

UTTARAKHAND JUDICIAL AND LEGAL ACADEMY

MODULE ON STEP BY STEPS GENERAL PROCEDURE IN CASE OF EXECUTION OF DECREES

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MODULE – A
STEP BY STEP GENERAL PROCEDURE IN CASE OF EXECUTION OF DECREES

APPLICATION FOR EXECUTION

1.1.1 Execution Petition : An “application for execution of a decree” is the formal petition under Order 21 of the Code of Civil Procedure, 1908 is usually called an “execution petition” and is filed in the court that passed the decree (or in the transferee court if the decree has been transferred).

1.1.2 Written or Oral : It is a written (or sometimes oral) application by the decree-holder seeking enforcement of a decree/order. The application is filed under **Order 21, Rule 10–13 CPC** .

1.1.3 Oral Application {Order 21, Rule 11(1)}: In money decrees, the decree-holder may make an oral application at the time the decree is passed, if the judgment-debtor is present in court. The court may then order immediate execution (for example, arrest of the judgment-debtor) before a formal warrant is prepared.

1.1.4 Written application {Order 21, Rule 11(2)} (Form No. 6 – Appendix E) :

Where an application is written (the usual case), it requires to be:

- **Sign & Verify:** In writing, signed and verified by the applicant or by a person acquainted with the facts.
- **Formatted in tabular form with particulars such as:**
 - (a) The suit number.
 - (b) Name of parties.
 - (c) Date of the decree.
 - (d) Whether any appeal has been preferred.
 - (e) Payment or adjustment made after the decree.
 - (f) Previous execution applications.
 - (g) Amount with interest due.
 - (h) Amount of costs.
 - (i) Person against whom execution is sought.
 - (j) Mode of assistance required (e.g., attachment, sale, arrest).

1.1.5 Certified Copy of Decree {Order 21 Rule 11(3)}: The court to which an written application in made may require the applicant to produce a certified copy of decree.

According to G.R. (Civil), 1957 the application for execution of a decree need not be accompanied by a copy of the decree sought to be executed **{Rule 165 of G.R. (Civil), 1957}**.

1.1.6 Grounds of Arrest (Order 21 Rule 11-A): Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

1.1.7 Inventory of Movable Property not in JD's Possession (Order 21 Rule 12): When a decree-holder applies for the attachment of movable property in the possession of the judgment-debtor, they **must annex an inventory of the property**, providing a reasonably accurate description, as noted by Writing.

1.1.8 Application for the attachment of a judgment-debtor's immovable property must include specific details at the foot of the application (Order 21 Rule 13):

- **Description of Property:** The application must provide a clear, accurate, and detailed description of the immovable property intended for attachment.
- **Boundaries/Numbers:** If the property can be identified by survey numbers, boundaries, or settlement records, these must be specified.
- **Judgment-Debtor's Interest:** The application must outline the extent of the judgment-debtor's share or interest in the property, based on the applicant's best belief and information.

This rule ensures that the court has sufficient information to identify the property correctly before issuing an attachment order. Failure to comply with these requirements may effect the execution process.

1.1.9 Courts by which decree may be executed (Section 38): Section 38 CPC states that a decree can be executed either by the court which passed it or by the court to which it is sent for execution.

- i. **Court Which Passed the Decree** - Section 37 CPC defines this as the court of first instance that passed the decree, including appellate scenarios or where the original court no longer exists or lacks jurisdiction, the successor court with jurisdiction at execution time then qualifies.
- ii. **Transferee Courts** - The original court may transfer the decree under Section 39 CPC to another competent court, either on application or its own motion. For execution; the transferee court gains full powers as if it passed the decree (Section 42 CPC).
- iii. **Special Cases** - Foreign decrees from reciprocating territories (Section 44A) or civil courts outside CPC areas (Section 43) can be executed similarly after certification in Indian courts of competent jurisdiction.

1.1.10 Limitation Period for Execution of Decree : General limitation period to file an execution petition is 12 years from the date the decree or order becomes enforceable, unless a shorter period is expressly stipulated by law; however, decrees granting perpetual injunctions are not subject to any limitation period for execution.

- i. **General Rule (Article 136 Limitation Act, 1963):** Article 136 of the Limitation Act, read with Section 47 CPC, provides that an application for execution of any decree (other than a decree granting a mandatory injunction) must be filed within 12 years from the date the decree becomes enforceable. This 12 year period is the outer limit; if no execution is initiated within that period, the decree is treated as unenforceable.
- ii. **Execution of Mandatory Injunctions (Article 135 Limitation Act, 1963):** Under Article 135 of the Limitation Act, the limitation period for the execution of a mandatory injunction decree is **three years** from the date of the decree or the date fixed for performance,. If no specific date for performance is mentioned, the three-year period begins immediately upon the passing of the decree.

- iii. **Decrees Granting Injunctions** - A decree granting a perpetual or prohibitory injunction is not barred by limitation; an execution application in respect of such a decree can be filed at any time, so long as the decree remains subsisting.

1.1.11 Prompt disposal of execution cases {Rule 162 of G.R. (Civil), 1957}:

- Every presiding Judge shall see that execution cases are not neglected or needlessly prolonged, but disposed of with the same care and regularity as original suits.
- Sufficient time should be allowed for the execution of all processes, warrants and orders issued which shall be drawn up in the execution department in strict rotation except in special cases under written orders of the presiding Judge.
- Processes and orders ordered to be given *dasti* to a party or counsel shall be promptly prepared and given out the same day in Court through the Reader.
- The Judge shall see that the orders issued by him are carried out: and frequent or habitual carelessness, unpunctuality or procrastination in the execution department should be adequately punished.
- An order staying execution shall be promptly complied. If execution has taken place there shall be no restitution in pursuance of the order of stay.

1.1.12 Recording of orders in execution {Rule 163 of G.R. (Civil), 1957}:

- All orders in execution cases shall be recorded on the order sheet in consecutive order with serial number prefixed and
- all such orders shall be legibly signed and dated by the Judge.

1.1.13 Work for Amins {Rule 529 of G.R. (Civil), 1957}:

- An Amin in a civil court is a specialized officer appointed to assist in judicial proceedings. Role of Amin is very important in execution proceedings.
- According to G.R. (Civil), 1957 Civil Court Amins besides being employed to conduct sales under Chapter VI, rule 174, may be employed on any of the following duties:
 - (1) In executing commissions-
 - (a) to examine witnesses,
 - (b) for local investigation,**
 - (c) to examine accounts, and
 - (d) to make partitions.**
 - (2) in making attachments under an order of the Court.**
 - (3) In making delivery of possession of property under an order of the Court.**
 - (4) In ascertaining the sufficiency of securities.
 - (5) In ascertaining means of persons suing as an indigent person.

1.1.14 Information by Amin to decree-holder {Rule 532 of G.R. (Civil), 1957}:

- An Amin shall inform the Decree-Holder or his pleader by registered post or otherwise, within sufficient time, of the date on which he proposes to be at a certain spot to make an attachment or deliver property, so as to enable the party concerned or his representative to attend on that date.

PROCEDURE ON RECEIVING APPLICATION FOR EXECUTION OF DECREE

1.2 After the application for execution is received by the court, the following main steps are usually taken (**Order 21 Rule 17, CPC**) :

1.2.1 Ascertaining the requirements of Rules 11 to 14 :

- The Court shall ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with.
- If they have not been complied with, execution application should be registered as miscellaneous case.
- The Court shall allow the defect to be remedied then and there or within a time to be fixed by it.
- If the defect is not so remedied, the Court shall reject the application.
- Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

1.2.2 Duty of Munsarim and Office {Rule 166 of G.R. (Civil), 1957}:

- It shall be the duty of the Munsarim to receive applications for execution, and before putting up an application for orders the office shall, by reference to its registers, ascertain and report whether the requirements of O. XXI R. 11 to 14 applicable to the case have been complied with and whether the application is within time and jurisdiction.
- For special reasons the applicant may be required to produce a certified copy of the decree.
- The office report shall state that the application is in order, or, if it be not in order, shall state the exact defect and how the defect should be remedied.
- The execution application must be put up before the Presiding Officer on the same day or on the next day.

1.2.3 Registration and numbering {Rule 167 of G.R. (Civil), 1957}:

- The court registers the application in the execution register (**Form No. 68**) .
- The Court assigns an execution number (e.g., “Ex. No. _ of 2026”).

1.2.4 Transfer of Execution :

- Transfer of execution means sending a decree from the court that passed it to another competent court (usually in a different place or State) so that the decree-holder can execute it more conveniently, usually where the judgment-debtor’s property or residence lies.
- Under Section 39 (1) of CPC, the court that passed the decree may, on the decree-holder’s application, send it for execution to another court of competent jurisdiction:
 - (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
 - (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.
- The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction **{Section 39 (2) of CPC}**.
 - When a court sends its decree for execution to another court. The originating court must send **(Order 21 Rule 6)** -
 - (1) A copy of the decree;
 - (2) A certificate of non-satisfaction or partial satisfaction **(Form No. 3,4,5 – Appendix E)**; and
 - (3) A copy of any execution order.
 - Postage shall be levied in the form of ten rupees cash from the decree-holder for the transmission and return by post of a decree, sent under section 39 of the Code to another Court for execution upon an application by the decree-holder. The money shall be credited into the treasury by pass book **{Rule 177 of G.R. (Civil), 1957}**.
 - The Court to which the decree is sent shall proceed to execute the decree.
 - The record of proceedings, shall be returned to the Court by which the decree was sent for execution:-
 - (1) when the decree has been executed, wholly or in part, by the Court to which it has been sent;
 - (2) when the decree is found for any reason to be incapable of execution, or
 - (3) if no application is made for execution, after the expiry of one year from the date on which the decree was received.

1.2.5 Issue notice to the Judgment-Debtor (Order 21 Rule 22 CPC):

- If required, the court issues notice under **Order 21 Rule 22 CPC** calling upon the judgment-debtor to show cause why the decree should not be executed.
- Notice may include directions to pay the amount, file objections, or appear before the court by a specified date.
- The Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him, where an application for execution is made—
 - (a) more than two years after the date of the decree, or
 - (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44-A ,or
 - (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent.
- Where the person to whom notice is issued under Rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed **{Order 21 Rule 23(1) CPC}** .
- Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit **{Order 21 Rule 23(1) CPC}**.

