(O. 21, R. 52).

(Title)

To

Sir,

The plaintiff having applied, under Rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (here state how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further Order of this Court.

I have the honour to be,

Sir

Your most obedient.

Judge.

Dated the day of..... 20...

No. 22

Notice of Attachment of a Decree to the Court which Passed it
(O. 21, R. 52.)

(Title)

To

The Judge of the Court of

Sir,

I have the honour to inform you that the decree obtained in your Court on the day of..... 19... by in Suit No. of 19..., in which he was and was ... has been attached by this Court on the application of....., the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder o the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.

Judge

Dated the day of... 20..

No. 23

Notice of Attachment of a Decree to the Holder of the Decree
(O. 21, R. 53)

(Title)

To

Whereas an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of..... 19..., in the Court of..... in Suit No. ... of 19 ... in which was.....and..... was It is Ordered that you, the said be, and you are hereby, prohibited and restrained, until the further Order of this Court, from transferring or charging the same in any way.

Given under my hand and the seal of the Court, this..... day of..... 20...

Judge.

No. 24

Attachment in Execution Prohibitory Order, Where the Property Consists of
Immovable Property

(O. 21, R. 54)

(Title)

To

..... Defendant

Whereas you have failed to satisfy a decree passed against you on the day of 19....., in Suit No..... of 19..., in favour of.....for Rs.,.....; It is Ordered that you, the said..... be, and you are hereby, prohibited and restrained, until the further Order of the Court, from transferring or charging the property specified in the Schedule hereunto annexed, by sale, gift or otherwise, and that all person be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

1 [fit is also Ordered that you should attend Court on the day of..... 20. to take notice of the date fixed for setting the terms of the proclamation of sale.]

Given under my hand and the seal of the Court, this..... day of..... 20.....

Schedule

Judge.

No. 25

Order for Payment to the Plaintiff, etc., of Money, etc., in the Hands of a Third Party

(O. 21, R. 56)

(Title)

To

Whereas the following property has been attached in execution of a decree in Suit No..... of..... 19 ..., passed on the day of..... 19...in favour of for Rs. It is Ordered that the property so attached, consisting of Rs. in money and Rs. in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said to

Given under my hand and the seal of the Court, this day of.... 20 ...

Judge.

No. 26

Notice to Attaching Creditor

(O.21.R.58)

(Title)

To

Whereas has made application to this Court for the removal of attachment onplaced at your instance in execution of the decree in Suit No..... of..... 19..., this is to give you notice to appear before this Court on theday of..... 19.... either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

Given under my hand and the seal of the Court, this day of..... 20...

Judge.

No. 27

Warrant of Sale of Property in Execution of a Decree for Money

(O. 21, R. 66)

(Title)

To

The Bailiff of the Court.

These are to command you to sell by auction, after giving..... days' previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of. . . 1

Frequently Asked Questions (FAQ)

1. What is “Execution”?

Ans. Word “Execution” is not defined in the Code of Civil Procedure but it simply means the process for enforcing the decree that is passed in favour of the decree holder by a competent court.

2. What are the relevant provisions on execution in CPC?

Ans. Section 36 to 74, section 144, 146 and 148 of CPC along with order 21 of CPC are the relevant provisions on execution of a decree in CPC.

3. Which court has jurisdiction to execute the decree?

Ans. As per section 37 of CPC the decree can be executed by the court which passed the decree and as per section 38 CPC the court which the decree is transferred, have jurisdiction to entertain the Execution Petitioners.

4. Can the execution court go behind the decree?

Ans. No., the execution court cannot go behind the decree.

Sunder Dass -Vs- Ram Prakash (AIR 1977 SC 1201, Hira Lal Patni -Vs- Sri Kadi Nadh (AIR 1962 SC 199) Vasydev Dhanjibhai Modi –Vs- Rajabhai-Abdul Rehman & Others (AIR 1970 SC 1475).

5. When there is a conflict between the judgment and decree, whether execution court can look into the judgment?

Ans. Yes, when there is a conflict between the judgment and decree and if the decree is not properly / happily drafted, the executing court can look into the judgment to know the intention of the court.

G.Ramayya Vs. Y.Bayanna (1974 (2) An.W.R 14 (SN), S.B.I, Petitioner Vs. Maa Sarada oil mills & others (A.I.R. 2003 Gau.22)

6. Whether The Executing Court can go through pleadings and proceedings upto decree to know the intention of the trial court in passing decree?

