TOPIC

CONDUCTION OF ROUND – 4 OF ONLINE REFRESHER COURSE AND DELIBERATION ON STRUCK – UP AREAS.

__PAPER PRESENTATION BY__

SRI. K. PRAKASHA BABU

II ADDL. CIVIL JUDGE (SENIOR DIVISION),

RAJAMAHENDRAVARAM.

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The difficulties of the Decree Holder begins soon after gets decree in its execution. Generally the execution of a “DECREE” is not an herculean task the Code of Civil Procedure, 1908 as well as Andhra Pradesh Civil Rules of Practise guided for smooth sailing in the Ocean by a Ship.

Before, I venture into deal with the “EXECUTION PROCEEDINGS” let we try to know what is definition of Execution. Either in the CPC (Code of Civil Procedure) or in CRP (Civil Rules of Practise) there is no definition of Execution. The same can be derived from the Industrial Disputes Act and also from the Oxford Dictionary.

PROVISIONS OF LAW WHICH DEALS WITH EXECUTION:

PART – II OF CODE OF CIVIL PROCEDURE, 1908

1. Sections.36 to 74.
2. Order XX Rule 12, 12A, 13 to 19.
3. Order XXI Rule 1 to 106.

CIVIL RULES OF PRACTISE

1. Rules 205 to 285.

For easy understanding of Order XXI which consisting of 106 Rules it can be divided how to deal its execution as heads.

1. Payment under Decree (Rules 1 and 2).
2. Codes Executing Decrees (Rules 3 to 9).
3. Application for Execution (Rules 10 to 23).
4. Process of Execution (Rules 24 and 25).
5. Stay of Execution (Rules 26 to 29).
6. Mode of Execution (Rules 30 to 36).
7. Arrest and Detention in the Civil Prison (Rules 37 to 40).
8. Attachment of Property (Rules 41 to 57).
9. Adjudication of Claims and Objections (Rules 58 to 63).
10. Sale Generally (Rules 64 to 73) : (Sections 65 to 67).
11. Sale of Movable Property (Rules 74 to 81).
12. Sale of Immovable Property (Rules 82 to 96).
13. Resistance of Delivery of Possession to Decree-Holder or Purchaser (Rules 97 to 106).

The Rules envisaged in the Civil Rules of Practise from 206 to 285 are Supplement to the Rules to the above Group.

If one can understand the above procedure then the Execution can be made easy.

KINDS OF EXECUTION:

1. Arrest and Detention in Civil Prison of the Judgment Debtor in the Money Decree.

2. Attachment and Sale of the Property in the hands and possession of Judgment Debtor.
3. Attachment of Immovable Property in the hands of the 3rd parties i.e., Garnishee.
4. Execution of Decree otherwise as decreed by the Court.
5. Execution, Arbitral Decrees, Decree passed by the District Registrar etc.,

MODE OF EXECUTION:

Execution made through an application under Order XXI Rule 10 of CPC where Decree Holder desires to execute it.

Decree Holder shall approach in executing the Decree to the Court which passed the Decree (or) the Officer if any appointed in this Block.

Decree sent for Execution to any other Court from the Court which passed Decree.

ORDER XXI RULE 11 OF CPC:

Sub-Rule 1 of CPC an execution application may be orally at the request of the Decree-Holder at the time of passing Decree where a decree is for payment of money for the arrest of the Judgment Debtor prior to the preparation of the warrant if the Judgment Debtor within the precincts of the Court.

Sub-Rule 2 of CPC in written application in the Form No.6 as envisaged in the appendix-E of Code of Civil Procedure, 1908. The Form which consists of the number of suits, name of the parties, date of decree etc., and important to verify whether an appeal is preferred against the decree, if it is decree for payment, any

adjustments or part payments, previous application and it should contain the mode in which the assistance of the Court required i.e.,

1. Whether by Delivery of an property decreed for.
2. By the attachment or the attachment and the sale or the sale without attaching the property.
3. By the arrest and detention of any person in the prison.
4. By the appointment of the Receiver.
5. Otherwise nature of the relief.

At the time of receiving the Execution Petition, it shall accompanied with a certified copy of the Decree.

RULE 11 (A) OF CPC:

Were a Decree-Holder sought for execution by mode of Arrest and Detention the execution petition shall accompanied stating the grounds for the arrest.

Rule 12 to 14 where application is made for attachment of the moveable property not in the possession of the Judgment Debtor. In such an event the execution petition shall accompany with an inventory of the property.

