EAST GODAVARI: WORKSHOP – III

CHAIRPERSON

HON'BLE SRI JUSTICE NINALA JAYASURYA

JUDGE, HIGH COURT OF ANDHRA PRADESH,

AND ADMINISTRATIVE JUDGE, EAST GODAVARI

NODAL OFFICER

JUNAID AHMED MOULANA

PRINCIPAL DISTRICT JUDGE,

EAST GODAVARI

DATE: 05.09.2026

VENUE: MULTI COURTS BUILDING COMPLEX

SUBJECTS:

SESSION I & II:

- Interim Orders – Importance, basis for granting or rejecting interim orders and importance of reasoned order.

SESSION III:

- Timeline for disposal of Execution Petition – practical challenges.

SESSION IV:

- **Execution Proceedings in respect of**

a) Money Decree.

b) Injunction Decree.

c) Decree for possession

- **Execution Proceedings in respect of**

d) Decree for restitution of conjugal rights.

e) Decree for specific performance.

SESSION NO. I & II

TOPICS:

a) Interim Orders – Importance, basis for granting or rejecting interim orders and importance of reasoned order.

Paper Presentation by-

Smt. Shaik Shireen,
V Additional Civil Judge (Junior Division),
Kakinada.
&

Sri. L. Gopinath,
Principal Civil Judge (Junior Division),
Prathipadu.

SESSION NO.III

TOPIC:

b) Timeline for disposal of Execution Petition – practical challenges.

Paper Presentation by-

Sri. P. Govardhan,
VI Additional District & Sessions Judge,
Kakinada.

SESSION NO.IV

TOPIC:

Execution Proceedings in respect of
a) Money Decree.
b) Injunction Decree.
c) Decree for possession

Dr. K.Deepa Dyva Krupa,
Civil Judge (Senior Division),
Peddapuram.

SESSION NO.IV

TOPIC:

Execution Proceedings in respect of
d) Decree for restitution of conjugal rights.
e) Decree for specific performance.

Sri. K. Ratna Prasad,
I Additional Civil Judge (Senior Division),
Rajamahendravaram.

SESSION – I & II

Interim Orders – Importance, basis for granting or rejecting interim orders and importance of reasoned order.

Paper presentation

By

Smt. Shaik Shireen,
V Additional Civil Judge (Junior Division),
Kakinada.

&

Sri. L. Gopinath,
Principal Civil Judge (Junior Division),
Prathipadu.

SESSION – III

Timeline for disposal of Execution Petition – practical challenges.

Paper presentation

By

Sri. P. Govardhan,

VI Additional District & Sessions Judge,

Kakinada.

SESSION – IV

Execution Proceedings in respect of
a) Money Decree.
b) Injunction Decree.
c) Decree for possession

Paper presentation

By

Dr. K.Deepa Dyva Krupa,
Civil Judge (Senior Division),
Peddapuram.

&

Execution Proceedings in respect of
d) Decree for restitution of conjugal rights.
e) Decree for specific performance.

Paper presentation

By

Sri. K. Ratna Prasad,
I Additional Civil Judge (Senior Division),
Rajamahendravaram.

INTERIM ORDERS

Importance, Basis for Granting or Rejecting Interim Orders And Importance of Reasoned Order

Sub-Topics:

- Temporary Injunctions under Order XXXIX,
- Other Interlocutory Orders under Order XXXIX,
- Appointment of Receiver under Order XL
- Other interim orders

Paper presentation by:
Smt. Sk.Shireen,
V Additional Civil Judge (Junior Division),
Kakinada, East Godavari District.

IMPORTANCE OF INTERIM ORDERS

Interim or interlocutory orders are those orders which are passed by the court during the pendency of a suit or proceeding pending before the court which do not finally determine the substantive rights and liabilities of the parties with respect to the subject matter of the suit or proceeding. The words 'interim or interlocutory orders' are not specifically defined under the Civil Procedure Code but the interim orders mean the orders made by the court during the pendency of any suit, appeal or other proceedings which are already instituted and pending before the court.

Interim orders are granted in order to protect, manage and preserve the subject matter of the suit during the pendency of the suit. As under Section 94(e) of Civil Procedure Code *in order to prevent the ends of justice from being defeated, the court may, if it is so prescribed, make such other interlocutory orders as may appear to the court to be just and convenient.* Interim orders deal with protection of rights of parties during the pendency of the suit or proceedings till the final adjudication. The difference between 'incidental' proceedings and 'supplementary' proceedings are that the incidental proceedings are in aid to the final proceedings and will have a direct bearing on the result of the suit. Whereas supplementary proceedings are initiated with a view to prevent the ends of justice from being defeated in case of any exigency.

In order to prevent the abuse of process during the pendency of the proceedings, interim orders may be issued as follows:

- Appointment of Commissioner under Order XXVI.
- Arrest before judgment under Order XXXVIII,
- Attachment before Judgment Order XXXVIII,
- Temporary Injunctions under Order XXXIX,
- Other Interlocutory Orders under Order XXXIX,
- Appointment of Receiver under Order XL

There are other interim orders such as directing payment into court under Order XXIV of CPC and requiring security for costs under Order XXV to protect the rights of parties during the pendency of the suit or proceedings.

TEMPORARY INJUNCTIONS UNDER ORDER XXXIX

The granting of temporary injunction is a matter of discretion of the Court. The discretion is to be exercised judicially according to well-settled principles. The law relating to injunctions is contained in Specific Relief Act and the Civil Procedure Code. The Civil Procedure Code deals only with the temporary injunctions and its object is to keep the matters in status quo until the final disposal of the suit. In Civil Procedure Code, Section 94(c) and Order XXXIX Rule 1 to 5 deal with temporary injunctions.

Order XXXIX Rule 1 speaks about the cases in which the court may grant a temporary injunction as a statutory relief, they are:

- In the case of property dispute, if the property in question is under a risk of being wasted, damaged or alienated or wrongfully sold in execution.
- If an individual threatens or displays intention of removing or disposing off of his property with a motive to defraud his creditors. This is specific to the defendant.
- If the plaintiff is threatened by the defendant to be dispossessed or injured in the context of the property in dispute.

As under Section 37 in The Specific Relief Act, 1963, *Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.*

Generally, when a defendant threatens or coerces the plaintiff to cause injury in respect of property in dispute, the Court grants a temporary injunction affecting the restraint of commission of the act in question. Temporary

injunction is thus, a provisional remedy that invokes the subject matter to retain or stabilize the condition in existence. Temporary injunction is said to be granted when the person seeking the same, has a right that is capable of being enforced by way of injunction. Order XXXIX of the Civil Procedure Code, 1908 Rule 3 stipulates for the passing of an ex-parte temporary injunction in an exigency.

BASIS OF GRANTING OR REJECTING THE ORDER:

The Hon'ble Supreme Court of India *in* ***Dalpat Kumar And Another vs Prahlad Singh And Others***[1] held "Order XXXIX, Rule l(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders.

Pursuant to the recommendation of the Law Commission Clause (c) was brought on statute by Section 88(i)(c) of the Amending Act 104 of 1966 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 of Civil Procedure Code to grant ad interim injunction against dispossession. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the

[1] *AIR 1993 SC 276*

suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that:

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant;

(2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

In *Dalpat Kumar v. Prahlad Singh*, the Hon'ble Supreme Court laid down the three tests for granting a temporary injunction:

- Prima facie case presented by plaintiff.
- Balance of Convenience (favoured or on at par with the plaintiff).
- If such a prayer for an injunction is not granted, the plaintiff will face a serious and terrible injury.

Prima facie case:

The Hon"ble Apex Court, in ***Gujarat Bottling Co. Ltd. and Others vs. Coca Cola Co. and Others***[2], elucidated the meaning of expression "*prima facie case*" to mean that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of the plaintiff

[2] 1995 AIR SC 2372

obtaining the relief at the conclusion of the trial, based on the material placed before the Court. The Honble Apex Court observed that the expression "*prima facie case*" means a substantial question raised bona fide which needs investigation and decision on merits, and the Court, at the initial stage, cannot insist upon a full proof case warranting an eventual decree.

The Hon'ble Apex Court, in, ***Kashi Math Samsthan & Anr vs Srimad Sudhindra Thirtha Swamy & Anr***[3] held ***"****It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted."*

Prima facie case should not be confused with prima facie title, which has to be established on evidence at the trial. The court need not conduct a mini-trial at the stage of granting the temporary injunction, as held by the Hon'ble Supreme Court in ***Anand Prasad Agarwalla vs Tarkeshwar Prasad And Ors*** [4]

The Hon'ble Apex Court, in ***Martin Burn Ltd. vs. R.N. Banerjee***[5] observed that "*A prima facie case does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie*

---

[3] AIR 2010 SC 296

[4] AIR 2001 SUPREME COURT 2367,

[5] AIR 1958 SUPREME COURT 79,

case had been made out, the relevant consideration is whether on the evidence let, it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at, on that evidence."

Balance of Convenience:

The Hon'ble Supreme Court in ***Wander Ltd. And Anr. vs Antox India P. Ltd.***[6] held that "*Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The object of the interlocutory injunction, is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.*

The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies"."

Irreparable loss:

The Hon"ble Apex Court, in ***Gujarat Bottling Co. Ltd. and Others vs. Coca Cola Co. and Others***[7], considered the aspect of "irreparable injury" and held that the Court is required to satisfy itself that the party seeking an injunction needs protection from the consequences of apprehended injury and the injury is such that it cannot be adequately compensated by way of damages.

---

[6] AIR ONLINE 1990 SC 156

[7] 1995 AIR SC 2372

The Court requires satisfying itself that, in case an injunction, as prayed for, is not granted, the party seeking the same will suffer irreparable injury. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of plaintiff, only if it is proved to the satisfaction of the court that unless defendant is restrained by an order of injunction, an irreparable injury be caused to plaintiff.