Ans. Yes, Bhavan Vijaya and others Appellants Vs Solanki Hanuji Khodaji Mansang and another Respondent (AIR 1972 SC 1371).

7. When the executing court refuse to execute the decree?

Ans. Yes, if the trial court is not having inherent jurisdiction or if the decree is a nullity on the face of the record, the executing court can refuse to execute the decree. As per section 39(4) CPC, if the person and property are of outside the jurisdictional limit of court then the court passing such decree is not authorized to execute the decree.

8. If the property situated in different courts how execution be taken place?

Ans. Mohit Bhargava Vs Bharat Bhushan Bhargava and other – (2007 (3) SCJ 735

9. What are the procedure with respect to Transfer of Decree?

Ans. Sec.39 C.P.C O.21 R.5 & 6

10. What are the power of transferee Court?

Ans. Section 42 C.P.C. deals with powers of court in executing transferred decree.

11. Whether the court to whom Decree has been sent for execution has power to stay the execution of decree?

Ans. As per Order 21 rule 26 C.P.C, the court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment – debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been thereto.

12. Whether a third party can file a petition to stay the execution under order 21 Rule 26 C.P.C.

Ans. No, third party cannot file a petition to stay the execution under order 21 Rule 26.

13. Whether order of court which passed decree be binding upon the court to which the decree was sent for execution.

Ans. Yes, as per Order 21, Rule 28 C.P.C. any order of the court which pass a decree shall be binding upon the court to which the decree was sent for execution.

14. Whether Caveat petition U/Sec 148-A C.P.C is maintainable -?

Ans. No, as per section 148A CPC right to lodge a caveat may be exercised only in case of a suit or proceeding instituted or about to be instituted in a court . Any person likely to be affected by an interim order that may be passed in a suit can file a caveat.

Ek Nath Kiva Akhadkar & Others -Vs- Administrative (A.I.R. 1984 Bom. 114)
Chloride India (L) -Vs- Ganesh Das Ramgopal (A.I.R 1986 Calcutta 74) Kattil
Vijalil Parkkum Kailoth -(Tribunal & D Etc)Moideen – Vs- Mannial Paadikayil
Kadeesa Umma & Others (A.I.R. 1991 Ker. 411)

15. Whether there are any limitations in Arrest to be adopted as mode of execution?

Ans. Women are exempted from arrest in execution of money decree (Sec.56 C.P.C) Certain class of persons are exempted from arrest (Sec.55 (2) CPC) If the decree is for not more than Rs.2000/-, arrest cannot be ordered. For restrictions on arrest read Sec. 135 and Sec.135-A C.P.C.

16. What are the Steps to be taken before ordering the detention of the J.Dr. in Civil prison.

Ans. (a) issue notice under Order 21 Rule 37 – Form No.12/Appendix E of CPC (b) If J.Dr. fails to appear in response to Rule 37 notice; then Rule 37 (2) warrant must be issued for production of the J.Dr. – Form No.13/Appendix E of CPC (c) If J.Dr appears in response to Rule 37 notice or if the J.Dr is produced on Rule 37(2) Warrant of arrest, means enquiry must be conducted under Order 21 Rule 40 CPC. The Court has to inform the JDR that he is at liberty to file insolvency proceedings – Sec.55 (3) CPC If the JDR expresses his intention to file I.P within one month he can released on security. Sec.55 (4) CPC If the J.Dr is prepared to give security when he is produced under Rule 37(2) Warrant, he must be released.

17. What are the period of detention of JDR in Civil Prison?

Ans. (i) The period of detention in civil prison – Sec. 58 (1) CPC. If the decretal amount is between Rs.2000/- to Rs.5000/-, upto 6 weeks and if the decretal amount is more than Rs.5000/-, upto 3 months (maximum period of detention in a civil prison must not be more than 3 months)

18. When the J.Dr be released from detention after arrest?

Ans. As per proviso of section 58 CPC J.Dr shall be released from detention before the expiration of the fixed period of detention on following situation – (i) On the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or (ii) On the decree against him being otherwise fully satisfied, or (iii) On the request of the person on whose application he / she has been so detained. However the J.Dr shall be released from such detention without the order of the court. Again as per section 59 of CPC J.Dr who has been detained may be released on the ground of his serious illness.

19. Who will fix subsistence allowance?

Ans. As per Sec.57 CPC the state government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of J.Dr.

20. Whether J.Dr be re-arrested for release from detention?

Ans. J.Dr cannot be re-arrested under the decree in execution of which he was detained in the civil prison as per section 58(2) CPC.