1.2.6 Hearing objections (Section 47) :

- Any objections filed by the JD (for example, that the decree is satisfied, time-barred, or that certain property is exempted) should be registered as Miscellaneous Case.
- During the hearing proceedings of objections the proceedings of Execution Case should be stopped and dates should be fixed with the Miscellaneous Case.
- The Executing Court considers the objections under the scope of section 47 of CPC .
- Objections under Section 47 must strictly pertain to execution/discharge/satisfaction of the decree only.
- If the objections are upheld, then execution application shall be dismissed.
- If the objections are overruled, then the Court shall order the decree to be executed.
- Powers available under Section 47 CPC are quite different and much narrower than those available in appeal/revision or review. Executing court can neither travel behind decree nor sit in appeal over the same or pass any order jeopardising rights of parties thereunder **{Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan, (2017) 5 SCC 371}**.
- For the applicability of the section 47 CPC, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible **{Pradeep Mehra v. Harijivan J. Jethwa, 2023 SCC OnLine SC 1395}**.

1.2.7 Passing of execution order and issue of process :

- If the court finds the application in order and execution is permissible, it passes an order for execution process **{Order 21 Rule 24(1) CPC}**.
- The court issues a warrant or process (e.g., warrant of attachment, sale, or detention) to the court-executing officer (usually a bailiff / process-server) **{Order 21 Rule 24(2) CPC}**.
- The court-executing officer tasked with execution must write on the process how and when it was executed. If not executed, or if the timeline passes, the officer must state the reasons and return it to the court **{Order 21 Rule 25(1) CPC}**.
- If the process is partly or fully executed, the court examines the return report and may pass further orders (e.g., sale proceedings, distribution of proceeds).
- If the officer is unable to execute the warrant, the court must examine the officer regarding their inability **{Order 21 Rule 25(2) CPC}**.
- If the executing officer reports that execution could not be effected, the court may examine the officer, record reasons, and decide whether-
 1. To re-issue the process;
 2. Choose a different mode of execution; or
 3. Dismiss the pending application.

1.2.8 Stay of Execution (Order 21 Rule 26,29 and Order 41 Rule 5):

A stay of execution is a temporary halt to the enforcement of a court decree or order. It is primarily governed by Order 21 Rule 26, 29 and Order 41 Rule 5 of CPC.

- **Stay by Executing Court (O-21 R-26) :** The executing court may stay execution for a reasonable time to allow the judgment-debtor to appeal, provided "sufficient cause" is shown.

- **Stay of execution pending suit (O-21 R-29) :** A court may stay execution, if a separate suit is pending against decree-holder on the part of the judgment-debtor in the same court.
- **Stay by Appellate Court (O-41 R-5) :** An appeal does not automatically stay execution; a specific application for a stay must be filed. A stay is granted only if the court is satisfied that substantial loss will occur otherwise, the application was made without delay, and security is provided.

For Stay of Execution, Applicant must show :

- **Substantial loss:** Irreparable harm if the execution continues.
- **Security:** Adequate security for the performance of the decree must be provided.
- **Prompt Action:** The application must be filed without unreasonable delay.

1.2.9 Hearing of Application (Rule 105):

- This rule outlines court procedures for scheduling and conducting hearings on execution applications.
- The courts fix a hearing date for any pending execution application.
- If the applicant fails to appear on the fixed or adjourned date, the court may dismiss the application.
- If the applicant appears but the opposite party does not (despite notice), the court may proceed ex parte and pass an appropriate order.
- The explanation clarifies that this includes claims or objections under Rule 58.

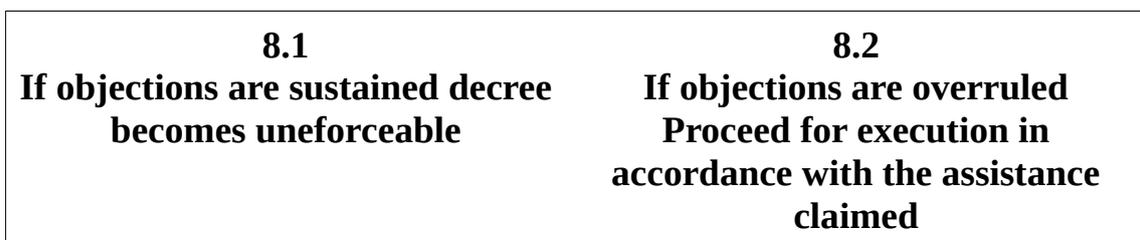
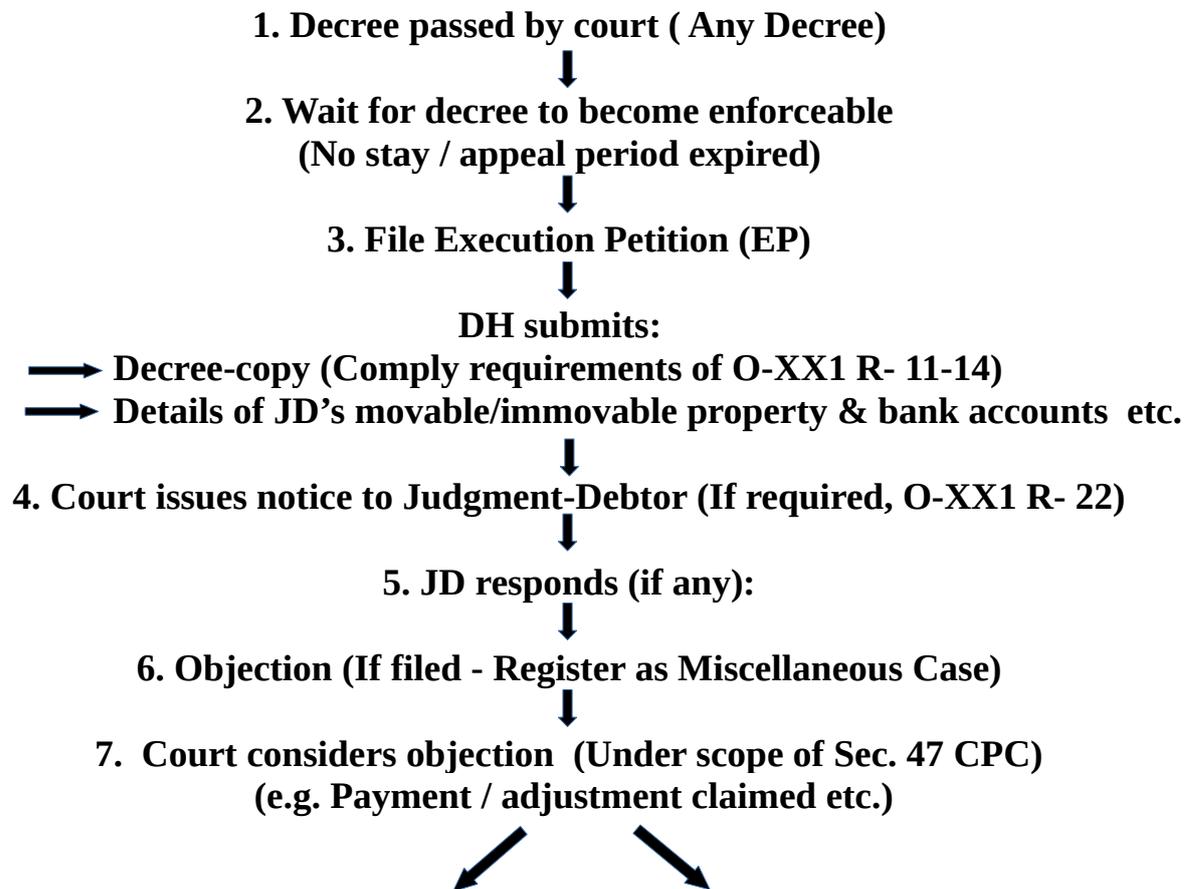
1.2.10 Setting aside Ex Parte Orders (Rule 106):

- This rule makes provision for remedy to restore dismissal or ex parte orders in execution proceedings.
- Applicant under Rule 105(2) or opposite party under Rule 105(3) can apply to set aside the order by showing sufficient cause for non-appearance.
- The court after satisfaction may restore it on terms.
- No set-aside order is made without notice to the other party.

1.2.11 Limitation Period for Application under Rule 106 {(Order 21 Rule 106(3)}:

- Applications must be filed within 30 days from the date of order, or for ex parte orders from knowledge of it.
- Section 5 of the Limitation Act does not apply, making the timeline strict.

FLOW-CHART FOR GENERAL PROCEEDINGS OF EXECUTION OF DECREES



MODULE - B

**EXECUTION PROCEDURE FOR
VARIOUS SPECIFIC DECREES BY VARIOUS MODES**

2.1.1 Various Kinds of Decrees : In general, the Courts pass the following kinds of decrees:

- Decree for payment of money (Order 21 Rule 30);
- Decree for specific movable property (Order 21 Rule 31);
- Decree for immovable property (Order 21 Rule 35,36);
- Decree for specific performance (Order 21 Rule 32);
- Decree for an injunction (Order 21 Rule 32);
- Decree for execution of document (Order 21 Rule 34);

2.1.2 Various Modes of Executing the Decrees : Section 51 outlines five main modes of execution :

- (a) Delivery of any property specifically decreed;
- (b) attachment and sale or by sale without attachment of any property;
- (c) arrest and detention in prison;
- (d) appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

2.1.3 Courts can choose or combine modes based on the application of DH, ensuring swift enforcement while protecting judgment-debtors from undue hardship.

TYPE OF DECREE	PROVISIONS	MODES OF EXECUTION
Money Decree	O-XXI R-30	Arrest and detention in civil prison; Attachment and sale of any kind of property; Sale.
Specific movable property	O-XXI R-31	Seizure and delivery; Arrest and detention in civil prison; Attachment of property; If undelivered after attachment, sale with compensation to decree-holder.
Specific performance of contract; Restitution of conjugal rights; Injunction	O-XXI R-32	Arrest and detention in civil prison; Attachment of property; Both. Extended to corporate officers.
Execution of Document; Endorsement of Negotiable Instrument	O-XXI R-34	Decree-holder prepares a draft of document and files it with the court; Serves a copy to the judgment-debtor; If the JD objects, they must put them in writing; Court will make an order approving or altering the

<p>Possession of immovable property</p>	<p>O-XXI R-35</p>	<p>draft; After finalizing the draft, the officer authorized by the court signs the document; Registration of document as per law.</p>
		<p>Direct Delivery: Possession is delivered to the decree-holder.</p> <p>Forcible Removal: If the judgment debtor refuses to vacate, the court may authorize their forcible removal.</p> <p>Joint Possession: If the decree is for joint possession, it is executed by fixing a warrant copy on the property and proclaiming the decree via beat of drum.</p> <p>Breaking Locks: If necessary, court officers may break open locked doors to deliver possession.</p>
	<p>O-XXI R-36</p>	<p>Symbolic (formal) possession - when a third party, such as a tenant, is in occupation and not bound to vacate. It involves notifying the occupant via a posted warrant and proclamation. The occupant remains, but the holder's right is legally established.</p>
<p>Partition Decree</p>	<p>O-XX R-18, Section - 54</p>	<p>Execution of a partition decree involves a two-stage process. A preliminary decree defining shares and a final decree for physical division.</p> <p>Non Revenue Property {Order 20 Rule 18(2)}: The court appoints a commissioner to divide the property and pass a final decree. No separate suit is required; Issue amin parwana; Kurra-bandi; Kurra confirmation; Delivery of possession.</p> <p>Government Revenue Land (Sec 54 CPC): Partition must be executed by the Collector or a gazetted subordinate.</p> <p>Execution (Order 21): Once the final decree is passed, it is executed like any other decree for possession under Order XXI, Rule 35, where the court can remove occupants to deliver possession.</p>

Below is the concise overview of step by steps general procedure in execution of various specific kinds of decrees by various modes:

**EXECUTION OF MONEY DECREE
BY ATTACHMENT & SALE OF IMMOVABLE PROPERTY**

2.2.1 Legal basis and conditions :

- A money decree may be executed by attachment and sale of JD's property under Section 51(b), coupled with Order 21 Rules 30, 41–57 and Section 60 CPC.
- The court may order attachment initially, followed by public sale, or may proceed to sale without prior formal attachment, as long as the property is within the executing court's jurisdiction and JD has an attachable interest.