Basis of granting an ex parte injunction:

As under Order XXXIX Rule 3 of Civil Procedure Code the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay. The Hon'ble Supreme Court in**, *Morgan Stanley Mutual Fund vs Kartick Das*[8]** *held, "*As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are**:**

(a) Whether irreparable or serious mischief will ensue to the plaintiff;

(b) Whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) The court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) The court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) The court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

---

8 1994 SCC (4) 225,

(f) Even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court."

In case of the absence of the direction to comply with the mandatory requirement under Order XXXIX Rule 3A of the Civil Procedure Code, the injunction is liable to be suspended or set aside. The Hon'ble Supreme Court of India in *M/s. Morgan Stanley Mutual Fund v. Kartick Das* after considering the proviso to Rule 3, held in categorical terms that ex parte injunction without recording reasons for its opinion cannot be sustained and the Court can interfere by exercising the constitutional power under Article 227.

Injunction to restrain repetition or continuance of breach:

The court may grant injunction in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, at any time after the commencement of the suit, either before or after judgment, to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Consequence of disobedience or breach of injunction:

An application under Order XXXIX, Rule 2A of the Code is maintainable only when there is disobedience of any `injunction' granted or other order made under Rule 1 or Rule 2 of Order XXXIX or breach of any of the terms on which the injunction was granted or the order was made.

The Hon'ble Supreme Court in***, Food Corporation Of India vs Sukh Prasad***[9] observed "*The power exercised by a court under order* XXXIX*, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains*

[9] AIR 2009 SUPREME COURT 2330,

of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under order XXXIX *Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the `order', on surmises suspicions and inferences. The power under Rule 2A should be exercised with great caution and responsibility."*

The Hon'ble Supreme Court in, ***Amazon.Com Nv Investment Holdings Llc vs Future Retail Limited***[10] held, *"It is one thing to say that the power exercised by a court under Order XXXIX, Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order XXXIX, Rule 2-A requires not "mere disobedience" but "wilful disobedience". We are prima facie of the view that the latter judgment in adding the word "wilful" into Order XXXIX, Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order XXXIX, Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order XXXIX, Rule 2-A is primarily intended to enforce orders passed under Order XXXIX, Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature."*

As under Order XXXIX Rule 4 of Civil Procedure Code, any order for an injunction may be discharged, varied or set aside by the Court on an application made thereto by any party dissatisfied with such order. When the Court grants an ex parte injunction, it is not deciding the case of the petitioner,

---

10 AIR 2021 SUPREME COURT 3723

but on satisfaction of the urgency for the petitioner as propounded by the petitioner. After the appearance of the respondent, the Court has to hear both sides and it may dismiss the petition.

Temporary mandatory injunction:

The Hon'ble Supreme Court of India in ***Dorab Cawasji Warden vs Coomi Sorab Warden & Ors in***[11] held that "*The relief of interlocutory mandatory injunctions are granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm."*

The Hon'ble Supreme Court also laid down the 3 guidelines for issuing a temporary mandatory injunction as below:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

OTHER INTERLOCUTORY ORDERS ORDER XXXIX

[11] AIR 1990 867

Rules 6 to 10 of Order XXXIX deal with interlocutory orders such as, the court's power to order the interim sale of movable property, to order the detention, preservation or inspection of any property which is the subject-matter of such suit. Similarly, when the land in the suit is liable to Government revenue or tenure liable to sale and the party in possession neglects to pay the revenue or rent, the court may order any other party to the suit in case of sale of the land to be put in immediate possession of the property.

Power to order interim sale (Rule 6):

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject-matter of such suit or attached before judgment in such suit, which is subject to speedy and natural decay, for any other just and sufficient cause it may be desirable to have sold at once.

Detention, preservation, inspection, etc, of subject-matter of suit (Rule 7):

The Court may, on the application of any party to a suit, and on such terms as it thinks fit:

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or, as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem

necessary or expedient for the purpose of obtaining full information or evidence.

Application for such orders to be after notice (Rule 8):

An application by the plaintiff for an order under rule 6 or rule 7 may be made at any time after institution of the suit. An application by the defendant for a like order may be made at any time after appearance. Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall except where it appears that the object of making such order would be defeated by delay, direct notice thereof to be given to the opposite party.

The Hon'ble High Court of Madras in, ***Subbae Gounder vs Palanathal***[12] observed that "*Order XXXIX, Rule 7 enables a litigant to apply for the appointment of a Commissioner or for such other interlocutory orders in case the subject-matter of the suit has to be preserved and inspected and for the due safeguarding of his vested rights. Order XXXIX Rule 8 on the other hand is supplementary to Order XXXIX, Rule 7 and that it enables the plaintiff or the defendant to the action to ask for the appointment of a Commissioner or for an interlocutory order even after the institution of the suit. But once the suit has been instituted, Order XXXIX, Rule 8 prescribes that such an order has to be made generally after notice."*

The Hon'ble High Court of Madras held that the permissive form of the power given to Courts in Order XXXIX, Rule 8 (1) and (2), of CPC is significant. It is made optional because the Legislature wanted to clothe Courts with jurisdiction, but it expects that it should not be lightly used and abused. There may be compelling circumstances which prompt the Court in a given case to use the power without notice to the other side. This can be

---

12 AIR 1969 MADRAS 204

done as justice should not only be done but seem to be done and in cases where the right is coupled with a duty.

Each case has to be decided on its own merits and Courts are expected to be vigilant in conceding the request for appointment of a Commissioner, bearing in mind that it becomes a duty to so appoint, if the exigencies of the case require. The two questions that arise for consideration are as to when a Commissioner can be appointed and how such appointment has to be made. Both aspects have to be concurrently satisfied before a Court can exercise jurisdiction under Order XXXIX Rule 7. There may be exceptional circumstances under which the Court may dispense with notice to the other side, if the sole criterion for such an ex parte order is the preservation of rights of parties. Appointment of a Commissioner under Order XXXIX, Rule 7, after notice as contemplated under Order XXXIX, Rule 8 is the normal rule. An ex parte order is no doubt an exception and Courts, are not totally bereft of their jurisdiction to make such an order.

When party may be put in immediate possession of land the subject-matter of suit (Rule 9):

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure; and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Order XXXIX Rule 9 of CPC speaks with regard to an individual neglecting to pay government revenue or the rent to his proprietor in relation to a land assessable with revenue, which is the subject matter of the suit. The court may order the sale of the land, to any party interested in buying that said land. The proceeds from the sale can be used to compensate the default in the payment of the rent.

The Hon'ble High Court of Madras in, ***Ecc Leasing Company Limited vs Paramount Airways Pvt Ltd***[13]**,** observed "*The power of a Civil Court to put a claimant or plaintiff or applicant, in immediate possession of a property, during the pendency of a suit or other proceedings, could be traced only to Order 39, Rule 9, CPC or to Section 151. At any time after the exercise of such a power, the Civil Court can always restore the parties to their original position. The power of restitution is conferred specifically by Section 144 CPC, even in cases where the status of the parties is altered in pursuance of a decree and such a decree gets modified or reversed on appeal. Despite conferring the power of restitution specifically under Section 144, the Civil Procedure Code provides for an interim order for immediate possession of a property or for the delivery of a property, only under very limited circumstances under Order 39, Rules 9 and 10, CPC,*

A Court would order the custody of a property to be handed over permanently, only under extraordinary circumstances. This is for the reason that except in cases that would fall under Order 39, Rules 6, 9 or 10, CPC or under Order 26, Rule 10C, CPC, the grant of custody pending final adjudication, could only be by way of interim custody and not final custody."

[13] Applications no. 4806 and 4807 of 2009 Dated 15.12.2009

Deposit of money in Court (Rule 10):

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

The Hon'ble High Court of Bombay in, ***Bharat Petroleum Corporation Limited, vs Mr. Thakorbhai Ranchhodji Desai***[14]**,** observed that **"***It cannot be disputed that in a suit for recovery of money or anything which is capable of being delivered and further when the opposite party admits that the money or such things is held by the said opposite party as trustee or that it belongs to or is due to another party, the Court is empowered to issue direction to deposit money or such thing or to deliver such thing to the party on whose behalf such money or thing is held as trustee or to whom admittedly such money or thing belong to. For due performance of such order, the Court can also issue further directions as may warrant in a given case including the direction for furnishing security whenever occasion arises for such direction. Being so, in case of a suit for the claim of damages, if an application for interim relief is filed, the Court would not be debarred from exercising the power under the provisions of law contained in Order XXXIX Rule 10 of CPC."*

The Hon'ble High Court of Delhi in, ***Nokia Technologies Oy vs Guangdong Oppo Mobile,***[15] held that ***"***Order XXXIX Rule 10 of the CPC applies to a situation in which the subject matter of a suit is money or some other thing capable of delivery. Where the subject matter of the suit conforms to this requirement, Order XXXIX Rule 10 further requires, for the provision to

---

14 2003 (3) MHLJ 617
[15]2023 DHC 4465

apply, admission, by one or the other party to the suit. The admission must be either that:

(i) such party holds the money or other thing as a trustee for the other party, or
(ii) such money or other thing belongs to the other party or
(iii) such money or other thing is due to the other party."

Once the afore-noted two ingredients of Order XXXIX Rule 10 are satisfied, the provision proceeds to deal with the nature of the order that the Court may pass. It stipulates that, in such circumstances, the Court may order the same to be deposited in the court, or to be delivered to the other party, with, or without security. The use of the word 'the same' indicates that what may be directed to be deposited in Court or paid to the opposite party, is only the money or other thing which is held by one party and admitted to be due to the other party. Order XXXIX Rule 10 does, however, extend to the Court directing the other party to furnish security against the deposit or payment of such amount.

Importance of a reasoned order:

The Hon'ble Supreme Court in, ***Shiv Kumar Chadha vs Municipal Corporation Of Delhi And Ors***[16] held that **"***Power to grant injunction is an extra ordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case.* The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. If the reasons for grant of injunction are mentioned, a grievance can be made by the other side that the court has prejudged the issues involved in the suit. In view of the proviso to Rule 3 of Order XXXIX. There is no scope for any argument. When the statute itself required reasons to be recorded, the court cannot

[16] AIR ONLINE 1993 SC 417

ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant.