21. Which court is competent to sell the immovable property of J.Dr?

Ans. Any court which has passed the decree except the court of small causes can sell immovable property of J.Dr in order to satisfy the execution of decree. If the decree passed by the small causes court is to be executed by the sale of the property, the same has to be transferred to the original court under Order 21 Rule 4 CPC.

22. Which are the properties not to be attached or sale in course of execution of a decree? Ans. As per the list provided in proviso of Sec.60 (1) CPC the properties mentioned therein shall not be liable to attachment of sale.

23. How an attachment can be made of immovable property?

Ans. As per Order 21 Rule 54 CPC where the property is immovable, the attachment shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all person from taking any benefit from such transfer or charge. That order required the judgment debtor to attend on specific date to be fixed for settling the terms of proclamation of sale. The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be fixed on conspicuous part of the property and then upon the conspicuous part of the court house and also where the property is land paying revenue to the government, in the office of the Collector of district in which the land is situate and also in the office of the gram panchayat having jurisdiction over that village.

24. What is the provision for Claim petition?

Ans. Order 21 Rule 58 deals with the claim petition.

As per Order 21 Rule 58 (2) C.P.C. the claim must be between the parties and their representatives and separate suit is not maintainable.

If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable.

Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment.

- i) Under Order 21 Rule 89 C.P.C. payment can be made by J.Dr or other persons. He has to pay auction amount and another 5% of the amount.

As per Art.127 of the Limitation Act, a petition can be filed within 60 days and the deposit must be within 60 days from the date of the sale. O.21 R.92(2) CPC.

- ii) Claim Petition under Order 21 Rule 90 on the ground of material irregularity.

- iii) Claim petition can be filed under Order 21 Rule 91 by purchaser that J.Dr has no saleable interest.

Sale shall not be set aside on the death of the J.Dr. before the sale, but after the service of proclamation of sale (O.21 R22-A).

25. What is the period of proclamation of sale?

Ans. Proclamation must be 15 days prior to the date of sale in case of immovable property and 7 days in case of movable property.

With the written consent of the J.Dr, the sale can be on earlier date under order 21 Rule 68.

26. Whether Sale Certificate issued by the court is compulsorily registerable?

Ans. No, U/s 17 (2) (XII) and U/s 89 of Registration Act, Registration of the Sale certificate is not compulsory registrable document. But, the document must be sent to Sub-Registrar for necessary entries.

Suggestions for Speedy Execution of Decrees and Orders

That it is only the execution which reveals and signifies the importance of the decrees, there can be some basic modes for early disposal of execution petition. In that regard some modes can be by reserving some special day for execution work. Execution of decrees should receive the same attention from the Courts as original civil work and should be methodically and regularly dealt with, as expeditiously as possible. Where parties have to be heard or in the course of execution proceedings, notice should be given, processes issued and dates fixed as in the case of original suits. As a rule, one day during the week should be reserved for execution work so as to ensure proper attention being paid to it; sometimes two days are necessary.

- At the time of dealing of execution proceeding, if Court strictly follow the rules, then execution proceeding can be disposed of as early as possible. In this proceeding, Section 5 of Limitations Act is not maintainable. If below 2 years from decree, no notice under Order XXI Rule 22 of C.P.C. be sent. Notice not necessary if Court feels that unreasonable delay will be caused. In cases of salary attachment, no notice to pay disbursing officer is necessary. It is sufficient if attachment warrant is sent to him.
- Stay of proceeding is the obstacle for early disposal of execution proceeding. This is where the proceedings get stuck without any progress. If we strictly follow the provision and decisions of High Court and Supreme Court delay will be considerably cut down and justice will be done in time.
- Court cannot stay of execution of its own decree. Only under Order 41 Rule 5 C.P.C, stay can be granted by Trial Court, but for fixed time only. No stay can be granted if appeal is filed with delay condonation petition. If Court is satisfied that appeal is pending, then no purpose in keeping the execution proceeding pending. Execution proceeding can be dismissed with liberty to file fresh execution petition after disposal of appeal. The limitation will be saved since decree will merge in appellate Court decree and time will run afresh after disposal of the appeal.
- So far extending the speedy remedy to the decree holder it is suggested that an executing Court should be established in every district court to hear the execution petitions as per the case load of the district within the state of Jharkhand or atleast one specific day of a week be fixed for hearing of execution cases only.