2.2.2 What immovable property can be attached:

- Under Section 60 CPC, immovable property within the JD's ownership or interest is generally liable to attachment and sale, subject to limited exemptions.
- **Exempt Properties List:**
 1. Right to future maintenance.
 2. Tools of artisans, agricultural implements, livestock for ploughing/breeding.
 3. Wearing apparel, bedding, cooking vessels, houses of agriculturists/labourers/domestic servants.
 4. One main residential house (and attached land/buildings) for agriculturists in certain states.
 5. Pensions, gratuities, allowances from government.
 6. Salary/wages: first ₹1,000 + 2/3 of remainder (non-maintenance decrees); fully exempt after 24 months under one decree.
 7. Stipends for scholarships, provident funds, trusts for public/charitable purposes.
- **Before attachment, the court must be satisfied that:**
 1. The JD has disposable interest in the property; and
 2. The property is not in the exclusive interest of a third party (confirmed by checking title via Rule 14 verification).

2.2.3 Procedural steps before attachment:

(A) Execution application-

- DH files an application for execution under Order 21 Rule 10, expressly stating request for attachment and sale of immovable property.
- The application should include:
 1. Complete description of the property (survey number, boundaries, location, revenue record, mutation, etc.);
 2. Title-chain / documents relied on to show JD's interest;
 3. Estimated value vis-à-vis the decretal amount.

(B) Notice :

- **If filed within 2 years of decree** - Court may issue attachment warrant without notice (Order 21 Rule 22).

- **If filed after 2 years or against legal heirs, or certain cases-** Issue show-cause notice to judgment-debtor before attachment.

2.2.4 Order of attachment (Order 21 Rule 54):

- Court issues an order of attachment of the immovable property (prohibition on JD's dealing e.g. transfer, mortgage, etc.) specifying **(Form No. 24, Appendix-E)**:
 - (a) Name and description of JD;
 - (b) Description of property;
 - (c) The order is implemented by:
 - (d) Physically serving the order on JD/occupant;
 - (e) Filing the order in the local revenue-record-maintenance office (tehsildar/patwari) and, if required, in the sub-registrar's office .
- The order shall require the judgment-debtor to attend court on a specified date to settle the terms of the proclamation of sale. **{{Order 21 Rule 54(1-A)}}**.
- The attachment must be proclaimed by beat of drum or other customary methods at the location of the property. If the land pays revenue, the order is posted in the Collector's office. If located in a village, it is also posted in the Gram Panchayat office **{{Order 21 Rule 54(2)}}**.
- Rule 54 directions are mandatory, not merely directory; defective attachment may be challenged by JD or third-party claimants.

2.2.5 Removal of Attachment (Order 21 Rule 55):

- Attachment of property is removed automatically ("deemed to be withdrawn") under three scenarios:
 - (a) **Payment:** When the decreed amount, along with costs, charges, and expenses resulting from the attachment, are paid into the court.
 - (b) **Satisfaction:** When the decree is otherwise satisfied or adjusted through the court.
 - (c) **Reversal:** When the decree is set aside or reversed by a competent court.
- If the attached property is immovable, the withdrawal of attachment can be proclaimed at the expense of the JD if they so desire.

2.2.6 Determination of Attachment (Order 21 Rule 57):

- This rule applies when the court dismisses the execution application.
- The Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.
- If the Court omits to give such direction, the attachment shall be deemed to have ceased.

2.2.7 Objections (Order 21 Rule 58):

- Under Order 21 Rule 58 of CPC, provides a summary procedure for adjudicating claims or objections regarding property attached during the execution of a decree.
- JD or third party may raise objections to title, exemption, or over-attachment; these are decided within the execution proceeding without filing a separate suit.

- The court will not entertain a claim if the attached property has already been sold, or if the claim/objection is deemed to be intentionally or unnecessarily delayed.
- The court may pass the following orders:
 - (a) allow the claim and release property wholly/partly;
 - (b) disallow it;
 - (c) continue attachment subject to mortgages/charges; or
 - (d) pass fit orders.
- Such orders function as decrees, appealable under CPC; refused claims allow a fresh suit, but refusal is conclusive until suit outcome.

2.3 General Steps from Attachment to Sale (Order 21 Rule 64 to 73):

2.3.1 Order for Sale and Sale by whom conducted and how made (Order 21 Rule 64 & 65):

- An executing court may pass an order to sell attached property or a necessary portion thereof to satisfy a decree (**Order 21 Rule 64**).
- The sale can only be conducted by an authorized officer of the Court or another individual appointed by the Court (**Order 21 Rule 65**).
- It must be made through a public auction, ensuring that the property is sold to the highest bidder.
- Warrant of sale of property shall be issued to Bailiff of the Court (**Form No. 27 Appendix-E**).

2.3.2 Proclamation of Sale (Order 21 Rule 66):

- Court prepares proclamation in local language.
- The proclamation must be drawn up after notice to the decree-holder and the judgment-debtor (**Form No. 28 Appendix-E**).
- The proclamation must specify as accurately as possible (**Form No. 29 Appendix-E**):
 - i. The property to be sold.
 - ii. Revenue assessed on the estate (if any).
 - iii. Any known encumbrances (liabilities) on the property.
 - iv. The exact amount for which the sale is ordered.
 - v. Any other material information a purchaser should know.
- The Executing Court shall issue order on Nazir/Bailiff (or authorized officer) for causing service of proclamation of sale (**Form No. 30 Appendix-E**).
- The Amin shall receive the actual expenses incurred towards making proclamation (munadi) through a method prescribed by the Court. The statement of expenditure along with original bills, if any, should be verified by the Amin {**Rule 526 G.R. (Civil), 1957**}.
- The court can examine any person or call for documents to verify details for the proclamation.
- Failing to comply with Order 21 Rule 66 is a "flagrant breach" and "nullity ab initio" if the sale is conducted casually without proper notice to the judgment-debtor. {**Lal Chand v. VIIIth ADJ, (1997) 4 SCC 356**}.

- Where valuable property is to be sold by public auction court should itself make valuation of property and enter it in sale proclamation. *{Shalimar Cinema v. Bhasin Film Corpn., (1987) 4 SCC 717}*

2.3.3 Assessment and Valuation (Second Proviso to Order 21 Rule 66):

- After attachment, the court may order valuation of the property.
- The court is not required to make its own estimation of the value, but the proclamation shall include the estimates of value given by either or both parties.
- The Court records the valuation and fixes the minimum reserve price (normally not below valuation).

2.3.4 Mode of Proclamation (Order 21 Rule 67):

- Every proclamation must be published as nearly as possible in the manner prescribed in Order 21 Rule 54(2), which involves making the proclamation at or adjacent to the property by beat of drum or other customary method, and a copy affixed to a conspicuous part of the property and the court-house **(Mandatory)**.
- The Court may direct the proclamation to be published in the Official Gazette, a local newspaper, or both, for wider publicity **(Optional)**.
- If the property is divided into lots for sale, separate proclamations for each lot are not required unless the Court believes a proper notice cannot be given otherwise.
- A direction for publication under the second paragraph of O-XXI, R-67(2) shall be given only in exceptional cases **{Rule 173 G.R. (Civil), 1957}**.

2.3.5 Time of Sale (Order 21 Rule 68):

- Order 21 Rule 68 of the CPC mandates minimum time period for selling attached property.
- It requires a minimum waiting period after the proclamation of sale is affixed on the courthouse:
 - i. **Immovable Property:** At least **15 days** must pass.
 - ii. **Movable Property:** At least **7 days** must pass.

2.3.6 Adjournment or stoppage of sales (Order 21 Rule 69) :

- The court has discretionary power to adjourn a sale to a specific day and hour.
- The officer conducting the sale may also do so, but must record reasons.
- If the sale occurs within the court premises, an adjournment cannot be made without the leave of the Court.
- If an adjournment lasts for **longer than 30 days**, a fresh sale proclamation **(under Order 21 Rule 67)** is necessary, unless the judgment-debtor consents to waive it.
- If the JD tenders the full debt and all costs (including sale expenses) to the officer, or proves payment to the court before the lot is sold, the sale shall be stopped **{Order 21 Rule 69(3)}** .

2.3.7 DH not to bid for or buy property without permission (Order 21 Rule 72) :

- No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

- When the DH buys the property **with court permission**, he can set off the purchase money against the amount due on the decree, subject to the provision of **Section 73 (rateable distribution)**.
- If a DH purchases property without permission (by themselves or through another), the JD or any interested person can make an application the court to set aside the sale.
- If a sale is set aside due to lack of permission, DH may have to bear costs and pay for any deficiency in price upon resale.

2.3.8 DH not to bid for or buy property without permission (Order 21 Rule 73) :

- No Officer or individual with a duty related to the sale is allowed to purchase or bid "directly or indirectly" for the property.
- It applies to "any officer or other person having any duty to perform in connection with any sale".

2.3.9 Sale by Court in execution of a decree {Rule 174 G.R. (Civil), 1957} :

- Where property to be sold in execution of a decree is a garden, or land occupied by a house or appurtenant thereto, or moveable property of any description, or is any interest in such garden, land or moveable property, the Court shall appoint a Civil Court Amin to conduct the sale,
- unless special reasons render it necessary that other agency should be employed; in which case such reasons shall be set forth in the handwriting of the presiding Judge in the order of appointment.

2.4. Steps for Sale of Immovable Property (Order 21 Rule 82 to 96):

2.4.1 What Courts may order sales (Order 21 Rule 82):

- Sales of immovable property in execution of decrees can be ordered by any Civil Court.
- But not by a Court of Small Causes.