The imperative nature of the proviso has to be judged in the context of Rule 3 of Order XXXIX of the Code. Before the Proviso aforesaid was introduced, Rule 3 said "the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party".

The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed.

Accordingly the Hon'ble Supreme Court in, *Shiv Kumar Chadha vs Municipal Corporation Of Delhi And Ors* directed that the application for interim injunction should be considered and disposed of in the following manner:-

(i) The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the opposite party and the order should be passed only after hearing the parties.

(ii) If the circumstances of a case so warrant and where the Court is of the opinion, that the object of granting the injunction would be defeated by delay,

the Court should record reasons for its opinion as required by proviso to Rule 3 of order XXXIX of the Code, before passing an order for injunction. The Court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the opposite party. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of order XXXIX aforesaid, and If the opposite party has entered appearance, any such exparte order of injunction should be extended only after hearing the counsel for the opposite party.

Appointment of Receiver under Order XL

A receiver is an impartial person appointed by the Court for collecting, receiving, pending the proceedings, rents, issues and profits of the land or other estate which the Court thinks that either party should not collect or receive for the purpose of enabling the same to be distributed among the persons entitled.

As under Order XL Rule 1 of the Civil Procedure Code, wherever it appears to the Court to be just and convenient,

- the Court may order appointment of a receiver of any property whether before or after the decree,
- remove any person from the possession or custody of such property,
- commit the same to the possession, custody or management of the receiver and
- confer upon the receiver all such powers as to bringing and defending suits for realization, management, protection, preservation and improvement of the property, collection of rents and profits thereof, application and disposal of such rents and profits and the execution of documents as the owner himself has or such other powers the court thinks fit.

As under Rule 286 of the Civil Rules of Practice, Subject to approval of the District Judge concerned, the Presiding Officer of each Court shall maintain a panel of legal practitioners and other persons with suitable qualifications from among whom receiver shall ordinarily be appointed.

Every person included in the panel shall within 1 month furnish security in favour of the Presiding Officer to secure his liability in respect of all the receiverships to which he may be appointed as under Rule 287.

Rule 288 to 293 of the Civil Rules of Practice deal with filing of accounts by the receiver, manner of filing accounts, filing an affidavit by the receiver, books to be maintained by the receiver, opening of accounts in the Schedule Bank and procedure in case of failure of the duties by the receiver.

The Hon'ble Supreme Court in ***Kanhaiyalal v. Dr. D.R. Banali***[17] observed that "A receiver appointed under Order XL of the Code of Civil Procedure, unlike a receiver appointed under the insolvency Act, does not own the property or hold any interest therein by virtue of a title. He is only the agent of the Court for the safe custody and management of the property during the time that the Court exercises jurisdiction over the litigation in respect of the property."

BASIS OF GRANTING OR REJECTING THE ORDER:

The Hon'ble High Court of Madras in ***T. Krishnaswamy Chetty v. C. Thangavelu Chetty***[18] held "*Indeed, the appointment' of a receiver is regarded as one of the most difficult and embarrassing duties which a Court of equity is called upon to perform. It is a peremptory measure, whose effect, temporarily at least, is to deprive of his property, a defendant in possession, before a final judgment or decree is reached by the Court determining the rights of the parties. It Is therefore not to be exercised doubtingly, but the Court must be*

[17] AIR 1958 SC 725
[18] AIR 1955 MAD 430

convinced that the relief is needful, and that it is the appropriate means of securing an appropriate end, And since it is a serious interference with the rights of the citizen, without the verdict of a jury and before a regular hearing, it should only be granted for the prevention of manifest wrong and injury. And because it divests the owner of property of its possession before a final hearing, it is regarded as a severe remedy, not to be adopted save in a clear case, and never unless plaintiff would otherwise be in danger of suffering irreparable loss."

And the Hon'ble High Court laid down **the 5 requirements** or the '**panch sadachar**' to be followed by the courts in appointment of receivers as follows:

1. The appointment of a receiver pending a suit is a matter resting in the discretion of the court

2. The court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

3. Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

4. An order appointing a receiver will not be made where it has the effect of depriving a defendant or defacto possession since that might cause irreparable wrong. It would be different where the property is shown to be *'in medio'* that is to say in the enjoyment of no one and

5. The court on application made for the appointment of a receiver looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.

The Hon'ble High Court of Judicature for the State of Andhra Pradesh and Telangana in ***Anupama Homes India Pvt. Ltd. v. P. Shouri Raja & Ors.***[19] held that the trial court should observe that the applicant has prima facie case and then proceed to appoint a receiver to manage the affairs of the company and without such a finding, appointment of receiver is unjustified.

With regard to appointment of receiver in partition suits, the Hon'ble High Court of Judicature for the State of Andhra Pradesh and Telangana in ***Chelikam Rajamma v. Padilete Venkata swamy Reddy***[20] held that from an analysis of Order XL Rule 1 of Civil Procedure Code, in the light of the case law in relation to partition suits, the following propositions may be deduced.

1. The appointment of receiver cannot be resorted to lightly without considering the entire facts and circumstances

2. The party seeking the appointment of receiver must make out a case that he or she was not only kept out of the possession of the properties unauthorisedly but the party in possession is indulging in acts of waste leading to inference of incompetence.

3. If prima facie the plaintiff has excellent chance of succeeding in the suit, there being no denial with regard to his or her share in the plaint schedule properties, the conduct of opposite party in keeping the plaintiff out of possession will be a relevant consideration for directing the opposite party to deposit a sum of money approximately representing the value of the yield pertaining to the share of the plaintiff pending disposal of the suit. Even in such circumstances a receiver should not be appointed to oust the possession of the opposite party from the joint family properties. The protection of the properties and safeguarding of the rights of the parties shall be the twin objectives impelling the appointment of the receiver.

---

[19] AIR 2008 (NOC) 50 (A.P.)

[20] 1993 (2) ALT 154

Appointment of receiver under Section 69A of the Transfer of Property Act, 1882.

- A mortgagee having the right to exercise a power of sale under Section 69 shall be entitled for the appointment of a receiver on his behalf for the income of the mortgaged property or any part thereof. Any person who has been named in the mortgage deed and is willing and able to act as a receiver may be appointed by the mortgagee. If no person has been so named and unable to or unwilling to act, the Mortgagee may appoint any person as the Mortgagor may agree or he shall be entitled to apply to the Court for the appointment of such receiver. A receiver appointed under Section 69A of the Transfer of Property Act is deemed to be the agent of the mortgagor, and the mortgagor shall be responsible for the receiver's act or defaults unless the mortgage deed otherwise provides

- A receiver appointed under Section 69A of the Act shall have the power to demand and recover the income of which he is appointed as a receiver by suit, execution or otherwise in the name of either the Mortgagor or the mortgagee to the full extent of interest which the Mortgagor could dispose of and give valid receipts.

- Even though the court appoints a receiver under Section 69A of the Transfer of Property Act, the statute stipulates that he shall be deemed to have been appointed by the mortgagee. An order appointing a receiver on an application filed by the mortgagee under Section 69A of the Act cannot be treated as an order under Order XL of CPC.

Importance of a reasoned order:

The Hon'ble High Court of Madras in, ***Ecc Leasing Company Limited vs Paramount Airways Pvt Ltd[21],*** held that "*When a Civil Court grants interim custody of a property to a Receiver, the property virtually comes under*

[21] Applications no.4806 and 4807/2009 dated 15.12.2009

Court custody and the Court becomes custodia legis. The Court in such cases, holds de jure possession of the property through the Receiver. Therefore it can always put the person from whom the property was taken away, back into possession. Even in cases where the custody of a property is handed over to one of the parties, pending final adjudication of the dispute, the Court is vested with the power to order restitution at any point of time."

The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending.[22] The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril.[23]

The appointment of receiver being an exceptional, harsh and highly intrusive legal remedy, that deprives a person of their property before the judgment, it is necessary for the courts to pass a reasoned order and only in cases where the plaintiff has made out a prima facie that he/she has a very excellent chance of succeeding in the suit.

- **OTHER INTERIM ORDERS**

Payment Into Court (Order XXIV):

Under Order XXIV of CPC, in a suit to recover a debt or damage, the defendant may at any stage of the suit deposit such sum of money which he considers as a full satisfaction of the claim into the court. He shall issue notice to the plaintiff through the court. No interest shall be allowed to the plaintiff on such sum deposited by the defendant from the date of receipt of such notice

[22]Crawford V. Ross', 39 Ga 44 (Z28)
[23]Dozier v. Logan', 101 ga 173 (Z29)

whether or not such sum deposited is full satisfaction of the claims or falls short thereof. Where the plaintiff accepts such amount as satisfaction in part of his claim he may prosecute the suit for the balance and when he accepts it as full satisfaction of his claim, he shall present to the court a statement to that effect.

The provision for payment into court is an attempt to reach a compromise rather than a defence and when the payment is made by the defendant, the plaintiff is to dispose of the claim, but not an admission as to the merits of the case.

The Hon'ble High Court of Madras in ***Nivarthy Bala Chengaiah and another v. Busetty Subbaiah***[24] while deciding whether the notice was properly issued to the plaintiff about the deposit of money in full discharge of the mortgage, held that "*the plaintiff pursued his remedy with a degree of zeal but he was legally bound to recognize the payment into court as an amount available for him to draw at any time before the date on which the judgment was pronounced and he was legally entitled to the costs of filing his plaint in the first instance. Until the defendant has legally informed of the fact that appellant's deposit was standing to the credit of his suit, Order XXIV would have no application. The plaintiff knew that the money was in court, but it is not proved that the plaintiff knew that the money was credited to the suit and available for him to draw under conditions later in Order XXIV.* "

The Hon'ble High Court by referring to the decision in *Pandiri Satyanandam v. Parakusam Mangayya* in which it has been held "*when the plaintiff knows all about the deposit, formal notice is not necessary,*" held that the facts of this case were peculiar and that the plaintiff had no knowledge that he could draw the amount as per the conditions laid down under Order XXIV of CPC.