- A duty should be cast upon the Nazir to submit a monthly report as to how many decrees or orders have been assigned to him for execution by different executing courts and what steps have been taken by him. The report must be submitted timely to the Judge-in-Charge/the PDJ/the executing court concerned.
- All court staffs/sheristadar/nazir/process server dealing with the matters of execution of decrees or orders must strictly submit their report within a time schedule to be framed. In case of violation of the time frame liability should be fixed.
- Regarding deposit of any money during execution of decree such as for nazir fee, magistrate fee, police force cost, survey knowing pleader commissioners fee, application of the latest technology should be explored. The ministerial staffs must equip themselves with knowledge of latest technology.
- Execution Courts may be informed annually with regard to cost of each cadre of police officials if any among them to be deputed for execution of decree / order so that the earliest possible directions for deposition of cost for deputation of police officials / Executive magistrate may be issued at the earliest. Generally Execution Court takes much time in ensuring the deputation of police force or Executive Magistrate for peaceful execution of decree / order when the Nazir in course of executing the writ of that in course of execution of decree there was possibility of law and order problem.
- In this regard Hon'ble Apex Court in case of Rahul S. Shah Vs. Jinendra Gandhi & others has also directed that "the Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree".
- Appendix E of the code of civil Procedure, prescribed different proforma of warrants of attachment/ seizure/ delivery of possession, which is issued by the executing courts. The bench clerk/office clerk of the court has to filled up those proforma & court sherishtadar has to check & verify entries filled/made in the warrants of attachment/ seizure/ delivery of possession with the case record. Sometimes, bench clerk/office clerk without filling up entries properly & court sherishtadar without proper verification of writs/warrants and without attaching necessary documents, gets signature of P.O.s, on processes, which caused delay in the execution. So, all sherishtadar, Bench & office clerk of civil court must

be aware as to what entry has to be made and what documents necessarily be attached with processes of warrants of attachment/ seizure/ delivery of possession, before sending it to the Nazarat for execution. Therefore, a practical training with exercise of filling the all kind of notices/process, to court staffs, is needed.

- It is often found that Nazir kept pending warrants of attachment or writ of delivery of possession and other processes issued by Executing Court for a long time on the pretend of administrative works, lack of staffs / process server / bailiff of the court, which is a prominent cause of delay in the execution cases. Therefore, a mechanism is required to developed, to check such delay, may as under: -
 - (a) A separate 'register of execution' should be opened in the Nazarat and entry of all writs/ processes received from all executing courts of Judgeship, must be made with its serial number, date of receiving, name of court & date of returning of the delivery of possession/process to concerned court. This register must be placed before Judge In charge for signature on daily basis with other registers i.e., cash book, peremptory register etc., to monitor delay in the execution.
 - (b) From 'register of execution' the Judge In charge may ensure (I) that no order of attachment/ writ of delivery of possession remain pending in the Nazarat un-executed for more than 15 days. (II) If more than one writ of attachment / delivery of possession is received at a time or more than 3 writs are received in a week, then Judge In charge Nazarat may depute/entrust other Staffs of the Nazarat like Naib Nazir, Cashier also for execution work.
- Sometimes Nazir used to return writ of attachment / delivery of possession to the executing court with an endorsement that, on the spot, J.Dr. has told that a first appeal or second appeal is pending against the decree. If writ is returned un-executed with such endorsement/remarks of Nazir, then cost should be imposed against Nazir.
- Sometimes, Nazir used to return writ of attachment / delivery of possession to the execution court with an endorsement that decree has been passed for vacant land but some temporary structures are standing over the lands or storage of soil / mud / bricks etc. of J.drs. has been found on the spot. The Nazir, being officer of the court, has power U/O21 R 35 of the C.P.C. to remove temporary construction or illegal storage on the land by applying his own mind and writ of attachment / delivery of possession should not be returned unexecuted on pity issues. In those

cases only, where permanent and old constructions are found, matter be reported to executing court for directions.

- There is always chance of breach of peace during execution works. In some cases, the execution cannot be done without deputation of proper police forces & Magistrate and in those cases the executing court deposes police forces on the cost of decree holder. In cases where police & Magistrate are deputed by the court, the police participate actively in the execution work and maintained law and orders also on the spots.