2.4.2 Postpone a scheduled sale of immovable property (Order 21 Rule 83):

- The judgment-debtor may apply to the court to postpone the sale of their attached property, to allow time to raise amount via a private sale, mortgage, or lease.
- The court, if convinced that the money can be raised, may postpone the sale on such terms and for such periods as it deems proper.
- Upon satisfaction, the court grants a certificate authorizing the judgment-debtor to make the transfer within a specified time, bypassing general restrictions (Section 64 CPC).
- Proceeds from the private sale or mortgage must be paid directly into the court, not to the JD.
- The sale does not become absolute until confirmed by the Court.
- This rule does not apply to a sale already directed for the enforcement of a mortgage or charge.

2.4.3 Payment, Default, Re-sale, and Co-sharer right (Order 21 Rule 84 to 88):

- **Initial Deposit (Order 21 Rule 84) :** Immediately after being declared the purchaser in an auction, the person must deposit 25% of the purchase money with the officer conducting the sale.

- **Immediate Re-sale (Order 21 Rule 84)** : If the purchaser defaults in making this 25% deposit, the property is to be re-sold immediately.
- **Balance Payment (Order 21 Rule 85)**: The remaining 75% of the purchase money and stamp duty must be deposited within 15 days of the sale, with the timeframe strictly enforced.
- **Default Consequences (Order 21 Rule 86)**: Failure to pay the balance results in the forfeiture of the initial 25% deposit to the government, and the property is re-sold.
- **Re-sale Procedure (Order 21 Rule 87)**: When a resale occurs due to default, it is treated as a new sale requiring a new proclamation.
- **Co-sharer Preference (Order 21 Rule 88)**: If a co-sharer matches the highest bid for an undivided property, they are given preference.

Setting Aside an Immovable Property Auction Sale:

2.4.4 Application to set aside sale on deposit (Order 21 Rule 89):

- Where immovable property has been sold in execution of a decree.
- The JD or anyone deriving title from them, or any person entitled to an interest in the property can make an application to have the sale set aside.
- **Conditions for Application are:**
 - (a) Deposit 5% of the purchase money as compensation to the purchaser.
 - (b) Deposit the amount specified in the proclamation of sale (minus any amount already received by the DH).
- The application must be filed within 60 days of the sale (**Article 127 of the Limitation Act, 1963**).

2.4.5 Application to set aside sale on ground of irregularity or fraud (Order 21 Rule 90):

- Order 21 Rule 90 CPC also allows setting aside an immovable property auction sale.
- The DH, purchaser, or any person entitled to share in a rateable distribution (or whose interests are affected by the sale) can apply to the Court to set aside the sale.
- The sale can be challenged if there was a material irregularity or fraud in publishing or conducting the auction.
- Even if irregularity or fraud is proved, the sale will not be set aside unless the court is satisfied that the applicant suffered substantial injury as a result.
- An application cannot be entertained on any grounds that the applicant could have taken on or before the date the proclamation of sale was drawn up.

2.4.6 Application by purchaser to set aside sale on ground of JD having no saleable interest (Order 21 Rule 91):

- The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale.
- Application can be made on the ground that the judgment-debtor had no saleable interest in the property sold.

2.4.7 Sale when to become absolute or be set aside (Order 21 Rule 92-93) :

- **Confirmation of Sale (Sub-rule 1):** If no applications are made within 30 days under Rules 89 (deposit), 90 (irregularity/fraud), or 91 (purchaser's right), or if such applications are disallowed, the Court confirms the sale, making it absolute.
- **Setting Aside Sale (Sub-rule 2):** If an application under Rules 89, 90, or 91 is allowed, the Court makes an order setting aside the sale. For Rule 89, the required deposit must be made within 30 days of the sale.
- **Conditional Restriction:** The Court cannot confirm a sale if there is a pending objection or claim regarding the attachment of the property.
- **Finality and Bar on Separate Suit:** Once a sale is confirmed under this rule, the sale becomes absolute. A separate suit to challenge the sale is barred; the only remedy is through the executing court for questions involving fraud or other errors.
- **Notice Requirement:** No order setting aside a sale shall be made unless notice has been given to all persons affected parties (**Form No. 36 & 37, Appendix-E**).
- **Return of purchase-money in certain cases (Order 21 Rule 93):** Where a sale of immovable property is set aside under rule 92 the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

2.4.8 Certificate to Purchaser (Order 21 Rule 94):

- Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale of is declared to be the purchaser.
- Such certificate shall bear date the day on which the sale became absolute (**Form No. 38 Appendix-E**).

2.4.9 Contents of Sale Certificate {Rule 176 G.R. (Civil), 1957} :

(1) A certificate of sale issued under O-XXI, R-94 shall invariably contain the following particulars:-

1. the "addition" (as defined in section 2 of Act No. XVI of 1908) of the person who is declared to be the purchaser;
2. particulars sufficient to identify the property as required in sections 21 and 22 of the said Act.

(2) A certificate issued under O-XXI, R-94 in respect of any sale held after the first day of April, 1879, shall be drawn up upon a stamp paper of the value required by section 3 clause (a) and Article 18 of the 1st Schedule and section 35 of the Indian Stamp Act (No.II of 1899) as amended in its application to Uttar Pradesh.

(3) On each copy of the certificate the amount of stamp-duty paid on the original certificate shall be noted.

N.B.- Copies prepared in compliance with section 89 (2) of Act No. XVI of 1908 are, by Article 24(a) of Schedule 1 of Act No. II of 1899, exempt from stamp-duty.

(4) All copies of certificates of sale shall be prepared upon durable paper, sufficient margin being left for binding.

Post Sale Steps:

2.4.9 Adjustment of sale-proceeds :

- The adjustment of sale proceeds primarily governs how money realized from the auction of a JD's property is distributed to satisfy the DH decretal amount including interest, permissible costs, auction-expenses and handle remaining balance (**Order 21 Rule 64**).
- The sale-proceeds are first applied to Court-costs, auction-expenses and then decretal amount. Any surplus is paid to the JD.
- If multiple Decree-Holders have applied for execution against the same JD *before* the sale proceeds are realized, the money is distributed rateably (proportionally) among all such creditors (**Section 73 CPC**).

2.4.10 Delivery of immovable property sold during a Court auction (Order 21 Rule 95 & 96):

- Where a sale of immovable property has become absolute, and certificate under Order 21 Rule 94 has been granted the purchaser shall apply to the court for delivery of possession.
- The court will order delivery, removing anyone who refuses to vacate.
- In case of delivery of property in occupancy of JD **Actual Possession** shall be delivered (**Order 21 Rule 95**) (**Form No. 39 Appendix-E**).
- In case of delivery of property in occupancy of tenant **Symbolic Possession** (*by affixing a copy of the sale certificate in a visible place and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser*) shall be delivered (**Order 21 Rule 96**) .

**EXECUTION OF MONEY DECREE
BY ATTACHMENT & SALE OF MOVABLE PROPERTY**

3.1.1 Legal Framework and Conditions :

- Execution of a money decree by attachment and sale of movable property is governed by Section 51(b) read with Section 60 and Order 21 Rules 30, 41–57 & 64-81 CPC.
- Section 60 CPC enumerates property that is liable to attachment and sale.
- Order 21 Rules 30 provides for the modes of execution of money decree .
- Order 21 Rules 41–57 lay down the procedure for attachment of movable property.
- Order 21 Rules 64-81 lay down the detailed procedure for sale of movable and immovable property.

3.1.2 Properties that can be attached :

- For movable property, the court attaches only those items that:
 - belong to the JD (or in which he has disposing power); and
 - are not exempt by Section 60.

3.1.3 Mode of Attachment for Different Kind of Movable Properties :

1.	Movable property (other than agricultural produce) in possession of judgement-debtor.	By actual Seizure and sale at once, if the property is subject to speedy and natural decay.	O-21 R-43
2.	Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.	O-21 R-44
3.	Movable property not in possession of judgement debtor.	by order prohibiting person in possession from giving it to judgement debtor.	O-21 R-46
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.	O-21 R-46
5.	Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.	O-21 R-46
6.	Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.	O-21 R-47
7.	Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.	O-21 R-48 & 48A
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.	O-21 R-49

9.	Negotiable instrument	by actual seizure and bringing it to court.	O-21 R-51
10.	Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court.	O-21 R-52

3.2 Steps for attachment of movable property :

3.2.1 Execution application and list of property (Order 21 Rule 10,11,12):

- The DH files an application for execution, indicating that execution is sought by “attachment and sale of movable property”.
- The DH submits a list of the JD’s movable assets (e.g., vehicles, machinery, jewellery, bank balances, stocks, etc.) and their likely locations.

3.2.2 Examination of judgment-debtor as to his property (Order 21 Rule 41):

- DH may apply to Court to compel a JD to disclose his assets through oral examination or affidavit.
- The court can order the debtor to appear for an examination and produce documents/books.
- If the money decree is not satisfied within 30 days, the court can compel the debtor to file an affidavit listing their assets (**Form No. 16-A Appendix E**).

3.2.3 Court order for attachment:

- The court is satisfied that the JD has attachable interest in the movable property and that the property is not exempt.
- Court passes the attachment order, generally directing actual seizure of movable property (other than agricultural produce) by the court officer.
- The court passes an order of attachment, specifying the list of items, place, and mode of custody.

3.2.4 Seizure and custody (Order 21 Rule 43):

- A court officer / bailiff visits the JD’s premises, seizes the listed movable property, and prepares an inventory list.
- The seized property be kept in safe custody (court-lockup, godown, or with a fit person under court directions).

3.2.5 Attachment of debt, share and other property not in possession of Judgment-debtor (Order 21 Rule 46):

- The court issues a written order prohibiting the person in possession from giving the property to the judgment-debtor and prohibits the creditor from collecting it.
- It covers the movable properties not in the judgment-debtor’s possession (excluding property in court custody).
- A copy of the prohibitory order is affixed at the courthouse, and notice is sent to the person holding the property -
 - debts, not secured by Negotiable Instrument (**Form No. 17 Appendix E**),
 - shares in a corporation (**Form No. 18 Appendix E**), and

- other movable property.
- Debtor who has been prohibited from paying a debt (under Rule 46(1)) to pay that amount directly into court. This payment serves as a valid discharge of his liability, acting as a complete release as if the debt was paid directly to the judgment creditor.

3.2.6 Garnishee (Order 21 Rule 46-A to 46-I):

- It applies in case of debt, other than a debt secured by a mortgage or a charge.
- A Garnishee is a third party, who owes money to a judgment debtor.
- Garnishee order is a court-issued notice and directive to pay into Court the debt due from him to the JD instead of the JD.

3.2.7 Vulnerable period and objections:

- After attachment generally no immediate sale; the court may allow a limited period during which the JD may pay or raise objections.
- Any person (including third party claimants) may raise objections to the attachment (e.g., right, title, or interest in the property); the executing court decides those objections, not a separate suit (**Order 21 Rule 58**).