IMMOVEABLE PROPERTY TO CONTAIN CERTAIN PARTICULARS:

Where an application is made for immoveable property the descriptive particulars of such property shall contain at the foot. With regard to the Survey Number, Boundaries, Specifications for the purpose of identification of the property. If the property is joint property specifying the share of the Judgment Debtor or to the extent of his interest.

RULE 14 OF CPC:

An application shall accompanied with the Encumbrance Certificate.

RULE 15 OF CPC:

The Rule is made for the joint Decree-Holder can sought for execution unless decree is an conditional decree to the contrary i.e., imposition of the condition by the Court. Where and when among several Decree-Holder is any one applied for execution the duty of the Court shall protect the interest of the other Decree-Holders.

EXECUTION OF THE TRANSFEREE DECREE:

It is also one of the mode of execution when the executing Court could not execute decree particularly a decree for money where the Judgment-Debtor is out of the Jurisdiction of the Court which passed the Decree.

Where a decree has been passed jointly in favour of two or more persons in the interest of any Decree-Holder may transfer his interest by assignment in writing or by operation by law. The Transferee may apply for Decree to be executed. When such a transfer is made a notice is to be given for the Judgment-Debtor and Court shall not entertain until it heard the objections.

Here an important factor to be noted i.e., Section.146 of CPC proceedings by or against representatives save as otherwise provided by this Court or by any law for the time being in force where any proceedings may be taken or application is made by or against any person then the proceedings may be taken or the application can be made or against any person claiming under him i.e., **LOCUS STANDI**.

If an execution application instituted by the Decree-Holder for execution of the money decree died during the pendency of the

execution proceedings the legal representatives of the Decree-Holder has to produce Succession Certificate. When once such certificate is produced there is no need for further proof that the petitioner is the legal representatives of the deceased Decree-Holder.

Settled in the case of the "**R.Ramachandra Naidu Vs. Muniratnam[1]".**

Where a Decree is for Perpetual Injunction in respect of certain property not of a personal nature. On the death of the Decree-Holder does not extinguish the legal representatives, sharer in the partition suit, transferee or assigning can execute a Decree for Injunction without filing a fresh suit held in the case of **"Nereddy Rajreddy Vs. Pasula Enkamma[2]".**

ORDER XXI RULE 17 OF CPC:

The rule deals with the procedure to follow after receiving the application and examine whether there is an requirement for the compliance of Rule 11 to 14 of CPC.

Sub-Rule 2 of Rule 17 of CPC permits to receive petition for amendment and can execute the amended application in such an event the amended application shall be deemed to be original application received under Rule 11 of CPC.

The Court shall enter into register.

RULE 18 OF CPC:

The Rule deals with the execution of Cross Decrees.

Ex. A holds Decree against B for Rs. 1000/- (One thousand rupees only) and B holds Decree against B for the Rs. 1000/- (One thousand rupees only) If A fails to deliver certain rules at future day

1 2003 (4) ALT 699.

2 1997 (2) ALT 481.

B cannot his decree as a Cross Decree. Where an application is made for the execution of the Cross Decree in separate Suits for the payment of two sum of money passed between the same parties and capable of executing the same Decree at the same time. If equal sums the satisfaction can be recorded where difference in the sums the other can sought for execution.

NOTICE OF EXECUTION UNDER ORDER XXI RULE 22 OF CPC:

Where an application is made more than two (2) years after the date of the decree or against the legal representatives of the party to the decree or where an application is made for execution of Decree or against the assignee or receiver in insolvency the Court executing the Decree shall issue a notice to the person against whom the execution is applied.

SUB-RULE 2 OF RULE 22 OF CPC:

The Court without issuing the notice by recording the reasons dispense the same where it considered that the issuance of such notice would cause unreasonable delay or would defeats the ends of the justice.

RULE 22 (A) OF CPC:

Sale not to be set aside on the death of the Judgment-Debtor before the sale but after the service of proclamation of sale. The sale shall not be set aside merely because of death of the Judgment-Debtor between the date of the proclamation of sale and the date of the sale not withstanding the failure of the Decree-Holder to substitute the LRS of the said deceased Judgment-Debtor. The Court executing the Decree after satisfying itself that there is a prejudice caused to the LRS when not brought on the record and sale was conducted and such sale may set aside.

PROCESS FOR EXECUTION:

For every Execution petition shall issue process for the execution of the decree such process shall bear the date of the day on which it is issued by the Judge or the Officer of the Court may appoint on his behalf shall bear the seal. So far as Andhra Pradesh is concerned in every such process a day shall be specified on or before which it shall be executed and the day shall be specified which it shall be returned to Court.