[24]AIR 1939 Madras 200

The Hon'ble High Court of Madras in ***Pandiri Satyanandam v. Parakusam Mangayya***[25] held "*Order XXIV, Rule 2, Civil Procedure Code, no doubt provides that notice of deposit shall be given through the Court by the defendant to the plaintiff and there is a form (No. 3) in Appendix II to C.P.C, But when the deposit has been made on the challenge of the plaintiffs and in the presence of the plaintiffs, it is not necessary that there should be a separate notice*.

Security For Costs (Order XXV):

Under Order XXV of CPC- The court may, either on its own or on the application of the defendant, order the plaintiff to give security for payment of all costs incurred and likely to be incurred by the defendant. However, where there is only a sole plaintiff or when there are more than one plaintiff and all the plaintiffs are residing out of India and when such plaintiff does not possess any sufficient immovable property within India other than the suit property, in such cases the court shall order the payment of security for payment of all costs. When such security is not furnished within the time fixed by the court, the court can dismiss the suit unless the plaintiff is permitted to withdraw the same.

The Order XXV Rule 1(1) of CPC is purely discretionary where the plaintiff is residing within the local limits of the jurisdiction of the court. However, the proviso shifts the rule from discretionary to mandatory when the plaintiff or the plaintiffs are residing outside India and do not have sufficient immovable property situated in India. The purpose of this rule is to protect the defendants from facing extreme difficulty or expenses when trying to recover the costs when the plaintiff is not residing within India.

The Hon'ble High Court of Delhi in ***S.A. Brothers & Co. v. John Bartholomow & Sons Ltd.,***[26] held that "a perusal of the proviso of Order

[25]AIR 1935 MAD 342A

[26]2000 SCC Online Del 854

XXV Rule 1 of CPC suggests that it was mandatory in terms. This is apparent from the use of expression 'shall be made in all cases' occurring therein. The provision prescribes only two requirements for passing an order.

1. Where the plaintiff resided outside India and,

2. Where it was not possessed of any sufficient immovable property within India.

From this it becomes clear that the trial court had no option but to pass an order asking for security of costs from the plaintiff where it found that he was residing outside India and was not possessing sufficient immovable property within India. It could not divert to examination of any other issue including prima facie evaluation of rival claims/counter claims for passing such an order.

Importance Of Reasoned Order

The Hon'ble High Court of Delhi in ***Kiran Shoes Manufacturers v. Welcome Shoes Pvt. Ltd.,***[27] held that "*it is not mandatory to direct the plaintiff to provide security for costs in each and every case and on the contrary the court is required to record reasons in writing if the court feels that such an order is necessary. However the proviso is couched in affirmative terms. It is applicable only in cases where the plaintiffs are overseas entities and do not possess sufficient immovable assets in India. If these two conditions are satisfied then the defendant would have to be secured for the costs that it may incur.*"

CONCLUSION:

The Hon'ble Supreme Court of India in ***Shruti Mano Sharma and Another v. Sunaina Singh and Others***[28] held that "we do not approve, the practice of writing lengthy Merits Laden Orders whether at the interlocutory stage or in appeal from it on applications for temporary injunctions, and emphasize that courts confine such orders to recording with reasons their findings on three

[27] 2017 SCC Online Del 6590.
[28] 2026 INSC 843

settled conditions of *prima facie case, balance of convenience and irreparable injury* without embarking upon an examination of the final merits or the probable outcome of the issues that properly arise for trial.

Therefore, the interim orders passed during the pendency of proceedings before the courts, shall be passed recording the reasons and without embarking upon an examination of final merits of the case, in order to prevent the ends of justice from being defeated and to protect the parties

PRL. CIVIL JUDGE (JD)
PRATHIPADU

WORK SHOP – III

PAPER PRESENTATION

ON

INTERIM ORDERS APPOINTMENT OF ADVOCATE COMMISSIONER UNDER ORDER XXVI CPC

AND

ARREST AND ATTACHMENT BEFORE JUDGMENT UNDER ORDER XXXVIII CPC

AND

IMPORTANCE OF REASONED ORDERS

PRESENTED

BY

LANKA GOPINATH

PRINCIPAL CIVIL JUDGE (*JUNIOR DIVISION*)

PRATHIPADU, EAST GODAVARI DISTRICT.

JUDGMENTS REFERRED

1. Haryana Waqf Board v. Shanti Sarup, (2008) 8 SCC 671.
2. *Mohd Mehtab Khan & Ors vs Khushnuma Ibrahim Khan & Ors, (2008) 8 SCC 671.*
3. *Haryana Waqf Board vs Shanti Sarup & Ors, 2008 (8) SCC 671*
4. *Padam Sen and another vs. The State of U.P., AIR 1961 SC 218,*
5. *K.M.A.Wahab & others vs. Eswaran & another, 2008 (3) CTC 597*
6. Krishnamurthy, T.K vs. Tamil Nadu Water and Drainage Board, 2006 (5) CTC 178.
7. Devadoss vs. A.Duraisingh, 2002 (3) CTC 748.
8. S. Rukman Naik vs P. Anjani Prabha And Anr, 2004 (4) ALD 876.
9. Pamula Narsaiah And Anr. vs Pamula Murali And Ors, 2002 (1) ALD 393.
10. Chokkalingapuram Thevangar Vardhaga Sangam, West Car Street, Chokkalingapuram, Aruppukottai Taluk, through its President v. Chokkanathaswami Temple, Chokkalingapuram, Aruppukottai Town, represented by its Executive Officer, 1996(I) M.L.J. 254.
11. Lekh Raj V. Muni Lal and others, (2001) 2 SCC 762.,
12. Penta Urmila and others vs. Karukola Kumarasamy, 2005 (2) ALD 130.
13. Bandaru Mutyalu And Another vs Palli Appalaraju, AIRONLINE 2013 AP 120
14. Varala Ramachandra Reddy Vs. Mekala Yadi Reddy and others, 2010 (4) ALD 198
15. Podugu Appa Rao (died) & others vs. Grandhi Sathiraju (died) and others, CDJ 2008 APHC 1132
16. Mallikarjuna Srinivasa Gupta Vs. K.Sheshirekha, 2006 (3) ALD 362
17. Mallikarjuna Srinivasa Gupta Vs. K.Sheshirekha, 2006 (3) ALD 362
18. Shaik Zareena Kasam vs. Patan Sadab Khan and others, 2011 (4) ALD 231.

19. Gurunath Manohar Pavaskar & others vs. Nagesh Siddappa Navalgund and others, 2007 (13) SCC 565,
20. Gurram Anantha Reddy vs Katla Sayanna, C.R.P. No.2982 of 2014 decided on 30-03-2015.
21. Sardar Singh v Kishorilal, AIR 1960 MP 221.
22. BudhmalChampalal v Shyam Das, (1958) Raj 308.
23. BadribhishalBhagulal v MisrilalKarnidan, AIR 1954 Nag 118.
24. Vareed Jacob v. Sosamma Greevarghese, (2004) 6 SCC 378.
25. Prem Raj Mundra v. Md. Maneck Gazi, AIR 1951 CAL 156.
26. Raman Tech & Process Engg. Co. v. Solanki Traders, AIR 2007 SC 80.
27. Mechelec Engineers v. Basic Equipment Corporation, AIR 1977 SC 577.
28. Raman Tech. & Process Engineering Co. v. Solanki Traders, (2008) 2 SCC 302.
29. Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan, (1990) 3 SCC 291.
30. Sardar Govindrao Mahadik v. Devi Sahai, (1982) 1 SCC 237.
31. Premraj Mundra v. Md. Maneck Gazi, AIR 1951 Cal 156.
32. N. Pappammal v. L. Chidambaram, AIR 1984 Mad 70.
33. Sk. Sahid v. Tehera Husna, AIR 2001 Ori 6.
34. Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302.
35. M.R. Lakshmanappa v. Ramachandra Bhat, 2008 SCC OnLine Kar 14.
36. Hamda Ammal v. Avadiappa Pathar, (1991) 1 SCC 715.
37. Kanhya Ram v. Firm Dina Nath Hardial Mall, 1926 SCC OnLine Lah 77.
38. Rajender Singh v. Ramdhar Singh, (2001) 6 SCC 213.
39. Kerala State Financial Enterprises Ltd. v. Official Liquidator, (2006) 10 SCC 709.
40. Vareed Jacob v. Sosamma Geevarghese, (2004) 6 SCC 378.
41. Premraj Mundra vs. Md. Maneck Gazi, AIR 1951 Cal 156.
42. Sant Lal Gupta v. Modern Coop. Housing Group Society Ltd, (2010) 13 SCC 336.

43. Sugaram v State of Rajasthan, 2006(8) SCC 641.

44. Siemens Engineering and Manufacturing Co. of India Ltd., V. Union of India and another, AIR 1976 SC 1785.

45. Mc Dermott International Inc. V. Burn Standard Co. and others, (2006) SLR 345.

46. Gujarat Singh Fijji V. State of Punjab, (1979) 2 SCC 368.

47. State of Maharashtra V. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129.

48. State of UP V. Battan and others, 2001) 10 SCC 607

49. State of Rajasthan V. Rajendra Prasad Jain, 2008 (15) SCC 711.

50. Assistant Commissioner, Commercial Tax Department V. Shukla & Brothers, (2010) 4 SCC 785.

51. Manohar s/o Manikrao Anchule vs. State of Maharastra, 2012 Supreme (SC) 922.

52. Yogendranath Nath Dubey Vs. Additional District and Sessions Judge/ F.T.C. II, Sultanpur and Another, 2012 Supreme (All) 496.

INTRODUCTION

The Code of Civil Procedure, 1908 does not merely prescribe the procedure for conducting a civil trial. It also confers certain interlocutory and supplemental powers upon Civil Courts to ensure that the final adjudication does not become ineffective or meaningless.