3.2.8 Precept (Section 46):

- Precept enables attachment outside court jurisdiction.
- It empowers the court that passed a decree to issue a written order (precept) to another competent court to temporarily attach the judgment-debtor's property outside its jurisdiction.
- The precept is sent to a court that is competent to execute the decree in a prescribed format (**Form No. 2 Appendix E**).
- An attachment under a precept is generally valid for a maximum of **two months**.

3.3 General Steps from Attachment to Sale (Order 21 Rule 64 to 73):

3.3.1 Order for Sale and Sale by whom conducted and how made (Order 21 Rule 64 & 65):

- An executing court may pass an order to sell attached property or a necessary portion thereof to satisfy a decree (**Order 21 Rule 64**).
- The sale can only be conducted by an authorized officer of the Court or another individual appointed by the Court (**Order 21 Rule 65**).
- It must be made through a public auction, ensuring that the property is sold to the highest bidder.
- Warrant of sale of property shall be issued to Bailiff of the Court (**Form No. 27 Appendix-E**).

3.3.2 Proclamation of Sale (Order 21 Rule 66):

- Court prepares proclamation in local language.
- The proclamation must be drawn up after notice to the decree-holder and the judgment-debtor (**Form No. 28 Appendix-E**).
- The proclamation must specify as accurately as possible (**Form No. 29 Appendix-E**):
 - i. The property to be sold.

- ii. Revenue assessed on the estate (if any).
- iii. Any known encumbrances (liabilities) on the property.
- iv. The exact amount for which the sale is ordered.
- v. Any other material information a purchaser should know.

- The Executing Court shall issue order on Nazir/Bailiff (or authorized officer) for causing service of proclamation of sale (**Form No. 30 Appendix-E**).
- The court can examine any person or call for documents to verify details for the proclamation.

3.3.3 Assessment and Valuation (Second Proviso to Order 21 Rule 66):

- After attachment, the court may order valuation of the property.
- The court is not required to make its own estimation of the value, but the proclamation shall include the estimates of value given by either or both parties.
- The Court records the valuation and fixes the minimum reserve price (normally not below valuation).

3.3.4 Mode of Proclamation (Order 21 Rule 67):

- Every proclamation must be published as nearly as possible in the manner prescribed in Order 21 Rule 54(2), which involves making the proclamation at or adjacent to the property by beat of drum or other customary method, and a copy affixed to a conspicuous part of the property and the court-house (**Mandatory**).
- The Court may direct the proclamation to be published in the Official Gazette, a local newspaper, or both, for wider publicity (**Optional**).
- If the property is divided into lots for sale, separate proclamations for each lot are not required unless the Court believes a proper notice cannot be given otherwise.

3.3.5 Time of Sale (Order 21 Rule 68):

- Order 21 Rule 68 of the CPC mandates minimum time period for selling attached property.
- It requires a minimum waiting period after the proclamation of sale is affixed on the courthouse:
 - i. **Immovable Property:** At least **15 days** must pass.
 - ii. **Movable Property:** At least **7 days** must pass.

3.3.6 Adjournment or stoppage of sales (Order 21 Rule 69) :

- The court has discretionary power to adjourn a sale to a specific day and hour.
- The officer conducting the sale may also do so, but must record reasons.
- If the sale occurs within the court premises, an adjournment cannot be made without the leave of the Court.
- If an adjournment lasts for **longer than 30 days**, a fresh sale proclamation (**under Order 21 Rule 67**) is necessary, unless the judgment-debtor consents to waive it.
- If the JD tenders the full debt and all costs (including sale expenses) to the officer, or proves payment to the court before the lot is sold, the sale shall be stopped **{Order 21 Rule 69(3)}** .

3.3.7 DH not to bid for or buy property without permission (Order 21 Rule 72) :

- No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
- When the DH buys the property ***with court permission***, he can set off the purchase money against the amount due on the decree, subject to the provision of ***Section 73 (rateable distribution)***.
- If a DH purchases property without permission (by themselves or through another), the JD or any interested person can make an application the court to set aside the sale.
- If a sale is set aside due to lack of permission, DH may have to bear costs and pay for any deficiency in price upon resale.

3.3.8 DH not to bid for or buy property without permission (Order 21 Rule 73) :

- No Officer or individual with a duty related to the sale is allowed to purchase or bid "directly or indirectly" for the property.
- It applies to "any officer or other person having any duty to perform in connection with any sale".

3.4 Important Considerations for Sale of Movable Property (Order 21 Rule 74 to 81):

3.4.1 Sale of Agricultural Produce (Order 21 Rule 74-75):

- If the produce is a growing crop, it is sold on or near the land.
- If cut or gathered, it is sold near the threshing floor or place of storage.
- The court may direct the sale to be held at the nearest place of public resort if it deems this will result in a better price for the property.
- If a fair price is not offered, the owner can apply to postpone the sale to the next day or the next market day. The sale must then be completed on that day, regardless of the price offered.
- If the crop is storable, the sale date must be fixed after the crop is cut or ready for storing. If non-storable, it can be sold beforehand, allowing the purchaser entry to care for or cut it (**Order 21 Rule 75**).

3.4.2 Sale of Negotiable Instruments and shares in corporations (Order 21 Rule 76):

- The court may authorize the sale of negotiable instruments or shares in a corporation through a broker rather than a public auction.

3.4.3 Sale by Public Auction (Order 21 Rule 77):

- The price for each lot must be paid at the time of sale. If the buyer defaults, the officer can re-sell the property immediately.
- Once the payment is made, the officer holding the sale grants a receipt and the sale shall become absolute.
- If a share of goods is sold and a co-owner bids the same amount as another bidder, the bid is deemed to be that of the co-owner.

3.4.4 Irregularity not to vitiate sale (Order 21 Rule 78):

- No irregularity in publishing or conducting the sale of movable property shall vitiate the sale.
- A person who suffers loss due to such irregularity can sue the person responsible for the mistake to claim compensation for damages.
- If the purchaser was involved in the irregularity, the injured party can sue them for the recovery of the specific movable property.

3.4.5 Delivery to Purchaser (Order 21 Rule 79):

- **By Direct Delivery** : If the movable property was physically seized, it shall be delivered directly to the purchaser **{Order 21 Rule 79(1)}**.
- **By Notice of Prohibition** : If the movable property is held by someone other than the judgment-debtor, delivery occurs by notifying that third person prohibiting from delivering the property to anyone except the purchaser **{Order 21 Rule 79(2)}**.
- **Debts**: Delivery is made through a court order prohibiting the creditor from collecting the debt and the debtor from paying anyone except the purchaser **{Order 21 Rule 79(3)}**.
- **Shares**: A written order from the court is issued prohibiting the registered holder from transferring the shares and the company from transferring them or paying dividends to anyone except the purchaser **{Order 21 Rule 79(3)}**.

3.4.6 Transfer of negotiable instruments and shares (Order 21 Rule 80):

- When a property sold is a share in a corporation or a negotiable instrument (e.g., cheque, promissory note) that requires endorsement, the court officer can sign it on behalf of the owner **{Order 21 Rule 80(1)}**.
- The endorsement should be in the form given in **{Order 21 Rule 80(2)}**.
- Before the formal transfer, the court can appoint a person to receive any dividends or interest payable on these shares or instruments **{Order 21 Rule 80(3)}**.

3.4.7 Post Sale Steps :

- The court adjusts the decree-amount, interest, and costs (including costs and auction-expenses) from the sale proceeds.
- Pays the balance, if any, to the JD or to the rightful claimant.

EXECUTION OF MONEY DECREE BY ATTACHMENT OF SALARY

4.1 Steps for execution of money decrees by attachment of salary:

4.1 Legal Framework :

- Execution of money decrees by salary attachment primarily follows Section 60 and Order 21 Rule 48 CPC.
- This process allows courts to withhold portions of a judgment debtor's salary to satisfy the decree.
- It applies to government servants, railway employees, local authority workers, and certain corporation employees.
- For private employees, Order 21 Rule 48A applies similarly if the disbursing officer is within court jurisdiction.

4.2 Attachment Limits :

- Salary is attachable property under Section 60(1) CPC.
- Under Section 60(1)(i) CPC, the first ₹1000 of salary plus two-thirds of the remainder (in execution of any decree other than a decree for maintenance) is exempt from attachment.
- The attachable portion is calculated as: **{Total Salary - ₹1,000 - (2/3 × Remaining Amount)}**.
- For maintenance decrees, one-third of salary is attachable as per Section 60(1)(ia).
- Exemptions include notified allowances, provident funds, and stipends.

4.3 Duration and Exemptions :

- Attachment cannot exceed 24 months, either continuously or intermittently, for the same decree.
- After 24 months, the salary is immune from further attachment for 12 months (cooling period).

4.4 Procedure :

- The DH files an execution petition under Order 21 Rule 11 CPC (**Specify JD's salary details, employer**) requesting salary attachment.
- Court issues notice to JD (O. 21 R. 22) and Employer (O. 21 R. 48).
- Objections heard and disposed (Section 47).
- Employer confirms salary. If prior attachment exists, the new order is returned with full details.
- The court issues an attachment order to the designated government officer (**Form No. 19 Appendix-E**).

- Upon notice of the Order, the designated government officer instructs the disbursing authority to withhold and remit the amount.
- Deduction starts next pay after attachable portion calculated u/s 60 Proviso.
- Monthly remittance by Employer to Court.
- Proceeds applied to decree.
- Review After 24 Months (S. 60(1)(i) Proviso)
- Exempt for 12 months for same decree.
- Re-attachable for new decree.
- Full exemption for same decree post-24 months.

EXECUTION OF MONEY DECREE BY ARREST & DETENTION

5.1 Legal Framework :

- To execute a money decree by arrest and detention (civil imprisonment) of the JD, Section 51(c), Order 21 Rules 30, 31, 32, 11-A, 37–40 CPC, read with Section 58 CPC are relevant.
- Arrest and detention are allowed only where the decree is for payment of a sum of money (i.e., a “money decree”).

5.2 Procedural steps before issuing arrest warrant :

(a) Execution application for arrest :

- The DH files an application for execution under Order 21 Rule 11, clearly stating that execution is sought by arrest and detention.
- File an affidavit / statement of the DH (as contemplated in Order 21 Rule 11-A) explaining (grounds of arrest) :
 - i. JD’s evasion of payment;
 - ii. JD’s known income / assets;
 - iii. reasons why attachment alone will not ensure realisation.

(b) No arrest can be allowed in the following cases :

- No women cannot be arrested or detained in execution of a money decree (**Section 56**).
- When the money decree is for the amount not exceeding ₹2,000 (**Section 58**).
- Minors can potentially be arrested under execution provisions, as Section 56 does not explicitly exempt them (although they get **Protection of Order XXXII**).