ENDORSEMENT OF THE PROCESS UNDER ORDER XXI RULE 25 SUB-RULE 2 OF CPC:

This Rule empowers the Officer of the Court to cause or make an enquiry for any delay for non service of process with the amine (OFFICER) the reasons for non execution of process so far as Andhra Pradesh is concerned there is an amendment where the process is issued for decree of payment of money the Court Officer when not executing the process he shall also obtain an endorsement on the process to that effect signed by the Decree-Holder and attested by two respectable witnesses who can identify Decree-Holder.

STAY OF EXECUTION:

Court may stay the execution not by the Court which passed the decree but it is the transferee Court. Enable the Judgment-Debtor to apply the Court for Stay to the appellate Court or the Court which passed the Decree under Order XLI Rule 5 Sub-Rule 2 of CPC where stay by the Court which passed the Decree before the expiration of time allowed for appealing there from.

Whenever any stay is granted the Court has power to impose conditions upon the Judgment Debtor on the orders of the stay of execution.

STAY CAN BE GRANTED UNDER RULE 29 OF CPC:

Where a suit is pending in any Court against the holder of the Decree of such Court on the part of the person against whom the Decree can be passed in such an event or such terms of security the Court may stay the Execution.

If Court is not imposing conditions the reasons has to be assigned for doing so.

RULES 30 OF CPC:

Execution of Decree for payment of money as the alternative to some other relief may be executed by the detention in the Civil Prison of the Judgment Debtor or by attachment and sale of the property.

RULE 31 OF CPC:

This Rule is Decree for Specific Moveable property.

RULE 32 OF CPC:

This Rule is Decree for Specific Performance for Restoration of Conjugal Rights or for Injunction.

RULE 33 OF CPC:

This rule is Discretion of Court in Executing Decree for Restoration of Conjugal Rights notwithstanding anything containing in the Rule 32 of CPC, Court at the time of passing Decree against husband for restoration of Conjugal Rights or subsequent decree the decree shall be executed in the manner provided under Rules 2 to 4.

RULE 34 OF CPC:

This rule is applicable for the execution of the Document, endorsement on Negotiable Instrument.

The Decree Holder may prepare the draft in accordance with the terms of the Decree and shall deliver to the Court, a Court shall thereupon serve the copy of the draft to the Judgment Debtor calling

for his objections within the time fixed by the Court. If the Judgment Debtor states his objection shall in writing within the time fixed by the Court and after considering draft and objections Court shall make such an Order.

Later, the Decree-Holder shall submit the draft as per the Orders of the Court with alteration if any and it shall be drafted upon the proper stamp paper as required by the law for the time being. The Presiding Judge or Officer appointed on his behalf shall executed a document deliver and it cause to office of the Registrar if it requires Registration duly authorizing any Court Officer.

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

RULE 36 OF CPC:

36. Decree for delivery of immovable property when in occupancy of tenant.—*Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to*

relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

ARREST AND DETENTION IN CIVIL PRISON:

Relevant provisions are Section.50 to 59 of CPC, Order XXI Rule 37 to 41 of CPC and Civil Rules of Practise Rule No.241 i.e., Arrest of Public Servant.

RULE 37 OF ORDER XXI OF CPC:

This rule deals with Discretionary power to permit the judgment Debtor to show cause against his detention in prison. The Court has to issue notices under Sub-Rule 1 of this Rule in Execution Decree of Money and the said Provision is Shall Provision without issuing notice, no warrant shall be issued. Except on an affidavit stating the grounds that Judgment Debtor is likely to abscond from the jurisdiction of the Court or issuance of notice may delay the execution.

When the Judgment Debtor made his appearance in obedience to the notice the Court shall conduct means enquiry in his presence, if Decree-Holder proves that Judgment Debtor got means and intentionally avoiding the payment of Decree then warrant has to be issued sending the Judgment Debtor to Civil Prison as notified by the State Government. Until unless the Decree-Holder deposit subsistence allowance under Rule 39 of CPC no Judgment Debtor shall commit to the Civil Prison. So far as State of Andhra Pradesh is concerned, Sub-Rule 4 of Rule 39 of CPC that is such sum (if any) as the Judge thinks sufficient for the subsistence and cost of

conveyance of the Judgment-Debtor for his journet from the Court-house to the Civil Prison and from the Civil Prison, on his release, to his usual place of residence together with the first of the payments in advance under Sub-Rule (3) of such portion of the current month as remains unexpired, shall be paid to the proper Officer of the Court before the Judgment-Debtor is committed to the Civil Prison and the subsequent payments (if any) shall be paid to the Officer in charge of the Civil Prison.