Two important areas in which such powers are exercised are:

- appointment of an Advocate Commissioner under Order XXVI CPC; and
- arrest and attachment before judgment under Order XXXVIII CPC.

Though these provisions operate at an interlocutory stage, their objects and consequences are different.

An Advocate Commissioner is appointed primarily to assist the Court in elucidating a matter in dispute by means of inspection, measurement, demarcation, technical enquiry or recording of physical features.

Order XXXVIII CPC, on the other hand, provides extraordinary preventive remedies against a defendant whose conduct creates a real danger that the process of the Court or the execution of a possible decree may be defeated.

Order XXXVIII consists of two distinct remedies:

Arrest before judgment:

Rules 1 to 4 are intended to secure the appearance of the defendant where his conduct satisfies the stringent conditions prescribed under Rule 1.

Attachment before judgment:

Rules 5 to 13 are intended to preserve property which may be required for satisfaction of a decree where the defendant is attempting to dispose of or remove such property with the intention of obstructing or delaying execution.

The provisions may therefore be broadly distinguished as follows:

«Order XXVI assists the Court in understanding the controversy.»

«Order XXXVIII prevents the ultimate adjudication from being defeated by the conduct of the defendant.»

Both powers are discretionary. Neither provision creates an automatic right in favour of the applicant. Both require strict attention to the statutory conditions. Both are capable of causing serious prejudice if exercised mechanically. Therefore, orders passed under these provisions must disclose a careful and reasoned exercise of judicial discretion.

PART- I

APPOINTMENT OF ADVOCATE COMMISSIONER UNDER ORDER XXVI CPC

The object of Order 26 Rule 9 of Civil Procedure Code is not to assist a party to collect evidence. An Advocate Commissioner can be appointed under Order XXVI Rule 9 of the Code of Civil Procedure 1908 inter alia for elucidating any matter in dispute. Section 75 of CPC also refers about the appointment of commissions which runs as follows

" 75. Power of court to issue commissions. – Subject to such conditions and limitations as may be prescribed, the court may issue a commission –

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

(e) to hold la scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay

and which is in the custody of the Court pending the determination of the

suit;

(g) to perform any ministerial act."

As per Section 75(b), subject to such conditions and limitations as may be prescribed the Court may issue commission to make a local investigation. With this, section 75 it would be appropriate now to refer Order XXVI Rule 9 of CPC. Sub-title of Order 26 of CPC makes a reference to "Commissions to examine the witnesses". Rule 9 of Order XXVI provides "Commissioner for local investigation."

Circumstances for Issuing a Commission:

1. **Examination of Witnesses (Order 26, Rules 1-8):** A commission can be issued for examining witnesses under certain conditions:

• Sickness or Infirmity (Order 26 Rule 1): If a witness cannot attend court due to health reasons, a commission may be issued to record their evidence.

• Apprehension of Danger (Order 26 Rule 4): If a witness fears for their safety, the court may allow their evidence to be recorded through a commission.

• Pardanashin Ladies (Section 132): The attendance of pardanashin ladies may be exempted, allowing evidence to be recorded via commission.

• Civil or Military Officers (Order 26 Rule 4): Government officials whose presence affects public service can provide evidence through a commissioner.

• Persons Detained in Prison (Order 26 Rule 7): A commission can be issued to record evidence from individuals in custody.

2. **Local Investigations (Order 26, Rules 9-10):** The court can appoint a commissioner to conduct local investigations to clarify issues related to the case, such as property conditions or market value.

3. **Adjustment of Accounts (Order 26, Rule 11)**: In cases involving complex financial matters, a commissioner can be appointed to scrutinize and adjust accounts.

4. **Partition of Property (Order 26, Rules 13-14):** A commissioner may be appointed to divide property as per the court's decree in partition suits.

5. **Scientific, Technical, or Expert Investigations (Order 26, Rule 10A)**: For cases requiring specialized knowledge, a commissioner with the appropriate expertise can conduct investigations and provide expert reports.

6. **Sale of Property (Order 26, Rule 10C):** In execution of a decree requiring property sale, a commissioner can be appointed to manage the sale and report on the proceedings.

7. **Ministerial Tasks (Order 26, Rule 10B):** Commissioners can also be appointed to perform administrative or ministerial tasks, such as preparing documents or calculations.

Powers and Duties of Commissioners (Order 26, Rules 16-18)

Commissioners have specific powers and duties, including:

• **Examining Parties and Witnesses (Order 26 Rule 16):** Commissioners can question individuals and request documents relevant to their tasks.

• **Entering Property (Order 26 Rule 16):** With court permission, commissioners may enter and search premises.

•**Proceeding Ex Parte (Order 26 Rule 17):** If a party fails to appear, the commissioner can proceed with the task without their input.

Remuneration and Expenses (Order 26, Rule 15)

The CPC does not specifically provide for remuneration of commissioners, but Rule- 15 allows the court to direct the deposit of funds to cover the commissioner's expenses. The court has discretion in determining the remuneration based on the complexity of the tasks performed.

Evidentiary Value of the Commissioner's Report (Order 26, Rule 10(2))

The report and evidence provided by the commissioner form part of the case record. The court evaluates this report, which can be challenged by the parties on valid grounds. The weight given to the commissioner's report is determined by the court.

OBJECT OF LOCAL INVESTIGATION:

The object of appointing a Commissioner is to assist the Court in obtaining objective factual material which can be more effectively ascertained by inspection, measurement or observation at the spot.

A Commissioner may appropriately be appointed for purposes such as:

- identifying immovable property;
- measuring land;
- demarcating boundaries;
- locating adjoining properties;
- noting physical features;
- identifying structures, walls, channels and pathways;
- preparing a plan or sketch;
- determining the physical location of an alleged encroachment;
- or conducting a technical or scientific enquiry with appropriate assistance.

The Commissioner is an officer appointed for the limited purpose specified in the warrant.

He does not represent either party. His duty is to execute the warrant impartially and report the factual result to the Court.

In **Haryana Waqf Board v. Shanti Sarup**[1], the Hon'ble Supreme Court recognised the utility of appointment of a Local Commissioner where the controversy involved demarcation and alleged encroachment over adjoining lands.

However, the warrant should be carefully framed.

Instead of directing the Commissioner:

> *«"to decide whether the defendant has encroached upon the plaintiff's land,"»*

the Court may direct him:

> *«"to measure and locate the respective properties with reference to authenticated survey records, note the physical features and constructions, and indicate their location in a plan."»*

STAGE OF APPOINTMENT:

Order XXVI Rule 9 does not prescribe a single rigid stage for appointment of a Commissioner.

The appropriate stage depends upon:

- the nature of the suit;
- the pleadings;
- the issues;
- the purpose of inspection;
- the evidence already available;
- and the possibility of alteration of physical features.

In some cases, appointment after commencement or completion of evidence may be appropriate. In other cases, early inspection may be necessary because the existing physical condition may be altered. The stage is therefore relevant, but not decisive by itself.

---

1. **(2008) 8 SCC 671.**

PRACTICAL TEST FOR APPOINTMENT:

Before appointing an Advocate Commissioner, the Court may ask:

- What is the precise matter in dispute?
- What fact is proposed to be ascertained locally?
- Can that fact ordinarily be proved by the parties?
- Is it better capable of ascertainment by inspection or measurement?
- Will the commission elucidate the dispute?
- Is the application merely intended to procure evidence?
- Does the warrant ask the Commissioner to decide a judicial issue?
- Is survey or technical assistance required?
- Are the terms of the warrant sufficiently precise?
- Will the appointment assist effective adjudication?

STATUS OF THE REPORT:

Under Order XXVI Rule 10 CPC, the report and evidence recorded by the Commissioner form part of the record.

However:

"The Commissioner's report is evidence; it is not the judgment."

The Court may:

- consider the report with the other evidence;
- permit examination of the Commissioner;
- consider objections;
- direct clarification;
- order further investigation;
- or reject unreliable portions of the report.

The report should neither be accepted mechanically nor rejected merely because objections are filed.

Key aspects and relevant citations regarding order 26 rule 9 of CPC:

Some times, it becomes pre-trial decree:

In **Sarala Jain and others.Vs. Sangu Gangadhar,C.R.P.No. 5837 OF 2015 decided on 19-02-2016** Hon'ble High Court of erstwhile A.P held that *"in view of judgment in* ***Mohd Mehtab Khan & Ors vs Khushnuma Ibrahim Khan & Ors[2],*** *appointing advocate commissioner by the trial Court for the purpose of demarcating schedule property and fix boundary stones to the property of the respondents amounts to granting pre-trial decree as it satisfied part of the reliefs claimed in the suit. In such case, commissioner cannot be appointed for the said purpose"*. Further, it was held in this case that to appoint an advocate commissioner, Court has to keep in mind the following:

(1) Total pleadings of both parties;

(2) Relief claimed in suit;

(3) Appointment of advocate commissioner for specific purpose at interlocutory stage shall not amount to grant pre-trial decree; and

(4) Necessity to appoint advocate commissioner to decide real controversy between parties.

Appointment of Commissioner in a suit for injunction:-

In **Haryana Waqf Board vs Shanti Sarup & Ors[3].** it was held that advocate commissioner can be appointed in injunction suits.

In **Padam Sen and another vs. The State of U.P[4],** three Judge Bench of the Hon'ble Supreme Court has held that Court has no inherent power under Section 151 to appoint an Advocate-Commissioner to seize account books in the possession of the plaintiff, upon an application by the defendant that he has apprehension that they would be tampered with. The Hon'ble Apex Court further held that the Court cannot seize them forcibly by appointing an Advocate-Commissioner, but it can summon them and if not produced, it can penalise the party and also draw adverse presumption against him. If the documents are forged, while in the possession of the plaintiff, the defendant can

---

2 . ***2013 (3) ALD 64 (SC).***

3 . **2008 (8) SCC 671 2014.**

4 . **AIR 1961 SC 218.**

prove the forgeries and dispute the entries. The Hon'ble Supreme Court has categorically ruled that it is not the business of the Court to collect evidence in favour of one party.