(c) Show-cause notice (Order 21 Rule 37):

- The court usually issues a notice to the JD to show cause why he should not be arrested and detained in civil prison (**Form No. 12 Appendix-E**).
- **If the JD fails to appear:** after receiving the notice, the court may issue a warrant for his arrest (**Form No. 13 Appendix-E**).
- **If JD appears:** The Executing Court **should adjudicate** on the present means of the debtors vis-a-vis the present pressures of their indebtedness, or alternatively whether they have the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly committed acts of bad faith respecting their assets. The court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the court under the proviso to Section 51. {*Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360*}

(d) Warrant of Arrest (Order 21 Rule 38):

- Every warrant for the arrest of a JD shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed (**Form No. 13 Appendix-E**).
- If the JD pays the full decretal amount (including interest and costs) to the officer, the arrest warrant ceases to have effect, and the debtor is released.

(e) Subsistence Allowance (Section 57 & Order 21 Rule 39):

- Subsistence allowance ensures basic support for JD detained in civil prison during decree execution. It is governed primarily by Section 57 and Order XXI Rule 39.

- Section 57 empowers State Governments to set graduated scales of monthly allowances based on the JD's rank, race, and nationality. These cover essentials like food and necessities during detention.
- Courts determine the amount if state scales are absent, factoring in living standards and detention duration.
- Order 21 Rule 39 requires the DH to deposit a sufficient sum before arrest (**covering subsistence from arrest until court appearance, plus conveyance costs**).
- The Court shall direct the attention of a DH taking action under Sections 55 and 59 of the Code, to the provisions of Section 33 of the Prisons Act, 1894, and to paragraphs 464 to 466 of the U.P. Jail Manual (Now Uttarakhand Jail Manual, 2023 is in force) **{Rule 178 G.R. (Civil) - Decree-holder's liability to pay for Civil prisoner's detention in Jail}**.
- No arrest warrant issues unless the DH first deposits in court a sum deemed sufficient by the Judge for the JD's subsistence from arrest until court appearance (**Pre arrest deposit**).
- Once committed to civil prison, the court fixes a monthly allowance as per Section 57 scales. The decree-holder must pay this amount monthly in advance. First payment shall be made to the court officer for the remaining current month. Subsequent ones to the Prison Officer, before each month's first day (**Post arrest deposit**).
- Non-payment leads to mandatory release of the JD barring "special reasons" {Order 21 Rule 39(3)}.
- Sums disbursed by the DH for the subsistence of the JD shall be deemed to be costs in the suit. Therefore, Subsistence allowance is recoverable as costs from the judgment-debtor {Order XXI Rule 39(5)}.
- The JD shall not be detained in the civil prison or arrested on account of any sum so disbursed {Proviso to Order 21 Rule 39(5)}.
- **Chapter XXIX (Rules 678 To 688) of 'The Uttarakhand Jail Manual, 2023'** contains specific provisions for detention of Civil Prisoners.

(e) Proceeding on appearance of JD [Hearing] (Order 21 Rule 40):

- Court hears DH's evidence and JD's defense.
- **Pending inquiry:** JD may be held in court officer's custody or released on security.
- **Post-inquiry:** Court may order detention (arrest if needed), but first allows up to 15 days in custody or on security to satisfy decree.
- If no detention ordered, application dismissed and JD released.
- At the hearing, the JD may:
 - offer payment (lump-sum or on terms), or
 - explain genuine inability to pay;
 - the court records evidence and forms a satisfaction.

(f) Order for arrest and detention :

- The executing court must satisfy itself that:
 - The decree is for a sum certain (not vague or partly unliquidated).
 - The JD has means or income or is wilfully refusing / evading payment.
 - The DH has exhausted or reasonably explored attachment routes (principle of proportionality; courts prefer attachment/sale over arrest).
- If the court is satisfied, it may pass an order of arrest, specifying:
 - Court that signed the arrest order;
 - Name, description, and address of JD;

- Name of arrest-officer (usually a court officer);
- Maximum period of detention (within Section 58 limits).
- The warrant of arrest is generally issued in **(Form No. 13 Appendix-E)**.

5.3 Actual arrest and detention (Section 55):

(a) Execution of warrant:

- The arrest-officer arrests the JD (preferably in daytime, avoiding undue hardship).
- Upon payment on the spot, the officer shall release the JD immediately and report the payment to the court.
- If no payment is made, the JD is taken to civil prison / district jail and an acknowledgement of reception is obtained.

(b) Restrictions :

- No entry into dwelling house after sunset/before sunrise.
- No breaking outer door unless JD occupies and refuses access.
- Special notice to pardanashin women.

(C) In-prison detention :

- The JD is detained only for the period fixed in the warrant, not exceeding the Section 58 ceiling. During detention, the JD may be released earlier if:
 - He pays the decretal amount; or
 - The court, on suitable grounds (e.g., undertakings, medical reasons), orders release.

5.4 Statutory time limits for detention :

- Under Section 58(1), CPC, maximum detention in civil prison is:

Amount of Money - Decree	Period of Detention
Exceeding ₹5,000	Maximum 3 months
Exceeding ₹2,000 - Not Exceeding ₹5,000	Maximum 6 weeks
Not Exceeding ₹2,000	No detention is allowed

- A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt.
- JD shall not be liable to be re-arrested under the execution of same decree.

5.5 Insolvency of JD {Section 55 (3), 55 (4)} :

• Inform JD of insolvency option {Section 55(3)} :

- Court to inform a JD arrested for a money decree of their right to apply for insolvency.
- If the JD has not acted in bad faith and complies with insolvency laws, this provision protects him from immediate, indefinite imprisonment by offering a path to discharge.

• Release on security for filing insolvency application within one month {Section 55(4)} :

- If the JD intends to apply for insolvency and provides security, the court *may* release him for **up to one month** to file the application.
- Failing which he may be committed to civil prison.

**FLOW-CHART FOR EXECUTION OF MONEY DECREE
BY ARREST & DETENTION**

DH Files Execution Petition for Arrest (O. XXI R. 11A, 37)
[Grounds stated: JD has means but refuses payment]



DH to deposit Subsistence Allowance in advance (O. XXI R. 39)



No arrest warrant can be issued unless the DH first deposits in court Subsistence Allowance



The Court shall fix a sum deemed sufficient for the JD's subsistence
(a) from arrest until court appearance (Pre arrest deposite)
(b) Once committed to civil prison, the court fixes a monthly allowance (Post arrest deposite)
Court can call the report from the Jail Authorities for fixation the amount



Court Issues Show-Cause Notice to JD [Reasonable time to appear]
[O. XXI R. 37(1)] [Form No. 12 Appendix-E]



[If appearance is not made, arrest-warrant can be issued.
(O. XXI R. 37(2)) [Form No. 13 Appendix-E]



If JD appears
[Objection u/s 47 CPC disposal, if any]
Hearing: Inquiry into Means; Evidence of assets/disposal
[S. 51 Proviso; O. XXI R. 40(1)]
{Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360}



Warrant of Arrest Issued (S. 55; O. XXI R. 38; App. E Form 13)
[Bailiff executes; JD produced before court promptly]



JD Before Court: Insolvency Option Informed (S. 55(3))
[Payment or detention ordered; Subsistence Allowance from DH deposit]



Detention in Civil Prison (S. 58)
[Max period: Rs. 2000-5000/- (6 Weeks); Exceeding Rs. 5000+ (3 months)]
[Not Exceeding Rs. 2000/- No Detention]
[Release on payment/adjustment; No manual labor]



END (Decree satisfied or max detention served)

EXECUTION OF DECREE OF INJUNCTION**6.1 Legal Framework :**

- Execution of an injunction decree (prohibitory or mandatory) is governed primarily by Order 21 Rule 32 CPC, read with Section 36–74 CPC and Article 135/136 of the Limitation Act, 1963.

6.2 Modes of executing an injunction decree (Order 21 Rule 32) :

- Arrest and detention in civil prison;
- Attachment of property;
- Both.

6.3 Procedure before the executing court:**(a) Filing the execution application under Order 21 Rule 32(1), clearly stating:**

- Nature of the injunction decree (prohibitory/mandatory);
- facts and date of breach/disobedience;
- relief/mode sought (detention, attachment, compensation, act to be done, etc.).

(B) The DH usually annexes:

- Certified copy of the decree;
- affidavit describing the disobedience and evidence (photographs, site-inspection report, etc.).

(C) Notice and inquiry into disobedience :

- The court issues notice (If required) to the JD.
- Hearing and disposal of objections raised under the pervuew of Section 47 CPC;

- The court must be satisfied that the disobedience was willful (not accidental or justified);
- mere technical breach may not attract harsh measures and execution should be dismissed.

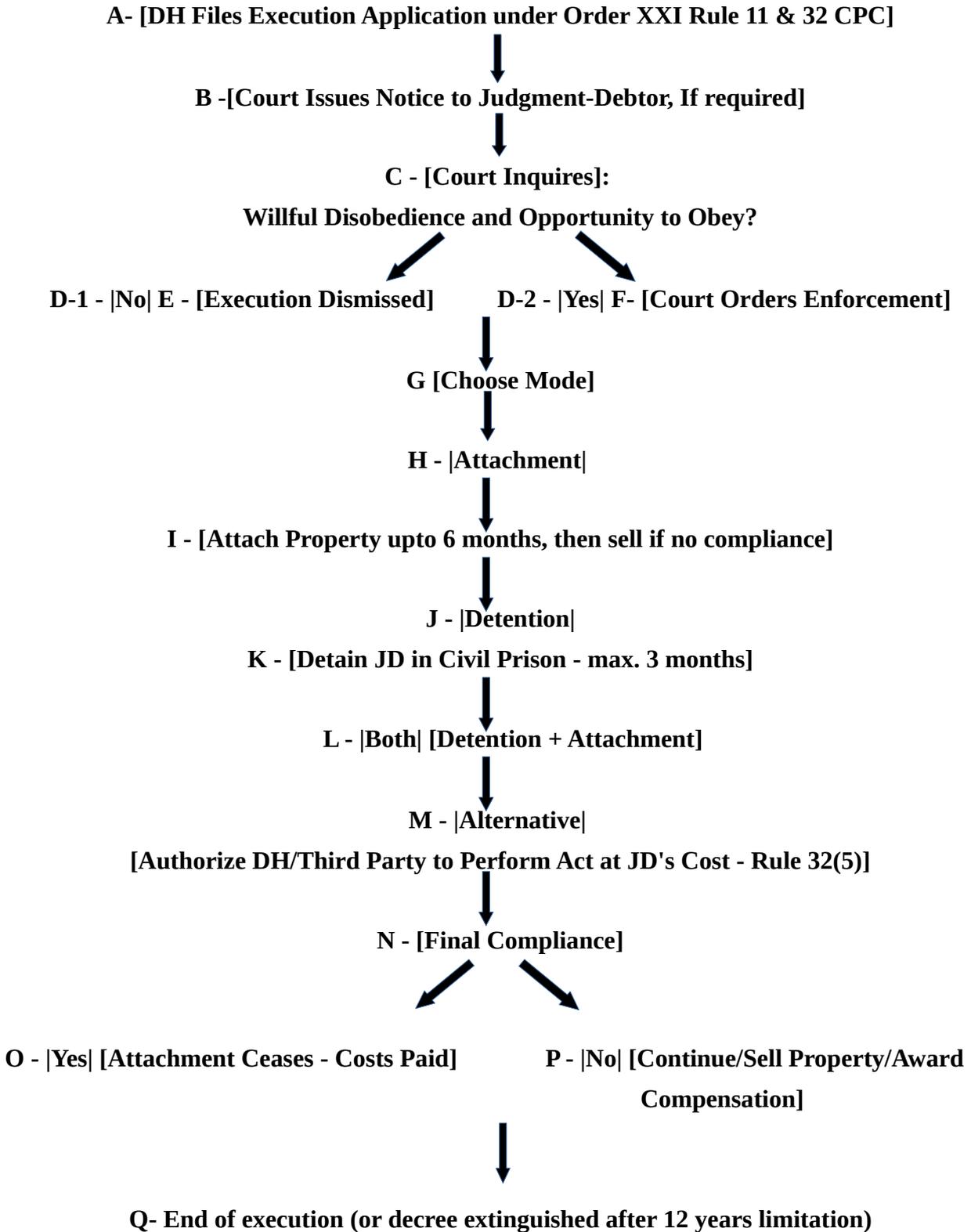
(d) Passing the execution order :