RULE 40 OF CPC:

When Judgment-Debtor in obedience to the notice or after arrest produced before the Court the Court shall proceed to Decree-Holder and take all such evidence as may be produced by him in support of his plaint and then an opportunity shall be given why he should not be committed to Civil Prison.

Pending enquiry the Court in its discretion ordered the Judgment-Debtor to be detained in the custody of the Officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance.

Subject to the provisions of the Section.51 of CPC the Court may release the Judgment-Debtor or sent to Civil Prison.

Here the duty of the Executing Court when Judgment-Debtor brought for arrest under Order XXI Rule 38 of CPC the Court shall inform the Judgment-Debtor that he may apply to be declared an insolvent and that he may be discharged if he expresses for its compliance with the provisions of insolvency to be declared as insolvent then he has to be released after furnishing sufficient surety to the satisfaction of the Court and he shall be released for a

period of one (1) month and undertake appear before the Court as and when called.

It is also to be kept in mind of the Court if any person intended to arrested for execution of the decree any person or class of persons whose arrest may be attended with danger or inconvenience to the public shall not be arrested and under Section.59 on the Ground of Illness, the Judgment Debtor may be released or when he satisfies the decree or when Decree-Holder with draws the Execution Petition.

In case of arrest of Public Servant a notice to the Drawing and Disbursement Officer or Authority against the Public Servant shall be given one (1) week prior to the date of his actual arrest under Rule 241 of CPC or to the any person to the immediate official superior of the person to be arrested.

Attachment of property under Rule 21 of CPC infact, if the Officer exercises this provision in executing the money decree Court can curb the delays that Judgment-Debtor may be called by issuing notice and examining him orally as to whether any or what debts are owing to him and whether he has any and what other properties are means of satisfying the decree and the Court may make an order for the attendance and examination of such Judgment-Debtor.

In case of disobedience to the above Order passed under Sub-Rule 2 of Rule 41 of CPC if the person disobey the order be detained in the Civil Prison for a term not exceeding three (3) months.

If a person Judgment-Debtor arrested and detained in the Civil Prison the Decree-Holder shall not again arrest the Judgment-Debtor

and mere detention in the Civil Prison cannot be considered as discharge of the debt.

ATTACHEMENT AND SALE:

Attachment of property in the hands of the Judgment-Debtor moveable and immoveable property. There is an amendment to the Hon'ble High Court of Andhra Pradesh

Andhra Pradesh. - Insert the following as Rules 43-A and 43-B:-

43-A. (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court, and shall with his report forward a list of the property seized.

(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court.

43-B. (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is so retained shall provide for its maintenance, and, if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house.

Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody.

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of the property, if sold or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums

deposited or paid under these rules be recovered as costs of the attachments from any party to the proceedings". (166 of 1913).

RULE 46 OF CPC:

Attachment of Debt, share, other property not in the hands of Judgment-Debtor i.e., in the hands of the Garnishee. Generally the salary is in the hands of the Drawing and Disbursement Officer of Government Employee subject to the provision of Section.60 of CPC be with held from the salary and allowance either in one payment or by monthly instalments as the Court may direct. This attachment of Salary even attached beyond jurisdiction of the Court though the Judgment-Debtor residence beyond jurisdiction of the Court i.e., Rule 48 of CPC.

Here before passing on the orders of the warrant of attachment no notice to Garnishee is contemplated under CPC except if Execution Petition is filed after two (2) years from the date of the Decree.

FAILURE OF GARNISHEE TO ATTACH THE SALARY:

The Court shall issue notice under Rule 46 (A) of CPC where Garnishee fails to comply the notice by depositing the amount due from him, fails to appear and give any answer to the show cause Court may order of Execution against him.

Payment of Garnishee to be a valid discharge.

RULE 48 (A) OF CPC:

This rule empowers Court to attach the salary of private employee which is in the hands of the Employee.

Rules 49 to 53 deals with the attachment of the Partnership Property, decree against the Firm, Attachment against the Negotiable Instrument, Attachment against the property/custody of the Court or the Public Servant and Attachment of the Decrees.

Attachment of immoveable property and claims under Rules 58 to 63 of CPC.