But, in cases where deputation of police force & Magistrate is not required, possibility of breach in peace cannot be ruled out. So, in a case, where deputation of police force has not been made, jurisdictional police station should be informed about execution work in their area, so that the police can deal with the situation if problems of law & order arise. Therefore, it is advisable that before going on the spot, Nazir has to serve a copy of writ of attachment / delivery of possession to the police station with a letter mentioning specifically that presence & participation of police on the spot is not required but the police have to maintain the law and order, if adverse situation arises. This practice may serve dual purposes: -

- (a) The police may watchful and can control adverse situation on the spot, if any arises.
 - (b) If judgment debtor or any person on his behalf comes to police station to register a false case {like dacoity etc.} against Nazir or any court staff, then police, may be able to reach on correct conclusion and may register FIR after proper inquiry and not in the causal manners.
- Sometimes, Nazir used to report that execution work is not possible without deputation of a huge police force and decree-holder is unable to pay such huge cost of deputation of police force & Magistrate. Resulting that the case record kept pending for long times for taking steps to D.Hrs. Under the above situation, where decree holder has not sufficient means to pay/deposit the execution cost, expenses should be borne by the state because it is the duty of the state to maintain rule of law. Further, a provision should be made that state can recover the execution cost from J. Dr. in the same proceeding without filing a separate suit or as arrears of land revenue.

- It has been found that execution work remains pending for a long time for appointment of Magistrate by the District Magistrate, even after depositing cost by the decree-holder. Necessary provisions are required to prevent of such types of delays like imposing cost etc. against erring officer by the executing courts.
- In modern age, use of technology may be very helpful in execution works. If proceedings of delivery of possession as well as attachment are video-graphed, then violent person shall not come on the spot for causing illegal hindrance during execution works. Further, the executing court also can satisfy with the execution proceedings. Thus, video-graphs and photographs may helpful not only in execution but may be helpful for executing court also.
- Some cases, D. Hr or any other person on his behalf, use to challenge the execution proceedings by filing fresh suits on frivolous grounds. In one case, of declaration of title and cancellation of decree (ex-parte), I found a plea in the plaint that no summons was received in the suit and execution proceeding was mere a paper work. In my view, video-graphs and photographs can stop falsity in the execution works, if any and it also can prevent false plea by parties in the court in other cases. But Videography and photography must be done by official camera, which must be kept in the custody of the Nazarat of civil courts/ judge-in-charge Nazarat.

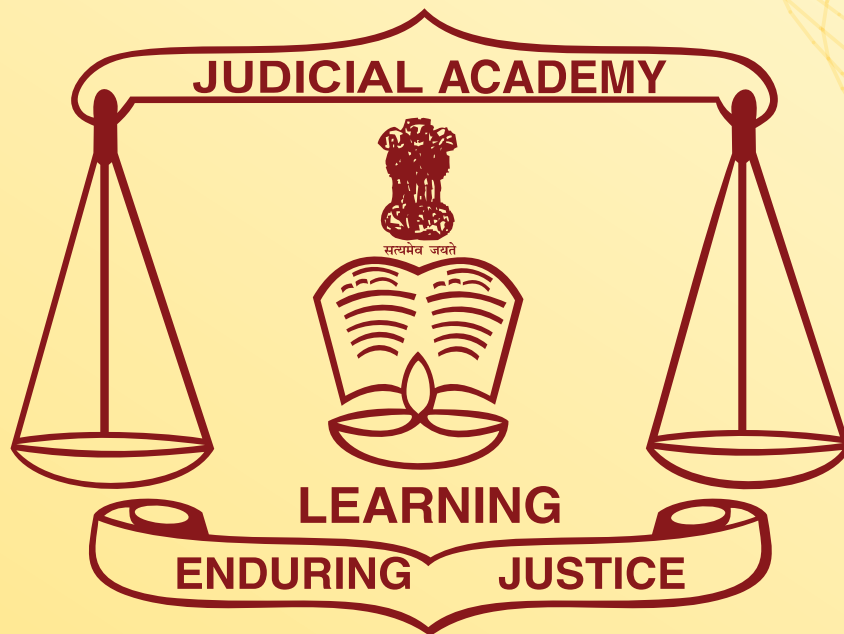


In relation to the difficulties faced by a decree-holder in execution of the decree, In 1872 the Privy Council had observed (General Manager of the Raj Durbhunga v Coomar Rarnaput, Sing.)

“... the difficulties of a litigant in India begin when he has obtained a decree.”

In Satyawati v. Rajinder Singh, (2013) 9 SCC 491, The Supreme Court observed that:

“if there is an unreasonable delay in execution of a decree, the decree-holder would be unable to enjoy the fruits of his success and the entire effort of successful litigant would be in vain”



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