- On finding willful disobedience, the court may pass one or more of the orders under Rule 32(2):
 - Order for arrest and detention in civil prison **{Order 21 Rule 32(2)}**;
 - attachment of property (for maximum 06 month) **{Order 21 Rule 32(3)}**;
 - sale, (where any attachment remained in force for six months, if the JD has not obeyed the decree and the DH has applied to have the attached property sold, such property may be sold) **{Order 21 Rule 32(3)}**;
 - compensation for loss, (out of the sale proceeds the Court may award to the DH such compensation as it thinks fit, and shall pay the balance (if any) to the JD on his application) **{Order 21 Rule 32(3)}**;
 - the attachment shall cease **{Order 21 Rule 32(4)}**,
 - ◆ where the JD 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;
 - direction that the act be done by DH or third-party at JD's cost **{Order 21 Rule 32(5)}**;
 - restoration of possession to the DH (If dispossession has been done during pendency).

6.4 Time limit for Execution Application:

- For decree of mandatory injunction, 03 years time limit is prescribed under Article 135 of the Limitation Act, so the DH may apply for execution at any time.
- Time runs from the date of the decree or the fixed date of performance.
- For decree of perpetual injunction, no time limit is prescribed under Article 136 of the Limitation Act, so the DH may apply for execution at any time.

FLOW-CHART FOR EXECUTION OF DECREE OF INJUNCTION



EXECUTION OF DECREE OF POSSESSION OF IMMOVABLE PROPERTY
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7.1 Legal Framework :

- Execution of a decree for possession of immovable property is done under Order 21 Rules 35, 36 CPC, read with Section 36–74 CPC.
- **Actual Possession :** The object is that the DH obtains actual/physical delivery of possession from the JD or others resisting the delivery, and, if necessary, removes any person bound by the decree who refuses to vacate **{Order 21 Rule 35(1)}**.
- **Symbolic Possession :** Delivery of immovable property in the possession of a tenant or third party not bound by the decree to vacate, when physical eviction is not permitted, may be made through constructive or "symbolic" possession executed by affixing a warrant copy and making a public proclamation on the property **{Order 21 Rule 36}**.

Order 21 Rule 36: Provides for delivery of vacant possession where the JD has obstructed delivery; the court may order arrest and detention (up to 30 days) of the obstructing person and ensure delivery of vacant possession.

7.2 Procedure before the executing court:**(a) Execution application under Order 21 Rule 11:**

- The DH files an application for execution stating that the decree is for delivery of possession of immovable property.
- DH shall give particulars such as location of property, occupants, and nature of obstruction (Compliance of Order 21 Rule 11).

(b) Handling of resistance / obstruction (Section 74):

- If the JD or someone at his instance obstructs delivery:
- The court may invoke Order 21 Rule 36, and order arrest and detention in civil prison of the obstructing person for up to 30 days (Section 74).
- Police may be requisitioned to assist the court officer in executing the warrant peacefully.

(c) Handling of Claims and Objections (Order 21 Rule 97-103):

- In execution proceedings mandatory mechanism for handling third-party resistance (Rule 97) or dispossession (Rule 99) has been provided.
- These provisions cover objections by any person, including strangers and tenants, claiming a right on their own behalf.
- It requires to adjudicate title/right issues by executing court itself rather than through separate suits.
- Order 21 Rule 97 allows DH or auction purchaser to file applications against obstructers.
- Order 21 Rule 99 enables third party occupants (tenants, licensees not bound by decree) to seek restoration of possession in case of dispossessed by DH or auction purchaser.
- If third persons are not parties to the suit, the court cannot dispossess them on the decree, the DH must seek possession through tenant-eviction statutes (e.g., Rent Act/Tenancy Act), not execution of decree for possession.
- Once an objection is raised, the executing court shall stay the execution and adjudicate the matter on its merits before proceeding with the execution.

- The executing court must adjudicate all questions (including title, right, or interest) arising between the parties or their representatives in the execution process (Order 21 Rule 101).

(d) Orders after Adjudication (Order 21 Rule 97 & 100):

- The Executing Court shall adjudicate treating them as part of the suit, not a separate suit and can take evidence.
- The Executing Court can pass the following orders :
 - **Allowing the Claim:** The court may uphold the objection, protecting the third party's possession and removing the property from execution.
 - **Disallowing the Claim:** The court may reject the objection and order the obstructor to be dispossessed.
 - **Protection of Rights:** The court can pass any order it deems fit to satisfy the decree.
- The decision made by the executing court under these rules is deemed a decree and is appealable, not a separate suit.
- Both sets of remedies (O-21 R-99 and O-21 R-97) are available to a stranger (third party) to the decree **{Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694}**.
- A third party claiming to be in possession can file an objection under Order 21 Rule 97, which must be resolved by the executing court before they are dispossessed, rather than the court waiting for them to be dispossessed first. **{Shreenath v. Rajesh, (1998) 4 SCC 543}**.

(d) Order for delivery of possession :

- The court issues an order / warrant directing delivery of possession to the DH (or his nominee) .
- If the JD is in occupation, the court may (**Order 21 Rule 35**):
 - Direct peaceful surrender of possession; or
 - Direct the court officer (bailiff / attach-officer) to enter the property and put the DH in possession, removing any JD/person resisting (**Form No. 11 Appendix E**).
- When the judgment-debtor is not in actual possession, but a tenant or other occupant who is not required by the decree to vacate is in possession, the Court orders symbolic possession in the following manner (**Order 21 Rule 36**) :
 - A copy of the warrant is affixed in a conspicuous place on the property.
 - The substance of the decree is proclaimed on-site through beat of drums or other customary methods.

(e) Joint Possession decrees {Order 21 Rule 35(2)}:

- Possession is delivered by affixing a copy of the warrant in a conspicuous place on the property; and
- proclaiming the decree through customary means (e.g., drumbeat, public notice).

7.3 Time limit:

- For delivery of vacant possession, the DH must generally move within 1 year from the date of confirmation of sale or decree (**Section 134 Limitation Act, 1963**).
- For the execution of decree, the limitation period is 12 years (**Section 136 Limitation Act, 1963**).

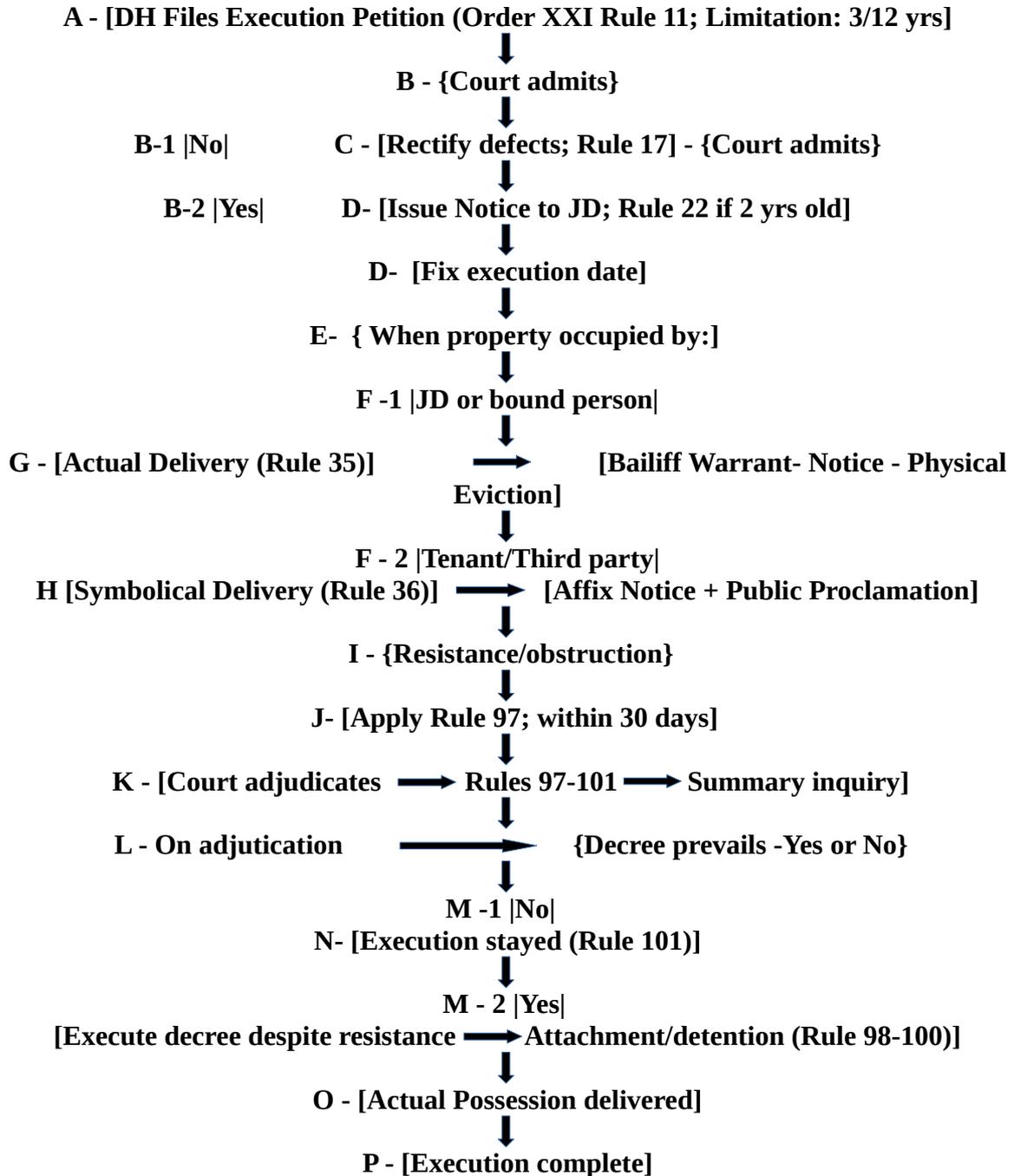
7.4 Police Assistance:

- Courts may grant short-term police assistance to the DH for delivery.
- The DH shall deposit the cost of police force expenses.
- Decrees have to be executed, if necessary with the police help *{Zahurul Islam Vs. Abul Kalam, 1995 Supp (1) SCC 464}*.