Rule 54 comes to play where the property is immoveable and the attachment shall be made by an Order prohibiting the judgment-Debtor from Transfer or Charging the property in any way.

Here if the original Court which passing the Decree when pass an orders of Interim in nature i..e, by way of attachment before the Judgment under Order XXXVIII Rule 5 of CPC.

When order of attachment against the immoveable property made by the Court it has to be proclaimed at some place near by the property by beat of drum and other customary mode.

When once attachment is made it has to be determined before that it the Judgment-Debtor satisfies the decree the Court may remove the attachment.

When attachment is in force for any reason the petition for execution is dismissed it is the duty of the Court shall direct whether the attachment shall continue or cease and shall also indicate the period upto which the such attachment shall continue or the date when it ceases.

RULE 58 OF CPC:

This rule deals with the objections of the claims to the attached property the Court has to deal all the claims and objections by way of suit in question related to right, title and interest of the attached property the Court may allow the objections or disobey the objection. Then Court shall enter sale generally which deals Rules 64 to 73.

Rule 74 to 81 deals with the moveable properties and Rules 80 to 89 deals with the immoveable properties.

While Court deals with the sale on the attaching property it has to take some precautions in bringing the attached property for sale, notice to the Judgment-Debtor strictly be served and after the appearance of the Judgment-Debtor in his presence Court shall draw settlement of terms after Settlement of terms in the presence of Judgment-Debtor. Provided that where the notice of settling the terms or the proclamation has been given to the Judgment-Debtor by means of Order XXI Rule 54 of CPC it shall not be necessary to give notice to the Judgment-Debtor at the time of the proclamation of sale by way of publication.

The time and place of the sale has to be made in the publication, the sale may be adjourned in the discretion of the Court the Court may conduct sale by itself or by appointing any Officer under it.

When the sale is conducted in public auction, if a decree-holder can be allowed under Rule 72 of CPC by granting/obtaining permission to bid in the public auction.

When the bidders participated in the sale and auction purchaser purchased the property the Court shall reflect the sale purchase money at once or shall collect 1/4 th of the purchase money granting time fourteen (14) days for the remaining amount. When full amount paid by the purchaser the purchaser shall also pay money for the purchase of the stamp.

Here generally the real trouble shoots to the Executive Court by way of Claim Petition. Therefore, the guidelines set out by the Hon'ble Supreme Court in the case of **"Rahul S Shah vs Jinendrakumar Gandhi".**

Otherwise, the Court receive the claim petition conduct the sale i.e., auction without confirming the sale by the Court adjudicate the claim petition as if a suit.

A Claim Application cannot be moved by a person where Rule 102 procludes to file such application who is a transferee pendente-lite i.e., nothing but in rules 98 and 100 shall applies to the resistance or obstruction in Execution of a Decree for the position of immoveable property. When any question is raised by the claimant shall be decided so far as determination is considered with regard that the Judgment-Debtor have no saleable interest. When any person want to set aside the sale he has to deposit the decreetal amount with interest accrued and also 3% of the poundage to be paid to the auction purchaser and also deposit the expenses for the sale publication etc.,

When there is objection the Court shall issue certificate to the auction purchaser under Rule 94 and upon on application by the

auction purchaser under rule 95 the purchaser shall be put to possession of the property that was sold in public auction.

So therefore, while bringing the property for sale the importance steps to be remembered with regard to the publication, date of sale, from hearing of the parties, sale papers, encumbrance certificate with utmost care (Steps for sale will be supplied separately) by way of Docket Order for easy understanding.

I had my good effort for **PAPER PRESENTATION** since the execution is vast subject one has to dealt by thoroughly going through the provisions of Rule 1 to 106 of Order XXI of CPC and as far as Practicable and strictly adhere the rule and provisions and also the state/Hon'ble High Court amendment to each provision. So far as application of Section.5 to Rule 106 in this State of Andhra Pradesh is applicable the Officers have note of caution there are several judgments of various Hon'ble High Courts and Hon'ble Supreme Court on the application of Section.5 of CPC to Rule 106 from the other states rather than the Hon'ble High Court of Andhra Pradesh.

The subject of execution is exhaustive and one has to gather from the experience of the Senior Officers and the guidelines set out by the Hon'ble High Court as well as Hon'ble Supreme Court. I would like to express my gratitude to the Hon'ble High Court Andhra Pradesh Judicial Academy for providing this opportunity through the Hon'ble Prl.District Judge, Rajamahendravaram, East Godavari District.