Advocate-Commissioner cannot be appointed for making an enquiry about factum of possession:-

In **K.M.A.Wahab & others vs. Eswaran & another**[5] **,**it was held that appointment of Advocate Commissioner for making enquiry about the factum of possession of the property in dispute is improper since the same has to be adjudicated upon framing issues and on appreciation of evidence. Material issue of determining the possession cannot be left to an Advocate-Commissioner.

Advocate-Commissioner should not be appointed to gather evidence to prove the case of parties:-

In **Krishnamurthy, T.K vs. Tamil Nadu Water and Drainage Board**[6]**,**it was held that Advocate-Commissioner should not be appointed to gather evidence to prove the case of parties, since the parties should prove their case by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to just conclusion.

Advocate Commissioner cannot be used for fact finding purposes and as such, the order passed by the Court below is not sustainable under law:-

In **Devadoss vs. A.Duraisingh**[7] **,** it was held that Advocate Commissioner cannot be used for fact finding purposes and as such, the order passed by the Court below is not sustainable under law. It is always open to the decree-holder to examine the concerned persons as witnesses and prove as to how and in what manner they got the cable connection relating to the suit.

Appointment of advocate-commissioner for the second time:

---

5 . **2008 (3) CTC 597.**

6 .**2006 (5) CTC 178.**

7 .**2002 (3) CTC 748.**

In **S. Rukman Naik vs P. Anjani Prabha And Anr[8],** an interesting question was come for consideration. While the said report is pending consideration, is it proper on the part of this Court to appoint Advocate-Commissioner for the second time for inspecting the site and submitting his report in respect of which the Advocate Commissioner appointed on the first occasion had submitted his report? To answer, the Hon'ble Andhra Pradesh High Court held that in para 21 as follows: "In view of the foregoing facts and circumstances, the Division Bench has taken note of the status quo order passed by this Court in S.A.14 of 2002 when CA.No. 113 of 2004 was filed by the petitioner in the contempt case to appoint Advocate-Commissioner and re-entrust the warrant to Ms. W.V.S. Rajeswari, who was earlier appointed as Advocate-Commissioner to note down the physical features. Without passing any order on the report of first Advocate-Commissioner, this Court ought not to have considered CA No. 113 of 2004 for re-entrusting the warrant to Ms. W.V.S. Rajeswari, Therefore, the order passed in CA No. 113 of 2004 is not in consonance with Order 26, Rule 10(3) of the Code of Civil Procedure but also against the order passed by the Division Bench in a batch of CRPs filed by the petitioner."

As to appointment of a second Advocate Commissioner, in **Pamula Narsaiah And Anr. vs Pamula Murali And Ors[9],** it was observed as follows: "Therefore, I hold that under Sub-rule (3) of Rule 14 of Order 26, the Court below has no power to reopen or review its own order when it has confirmed and passed a final decree on the basis of the Advocate-Commissioner's report. If the parties are so aggrieved, they can assail the correctness or otherwise of the order by approaching the appellate Court. If once the Court below has confirmed and passed a final decree on the basis of the Advocate-Commissioner'sreport, it has no power to vary or set aside the Advocate-Commissioner and appoint a second Commissioner."

Chokkalingapuram Thevangar Vardhaga Sangam, West Car Street, Chokkalingapuram, Aruppukottai Taluk, through its President v. Chokkanathaswami Temple, Chokkalingapuram, Aruppukottai Town, represented

---

8 . **2004 (4) ALD 876**.

9 . **2002 (1) ALD 393.**

by its Executive Officer[10], in which, it was held thus *"Commissioner appointed and report submitted by him. Mere lapse in report, cannot be ground for appointment of second commissioner. Commissioner's report, is not per se evidence. Court has discretion to appoint second commissioner depending on facts and circumstances of the case before it".*

Evidentiary value of Advocate-Commissioner's report:-

A party can countermand the evidence of Commissioner's report by letting in other evidence. A Local Commissioner can only report on existing facts and not how they came about, as per decision of Hon'ble Supreme Court in **Lekh Raj V. Muni Lal and others[11],**

Introducing additional evidence – When?

In a decision reported in **Penta Urmila and others vs. Karukola Kumarasamy[12],** the Court in paragraph 6 has held as follows: 6. In a suit for permanent injunction, the vital and important issue is whether the plaintiffs are in possession of the suit schedule land and whether there was attempt by the defendant/s to interfere with such possession of plaintiffs. The burden is entirely on the plaintiffs to bring convincing and cogent evidence on record and for so doing, it is not permissible for them to invoke Order XXVI Rule 9, which is intended for difference purpose. Further, if at this stage, Advocate Commissioner files a report, as directed by Appellate Court with the assistance of the Mandal Surveyor it would certainly amount to introducing additional evidence which is ordinarily not permissible unless proper application is made under Order XLI Rule 27 satisfying the conditions therein.

Local inspection by advocate-commissioner:-

In **Bandaru Mutyalu And Another vs Palli Appalaraju[13],** it was held that in situations where there is controversy as to identification, location or measurement of

---

10 . **1996(I) MLJ 254**.

11 . **(2001) 2 SCC 762.**

12 .**2005 (2) ALD 130.**

13 . **AIRONLINE 2013 AP 120.**

the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared.

The Hon'ble Andhra Pradesh High Court in the case between **Varala Ramachandra Reddy Vs. Mekala Yadi Reddy and others**[14], wherein, it was held that an Advocate Commissioner can be appointed in an injunction suit for local inspection of the suit site and to demarcate the suit schedule property with the help of the Surveyor.

The Andhra Pradesh High Court in **Podugu Appa Rao (died) & others vs. Grandhi Sathiraju (died) and others**[15], held that the Advocate-Commissioner appointed to find out whether the tenant had committing any act of waste, affecting the value and utility of the building, as sustainable under law.

Further, the Hon'ble Andhra Pradesh High Court in the case between **Mallikarjuna Srinivasa Gupta Vs. K.Sheshirekha**[16], in which case, a suit was filed for declaration of title and an application was filed contending that the defendant therein encroached a portion of the site. The stand of the defendant therein was that he has not encroached any portion of the site as alleged by the plaintiff. In the circumstances, this Court held as follows:-

"By mere looking into the sale deed or the lay out, it is not possible to determine the rights, unless it is verified whether any portion of the building is constructed in Plot No.62. Therefore, it is essential to consider the request of the petitioner for appointment of Advocate Commissioner for the purpose mentioned therein."

The Hon'ble Andhra Pradesh High Court in **Shaik Zareena Kasam vs. Patan Sadab Khan and others**[17], directed the lower court to appoint an Advocate Commissioner observing that if there is some delay in filing the application to appoint an Advocate Commissioner and if there are some laches on the part of one party, the Court may impose reasonable costs,

---

14 .**2010 (4) ALD 198.**

15 . **CDJ 2008 APHC 1132.**

16 . **2006 (3) ALD 362.**

17 . **2011 (4) ALD 231.**

For the purpose of taking measurement of the suit land:-

The Hon'ble Supreme Court in **Gurunath Manohar Pavaskar & others vs. Nagesh Siddappa Navalgund and others**[18]**,** has held that the learned trial Judge may appoint an Advocate-Commissioner for the purpose of taking measurement of the suit land.

Court has power to appoint an Advocate-Commissioner?

Hon'ble High Court of A.P. in **Gurram Anantha Reddy vs Katla Sayanna**[19], in which it was held that "The contention that in Execution Proceedings, Commissioner cannot be appointed and the E.P. Court has no power to appoint Commissioner under Order 26 Rule 9 of the Code of Civil Procedure has absolutely no merit in view of the reason that as per Order 26 Rule 18-A of the Code of Civil Procedure, the provisions of Order 26 of Code of Civil Procedure are applicable to the proceedings in execution of a decree or order also."

PART II

ORDER XXXVIII CPC: ARREST AND ATTACHMENT BEFORE JUDGMENT

STATUTORY FOUNDATION:

Order XXXVIII forms part of the supplemental proceedings contemplated under Section 94 CPC.

Section 94 empowers the Court, in order to prevent the ends of justice from being defeated, to:

- issue a warrant to arrest a defendant and require security for his appearance;
- direct security for production of property or order attachment;
- grant temporary injunction;
- appoint a receiver;
- and make other just and convenient interlocutory orders.

---

18 . **2007 (13) SCC 565,**

19 .**C.R.P. No.2982 of 2014 decided on 30-03-2015,**

The expression:

"In order to prevent the ends of justice from being defeated"

explains the underlying purpose of Order XXXVIII.

The provision is preventive and protective.

It is not punitive.

It is not intended to punish a defendant for disputing the suit claim.

Nor is it intended to guarantee success or immediate security to every plaintiff.

DIVISION OF ORDER XXXVIII:

Order XXXVIII is divided into two principal parts:

Arrest before judgment

Rules 1 to 4.

Attachment before judgment

Rules 5 to 13.

Arrest before judgment is directed against the person of the defendant for the purpose of securing his appearance.

Attachment before judgment operates against the defendant's property for the purpose of protecting execution of a possible decree.

This distinction must be maintained throughout the judicial enquiry.

PART III

ARREST BEFORE JUDGMENT

NATURE OF THE REMEDY:

Arrest before judgment is one of the most drastic civil remedies available before the liability of the defendant has been finally adjudicated. It affects personal liberty. Therefore, the jurisdiction must be exercised with exceptional care. The object of arrest before judgment is not to punish the defendant, compel payment, obtain an admission,

or pressure him into settlement. Its limited object is to secure the defendant's appearance where his conduct falls within the specific circumstances stated in Rule 1.

SCOPE OF RULE 1:

Order XXXVIII Rule 1 applies at any stage of a suit other than a suit of the nature referred to in Section 16(a) to (d) CPC. The Court may act upon affidavit or other material where the requirements of Rule 1(a) or Rule 1(b) are established.