7.8 Procedure for police to help to an Amin {Rule 534 G.R. (Civil), 1957}:

- When Amin has to make an attachment under an order of the Court (Rule 529), and he apprehends that resistance will be offered by the judgment-debtor or any other person he may apply for requisite police help if and when necessary, subject to the conditions following :
 - (i) Application for such assistance should be made through the Presiding Officer of the Court who should not forward the application unless he is satisfied that the attachment cannot be effected without police assistance.
 - (ii) The Superintendent of Police will be entitled to refuse assistance but he should not ordinarily refuse it unless he has not the necessary force available. When he refuses assistance, he will inform the Presiding Officer of the Court of the reasons for his refusal.
 - (iii) If in any particular case, for reasons of urgency, it is not possible to resort to this procedure, the Amin may apply direct to the officer-in-charge of the police station concerned who may refuse to give assistance but should inform the Superintendent of Police, immediately of his reasons for such refusal.

**FLOW-CHART FOR
EXECUTION OF DECREE OF POSSESSION OF IMMOVABLE PROPERTY**



**EXECUTION OF DECREE OF SPECIFIC PERFORMANCE
(EXECUTION OF SALE DEED)**

8.1 Legal Framework:

Execution of a decree for specific performance of contract (execution of sale deed) is governed by Order 21 Rule 32 CPC, read with Sections 36–74 CPC and the Specific Relief Act, 1963.

8.2 Modes of execution under Order 21 Rule 32:

- Detention in civil prison;
- Attachment and sale of movable or immovable property;
- Compensation (The JD may be directed to pay compensation for loss caused by non-performance, if the court thinks it just and equitable).

8.3 Procedure before the executing court :**(a) Execution application under Order 21 Rule 11, 32(1):**

- The DH files an application for execution, clearly stating:
 - that the decree is for specific performance of contract;
 - how and when the JD has disobeyed the decree (with some proof).
 - The application should specify the relief sought:
 - detention; and/or
 - attachment of property; and/or
 - direction to execute the sale-deed or
 - deliver possession; and/or
 - compensation.
- Rectification of defects, if any (**Order 21 Rule 17**).

(b) Notice and inquiry into disobedience :

- If required, the court issues notice to the JD and holds an inquiry to determine whether the disobedience is willful or justified.
- The JD may show inability to perform or mistake etc.
- If the court is satisfied, the decree may be modified or dropped.

(c) Passing the execution order :

- On finding willful disobedience, the court may combine:
 - an order for detention (civil prison);
 - attachment / sale of property;
 - a direction that the sale-deed be executed by registrar / court officer (**Procedure prescribed under Order 21 Rule 34 shall be followed**); or
 - possession be delivered;
 - a direction for compensation.

8.4 Act to be done by DH or third party at JD's cost for execution of sale deed and delivery of possession:

- Where the decree is mandatory (e.g., execute sale deed, hand over possession), the court may:
 - Direct that the sale deed be executed.
 - Permit the DH or, in some cases, a court appointed officer to execute the deed.
- The following procedure shall be followed (Order 21 Rule 34) :
 - DH to Prepare Draft Sale Deed **{Rule 34 (1)}**
 - Court examines draft
 - Serves draft on JD
 - Issue Notice to JD - Fix date for JD objections **{Rule 34(2)}**
 - JD compliance – If Yes (JD executes sale deed as per draft)
 - JD compliance - If Not (JD objects to draft in writing)
 - Court hears objections
 - Court orders - Approving or Altering/Modifying the Draft
 - DH delivers to Court the Altered Draft
 - Court may direct for proper stamp paper, (if stamp is required) **{Rule 34(4)}**
 - Court can call report from Sub Registrar Office for proper value of stamp
 - Court/Appointed Officer executes document **{Rule 34(4)}**
 - Register document, if required **{Rule 34(6)}**
 - DH pays balance consideration
 - Delivery of possession, If the decree contemplates delivery of possession, the Executing Court may pass an order for delivery of possession **(Order 21 Rule 35 or 36)**.
 - Court can order that the costs and expenses be borne by the JD.

8.5 Time Limit :

A decree for specific performance is generally enforceable within 12 years from the date it becomes enforceable (Article 136 of the Limitation Act, 1963) unless modified by agreement or court order.

**FLOW-CHART FOR EXECUTION OF DECREE OF SPECIFIC PERFORMANCE
EXECUTION OF SALE DEED**

A- [DH Files Execution Petition; Order XXI Rule 11, 32; Specific Performance Decree]

B- {Court admits- Yes or No}

B -1 |No|

C- [Rectify defects (Rule 17)]

B -2 |No|

D- [DH to Prepare Draft Sale Deed {Rule 34 (1)}]

E - [Court examines draft]

F- [Serves draft on JD]

G- [Issue Notice to JD - Fix date for JD objections Rule 34(2)]

H - {JD compliance - Yes or Not}

H-1 - |Yes|

[JD executes sale deed as per draft]

H-2 - |No|

[JD objects to draft in writing]

[Court hears objections]

[Court orders - Approving or Altering/Modifying the Draft]

[DH delivers to Court the Altered Draft]

[Court may direct for proper stamp paper, if stamp is required]

[Court/Appointed Officer executes document {Rule 34(4)}]

[Register document if required {Rule 34(6)}]

I - [DH pays balance consideration]

**J - [Delivery of possession (Rule 35/36) if specified]
[Execution complete]**

**GENERAL GUIDELINES & DIRECTIONS
ISSUED BY HON'BLE SUPREME COURT**

Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418

Para 42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 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.

42.2. 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.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 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.

42.5. 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.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. 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.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 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.

42.9. 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 expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. 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 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 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.

42.12. 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.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, 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 with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums 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.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.

Periyammal v. V. Rajamani, (2025) 9 SCC 568

62. A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. The import of such a reading of the provisions is that only matters arising subsequent to the passing of the decree can be determined by an executing court under Section 47 and Order XXI Rule 101. Such reasoning is reinforced by the decisions of this Court in *C.F. Angadi v. Y.S. Hirannayya, (1972) 1 SCC 191* and *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670*, wherein it has been held that while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.

63. What flows from the position of law, as afore stated, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in *Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418* has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree.

76. The mandatory direction contained in para 42.12 of *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418 requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education & Welfare Society* [*Bhoj Raj Garg v. Goyal Education & Welfare Society*, (2025) 9 SCC 618]

77. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the Presiding Officer concerned would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.

Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689

29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief.

30. In money suits and other suits requiring a single decree, the process of suit should be a continuous process consisting of the first stage relating to determination of liability and then the second stage of execution and recovery, without any pause or stop or need for the plaintiff to initiate a separate proceedings for execution. In suits for partition and other suits involving declaration of the right and ascertainment/quantification of the relief, the process of the suit should be continuous, consisting of the first stage of determination and declaration of the right, second stage of ascertainment/division/quantification, and the third stage of execution to give actual relief.

Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694

Para 8. A conjoint reading of Order 21, Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21, Rule 98, sub-rule (2)

and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order 21, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order 21, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order 21, Rule 98, sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21, Rule 99 to be put in possession of the property or if his application is found to be substanceless, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21, Rule 98, sub-rule (1) would be deemed to be a decree as laid down by Order 21, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21, Rule 101.

Jai Narain Ram Lundia v. Kedar Nath Khetan, (1956) 1 SCC 75

- When a decree imposes obligations on both sides which are so conditioned that performance by one is conditional on performance by the other execution will not be ordered unless the party seeking execution not only offers to perform his side but, when objection is raised, satisfies the executing court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree: a thing that an executing court cannot do.
- There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be left to its own execution. But when the obligations are reciprocal and are interlinked so that they cannot be separated, any attempt to enforce performance unilaterally would be to defeat the directions in the decree and to go behind them which, of course, an executing court cannot do.
- ***In a decree for specific performance*** where the decree itself cannot be given unless the side seeking performance is ready and willing to perform his side of the bargain *and is in a position to do so*, only strengthens the conclusion that that was the meaning and intendment of the language used. The reason is, that to hold otherwise would be to permit an executing court to go behind the decree and vary its terms by splitting up what was fashioned as an indivisible whole into distinct and divisible parts having separate and severable existence without any interrelation between them just as if they had been separate decrees in separate and distinct suits.
- The basic principle in execution is that the executing court must take the decree as it stands and cannot go behind it. If the decree says that on payment being made some definite and specific thing is to be given to the other side, the executing court cannot alter that and allow something else to be substituted for the thing ordered to be given.
- The defendant may or may not have the right to ask the court which passed the decree to vary it in that way but he can certainly not ask the executing court to do so. The decree must either be executed as it stands in one of the ways allowed by law or not at all.
- The remedy provided in Order 21 Rule 32(1), is, of course, one of the remedies available in execution of a decree for specific performance but it can only be used by a person who is entitled to

execute the decree, and if, by reason of his own incapacity to perform his part, he is precluded from seeking execution, Order 21 Rule 32(1), cannot apply.

- The only question that remains is whether the executing court can consider whether the defendant is in a position to perform his part of the decree. But of course it can. If the executing court cannot consider this question who can? The executing court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the court executing the decree can determine it. It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so, under Section 47 of the Civil Procedure Code, it can only be determined by the court executing the decree. And as for the first court's conclusion that it could not decide these matters because it was not the court that passed the decree, it is enough to say, that Section 42 of the Code expressly gives the court executing a decree sent to it the same powers in executing such decree as if it had been passed by itself.
- Objections to execution not required to be taken by the Appellate Court while dealing with transfer application. Questions involving inquiry into fact should not be raised before appellate court.