GROUNDS UNDER RULE 1(a):

- to delay the plaintiff;
- to avoid any process of the Court; or
- to obstruct or delay execution of a decree that may be passed against him.
- the defendant has absconded or left the local limits of the Court's jurisdiction;
- the defendant is about to abscond or leave such local limits; or
- the defendant has disposed of or removed his property or part thereof from the Court's local jurisdiction.

Thus, Rule 1(a) contains two requirements:

Conduct : Absconding, leaving, proposed departure, disposal or removal of property.

Intention : Delay of the plaintiff, avoidance of Court process, or obstruction or delay of execution.

Both requirements must be established.

RULE 1(b): DEFENDANT ABOUT TO LEAVE INDIA:

Under Rule 1(b), arrest may also be considered where the defendant is about to leave India under circumstances affording a reasonable probability that the plaintiff may thereby be obstructed or delayed in execution of a possible decree.

Mere foreign travel is not sufficient. The Court must examine whether the circumstances surrounding the proposed departure create a reasonable probability of obstruction or delay in execution. The Court must therefore distinguish between Ordinary and bona fide departure

and Departure intended to avoid process or defeat execution. No single circumstance is necessarily conclusive. The cumulative effect must be considered.

REQUIREMENT OF SPECIFIC PLEADINGS:

An application for arrest before judgment should disclose specific material facts. A vague allegation that *"The defendant is trying to abscond"* is ordinarily insufficient. The affidavit must contain facts and not merely repeat the language of Rule 1.

WARRANT AND OPPORTUNITY TO SHOW CAUSE:

Where the Court is satisfied that the requirements of Rule 1 are prima facie established, it may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance. The warrant is therefore not issued for immediate punishment or detention. Its initial purpose is to bring the defendant before the Court and afford an opportunity to show cause. The warrant must specify the sum which is considered sufficient to satisfy the plaintiff's claim.

Under the proviso to Rule 1, the defendant shall not be arrested, if he pays the specified sum to the officer executing the warrant. The amount is then held in deposit until disposal of the suit or further orders.

PRELIMINARY JUDICIAL SATISFACTION:

Because Rule 1 authorises arrest before final adjudication, a warrant should not issue as a matter of course. Before issuing the warrant, the Court should record:

- the material considered;
- the conduct attributed to the defendant;
- the statutory intention inferred from that conduct;
- the danger to the process or execution;
- and why a less intrusive direction would not adequately serve the purpose.

A mechanical order stating: *"Heard. Issue warrant under Order XXXVIII Rule 1 CPC",* does not disclose the necessary application of mind.

SECURITY UNDER RULE 2:

When the defendant is brought before the Court, he must be given an opportunity to show cause. If the defendant fails to show sufficient cause, Rule 2 empowers the Court to order him:

- to deposit money or other property sufficient to answer the claim;
- or to furnish security for his appearance whenever called upon during pendency of the suit and until satisfaction of any decree;
- or to pass an appropriate order regarding the amount deposited under the proviso to Rule 1.

A surety for the appearance of the defendant binds himself, in default of appearance, to pay the amount which the defendant may be ordered to pay in the suit.

SECURITY FOR APPEARANCE AND SECURITY FOR CLAIM:

The Court must carefully distinguish between:

- security for appearance;
- deposit of money or property sufficient to answer the claim;
- and security for production of property under Rule 5.

The terms of the order should clearly state:

- the nature of the security;
- the amount;
- the period;
- the conditions of appearance;
- and the consequence of default.

An excessive or indefinite security direction may operate oppressively.

The amount should bear a reasonable relationship to the suit claim and the object of the provision.

LIABILITY UNDER SECURITY BOND: The extent of liability of a suretyon a security bond must depend on the terms there of, and it has been held that it should be strictly construed. On this principle, it has been held that the liability to produce the defendant at any hearing of the suit does not import liability to produce him at the stage of execution of the decree, same is held in the case of **Sardar Singh v Kishorilal[20].**

20 . **AIR 1960 MP 221.**

Undertaking to produce in one court, does not extend to producing the defendant in another court to which the case might be transferred as mentioned in the case of **BudhmalChampalal v Shyam Das[21].**

Where a suit dismissed for default of appearance is again restored, an order passed under 38, rule 3, becomes thereby renewed as stated in **BadribhishalBhagulal v MisrilalKarnidan[22].**

APPLICATION BY SURETY FOR DISCHARGE:

Rule 3 permits a surety for the defendant's appearance to apply at any time for discharge from his obligation.

Upon such application, the Court shall summon the defendant to appear or may, if it thinks fit, issue a warrant for arrest in the first instance.

When the defendant appears, surrenders, or is produced pursuant to the warrant:

- the existing surety is discharged; and
- the defendant is called upon to furnish fresh security.

The provision protects a surety who is no longer willing or able to continue the obligation.

At the same time, it ensures that the defendant's appearance remains secured.

FAILURE TO FURNISH SECURITY: RULE 4

` Where the defendant fails to comply with an order under Rule 2 or fails to furnish fresh security under Rule 3, the Court may commit him to civil prison.

The detention may continue:

- until decision of the suit; or
- if a decree is passed against him, until satisfaction of the decree.

However, Rule 4 prescribes a maximum period of six months. Where the amount or value of the subject matter does not exceed fifty rupees, the maximum period stated in the central statutory text is six weeks.

---

21 . **(1958) Raj 308.**

22 . **AIR 1954 Nag 118.**

No person can continue to be detained after compliance with the security order.

The monetary figure contained in the rule is historical and extremely outdated, but the Court must apply the provision subject to any applicable legislative or State amendment.

FACTORS TO BE CONSIDERED FOR ARREST BEFORE JUDGMENT

Before issuing a warrant, the Court may ask:

- Is the suit excluded by Section 16(a) to (d)?
- What precise conduct of the defendant is alleged?
- Has the defendant absconded, left, or proposed to leave the jurisdiction?
- Has he disposed of or removed property?
- What is the source of the information?
- Is the conduct supported by objective material?
- What statutory intention is shown?
- Is there a reasonable probability of obstruction or delay?
- Is the plaintiff's claim bona fide and substantial?
- Can the object be achieved through a less intrusive measure?
- What amount should be specified in the warrant?
- Have clear reasons been recorded?

CIRCUMSTANCES WHERE ARREST MAY BE REFUSED:

Arrest before judgment should ordinarily be refused where:

- allegations are vague;
- no source of information is disclosed;
- the defendant is merely travelling;
- the defendant has appeared and is contesting the suit;
- sufficient assets remain available;
- the defendant has not avoided service;
- the apprehension is based only on strained relations;
- the plaintiff seeks arrest as pressure for settlement;
- or the statutory intention is not established.

As highlighted in the case of **Vareed Jacob v. Sosamma Greevarghese**[23] the court must exercise this power with due care, caution, and circumspection.

In the case of **Prem Raj Mundra v. Md. Maneck Gazi**[24]Attachment before judgment is an extraordinary remedy; strong prima facie case required.

Raman Tech & Process Engg. Co. v. Solanki Traders[25]**. –** Courts must use this power sparingly; plaintiff cannot obtain unfair leverage over defendant.

Mechelec Engineers v. Basic Equipment Corporation[26]**.** – The Court clarified that personal liberty is a fundamental right, and preventive arrest in civil proceedings must be justified with strong evidence of dishonest intent.

PART IV

ATTACHMENT BEFORE JUDGMENT

Order XXXVIII Rule 5 CPC: Empowers the court to direct the defendant to furnish security to produce and place at the disposal of the court the property or its value, and to attach the property if the defendant fails to comply.

OBJECT OF RULE 5

Order XXXVIII Rule 5 is intended to prevent a defendant from defeating realisation of a decree that may ultimately be passed against him by disposing of or removing property with the intention of obstructing or delaying execution.

The Supreme Court in **Raman Tech. & Process Engineering Co. v. Solanki Traders**[27]**,** held that the power is drastic and extraordinary, must be used sparingly, and should not be exercised mechanically or merely for the asking. It is not intended to

---

23 . **(2004) 6 SCC 378.**

24 . **AIR 1951 CAL 156.**

25 . **AIR 2007 SC 80.**

26 . **AIR 1977 SC 577.**

27 . **(2008) 2 SCC 302.**

convert an unsecured debt into a secured debt or to provide leverage for coercing settlement.

CONDITIONS UNDER RULE 5

Before acting under Rule 5, the Court must be satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay execution of a decree that may be passed:

- is about to dispose of the whole or any part of his property; or
- is about to remove the whole or any part of his property from the Court's local jurisdiction.

The Court may then direct the defendant:

- to furnish security;
- to produce and place the property or its value at the disposal of the Court when required;
- or to appear and show cause why security should not be furnished.

The plaintiff must ordinarily specify the property and its estimated value.

The Court may also direct conditional attachment.

An attachment ordered without complying with Rule 5(1) is void.

TWO ESSENTIAL ELEMENTS

Rule 5 contains two indispensable elements:

- The physical act or threatened act

The defendant is about to dispose of or remove property.

- The statutory intention

The act is intended to obstruct or delay execution of a possible decree.

Proof of proposed alienation alone is insufficient.

Proof of a strong claim alone is also insufficient.

Both elements must coexist.

PRIMA FACIE CASE:

In Raman Tech case, the Hon'ble Supreme Court explained that before proceeding to protect the plaintiff under Rule 5, the Court should be satisfied that there is a reasonable chance of a decree being passed and that the plaintiff has a prima facie case.

However, a prima facie case alone does not entitle the plaintiff to attachment. The plaintiff must additionally establish that the defendant is attempting to dispose of or remove assets with the required intention.

Therefore, the Court should separately consider:

- whether the suit claim is bona fide and prima facie sustainable; and
- whether the statutory danger to execution is established.

PARTICULARS IN THE APPLICATION

An application under Rule 5 should ordinarily disclose:

- the property sought to be attached;
- the defendant's ownership;
- estimated value;
- the proposed transaction or removal;
- the date or period;
- the identity of the proposed purchaser, where known;
- the source of information;
- the conduct indicating fraudulent intention;
- the defendant's other assets;
- and the relation between the value of the property and the suit claim.

A bald statement that the defendant is "trying to alienate the property to defeat the decree" is ordinarily insufficient.

SECURITY IS THE PRIMARY DIRECTION

The statutory structure indicates that the initial direction is ordinarily to:

- furnish security; or
- appear and show cause why security should not be furnished.

Attachment is not necessarily the first or automatic step.

Conditional attachment under Rule 5(3) may be ordered where immediate preservation is necessary.

However, even conditional attachment requires prior judicial satisfaction under Rule 5(1).

CONDITIONAL AND FINAL ATTACHMENT:-

Conditional attachment:-

It is made under Rule 5(3), ordinarily pending the defendant's appearance and explanation.

Final attachment:-

It may be ordered under Rule 6 where the defendant:

- fails to show cause; or
- fails to furnish the security required.

Where the defendant shows sufficient cause or furnishes security, the attachment must be withdrawn or an appropriate order made. The Court should not mechanically "make the attachment absolute" merely because a counter has been filed and heard. It must decide whether the cause shown is satisfactory.

In **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan**[28], it was held that Rights arising under an earlier transaction may prevail over a subsequent attachment, subject to the applicable substantive law.

Order XXXVIII Rule 6 CPC: Provides that if the defendant fails to show cause or furnish security, the court may order the attachment of the property sufficient to satisfy the decree.

MODE OF ATTACHMENT: RULE 7

Rule 7 provides that attachment before judgment shall, unless otherwise expressly provided, be made in the manner prescribed for attachment in execution of a decree.

---

28 . **(1990) 3 SCC 291.**

Therefore, the Court and the executing officer must follow the applicable requirements under Order XXI depending upon the nature of the property.

The attachment order should clearly identify:

- the property;
- the extent;
- the value protected;
- and the mode of implementation.

THIRD-PARTY CLAIMS: RULE 8

A third party may claim that the attached property does not belong to the defendant or is otherwise not liable to attachment.

Rule 8 requires such claims to be adjudicated in the manner prescribed for claims to property attached in execution of a money decree.

The enquiry may involve questions of:

- right;
- title;
- interest;
- possession;
- prior transfer;
- mortgage;
- charge;
- or other pre-existing claims.

The claimant must be afforded a fair opportunity to place the relevant pleadings and evidence.

RIGHTS OF STRANGERS

Rule 10 expressly provides that attachment before judgment does not affect rights existing before attachment in favour of persons who are not parties to the suit.

It also does not prevent another decree-holder from applying for sale of the property in execution of his decree.

Thus, attachment before judgment:

- does not create ownership;
- does not create a substantive charge;
- does not invalidate prior lawful rights;
- and does not give the plaintiff priority over every other claimant.

The Supreme Court has reaffirmed that attachment is only an ancillary protective measure and cannot prejudice genuine pre-existing rights of strangers.

WITHDRAWAL OF ATTACHMENT: RULE 9

The Court shall withdraw attachment where:

- the defendant furnishes the required security together with security for the costs of attachment; or
- the suit is dismissed.

Once the basis for the protective measure disappears, attachment cannot continue.

EFFECT AFTER DECREE: RULES 11 AND 11-A

Where property attached before judgment continues under attachment and a decree is subsequently passed in favour of the plaintiff, reattachment in execution is unnecessary.

Rule 11-A makes the provisions governing attachment in execution applicable, so far as may be, to the attachment which continues after judgment.

However, where a suit is dismissed for default, the earlier attachment does not automatically revive merely because the dismissal is subsequently set aside and the suit is restored.

AGRICULTURAL PRODUCE: RULE 12

Order XXXVIII does not authorise attachment before judgment of agricultural produce which remains in the possession of an agriculturist.

Nor does it empower the Court to direct production of such produce.

This is a specific statutory protection.

53. COURT OF SMALL CAUSES: RULE 13

A Court of Small Causes is not empowered under Order XXXVIII to order attachment of immovable property.

The Hon'ble Supreme Court in **Sardar Govindrao Mahadik v. Devi Sahai[29],** while dealing with the provisions under Order 38 CPC, inter alia, observed in para 58 that

"*58. The sole object behind the order levying attachment before judgment is to give an assurance to the plaintiff that his decree if made would be satisfied. It is a sort of a guarantee against decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree".*

Significantly, one of the crucial safeguards under Order 38 Rule 5 CPC is the requirement of the applicant/plaintiff to explicitly declare on an affidavit, the grounds on which it is believed or apprehended that the defendant is likely to dispose of or remove his property. However, in this regard, the Hon'ble High Court of Calcutta in **Premraj Mundra v. Md. Maneck Gazi[30]**. cautioned that the affidavits in support of the contentions of the applicant, must not be vague, and must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, and the grounds for belief should be stated. Additionally, the Hon'ble Court observed that in order for the plaintiff to succeed in getting an order/direction under Order 38 Rule 5 CPC, mere averment and proof of the factum of transfer of property by defendant is insufficient. On the contrary, it was ruled that there must be, "additional circumstances to show that the transfer is with an intention to delay or defeat the plaintiff's claim".

The Hon'ble Madras High Court in **N. Pappammal v. L. Chidambaram[31]**. further clarified that a mere mechanical repetition/reproduction of the provisions under Order 38 Rule 5 CPC or the language used therein without any basic strata of truth underlying the allegation or vague and general allegations that the defendant is about to dispose of the property or remove it beyond the jurisdiction of the court totally unsupported by particulars …would not constitute an adequate compliance with the said provision.

---

29 . **(1982) 1 SCC 237.**

30 . **AIR 1951 Cal 156.**

31 . **AIR 1984 Mad 70.**

A perusal of the provisions under Order 38 Rule 5 CPC would make manifestly clear that the order of attachment may be passed by the courts only after issuance of notice to the defendant, inter alia, seeking furnishing of security or demonstrating the reasons for not complying with such requirement, as envisioned under sub-rule (1) of the said provision. In fact, sub-rule (4) of Order 38 Rule 5 CPC, clearly enunciates that in case an order of attachment is made, "without complying with the provisions of sub-rule (1) of this Rule, such attachment shall be void". However, sub-rule (3) of the said provision clarify that till the final determination or conclusion of proceedings of any such application/prayer for attachment, made on behalf of the plaintiff, courts are well within their powers to, "direct the conditional attachment of the whole or any portion of the property", as specified by the plaintiff-applicant in his application/affidavit/prayer for attachment. Hon'ble High Court of Orissa in **Sk. Sahid v. Tehera Husna**[32], while dealing with the scope of such conditional order(s) of attachment, inter alia, observed as follows.

11. … the conditional order of attachment is not an absolute attachment. This order of conditional attachment would be operative during the intervening time i.e. between issuance of notice and appearance of the defendant.

In fact, in the instant case, the Hon'ble Court while acknowledging that the object of the provisions under Order 38 Rule 5(4) CPC is to protect the interest of the defendant, so that no order of attachment can be passed without complying with the provisions under sub-rule (1) thereof. As in para 11. … at the same time to protect the interest of the plaintiff an order under Order 38 Rule 5 sub-rule (3) can be passed along with issuance of notice under Order 38 Rule 5, sub-rule (1) CPC, otherwise the intention and spirit of Order 38 Rule 5 would be defeated.

Accordingly, as per Order 38 Rule 6(1) CPC it is only where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, "the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached". In the alternate, where a defendant shows sufficient cause why he should not furnish security, or if he furnishes security, attachment shall

---

32 . **AIR 2001 Ori 6.**

not be ordered and if there is already a conditional attachment under Rule 5, that has to be vacated.

The Hon'ble Supreme Court in **Raman Tech. & Process Engg. Co. v. Solanki Traders** [33] , while terming the power under the said provision as drastic and extraordinary, urged that the same, "should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule." The Hon'ble Court, at the same time, opined that the purpose of the provisions under Order 38 Rule 5 CPC is not to convert an unsecured debt into a secured debt.

Accordingly, it was ruled that any such attempt by the plaintiff, "to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged". Hon'ble High Court of Karnataka in **M.R. Lakshmanappa v. Ramachandra Bhat**[34]**,** observed in para 7 that, *before exercising the power, the court should be satisfied that there is reasonable chance of, a decree being passed in the suit against the defendant*. That means, the court should be satisfied that the plaintiff has a prima facie case. The court has to examine whether the interest of the plaintiff should be protected by exercising the power under Rule 5 of Order 38 CPC.

The rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree". The Hon'ble Supreme Court in **Hamda Ammal v. Avadiappa Pathar**[35]**,** held that a sale deed, executed prior to the attachment before judgment, however, registered subsequently, "will prevail over attachment before judgment."

In the case of **Kanhya Ram v. Firm Dina Nath Hardial Mall**[36]**,**it was held that an order to attachment before judgment could be of any property; within or without the jurisdiction of the Court. However, where an order of attachment of properties located outside the jurisdiction of a particular court is passed, in terms of the provisions of

---

33 . **(2008) 2 SCC 302.**

34 . **2008 SCC OnLine Kar 14.**

35 . **(1991) 1 SCC 715.**

36 . **1926 SCC OnLine Lah 77.**

Section 136 read with Order 38 Rule 7 of CPC, such orders are usually transmitted to the District Court within the local limits of whose jurisdiction such an order is sought to be executed.

The Hon'ble Supreme Court in **Rajender Singh v. Ramdhar Singh**[37]**,** clarified that the failure, if any, on the part of the court which issued the attachment order in sending the attachment order and the connected papers to the District Court and instead sending the same to the subordinate court/Judge, directly, within whose jurisdiction the property sought to be attached is situated, will not invalidate the attachment order as such. In para 13 of said judgment it was opined that Section 136 only lays down the procedure in case the property is situate outside the territorial jurisdiction of the court. The District Court to which such order of attachment is sent is only effecting the attachment and the power under Order 38 Rule 5 is not as such exercised by that court.

Accordingly, it was clarified that in case any objection is raised regarding the non-compliance with the procedure under Section 136 CPC, inter alia, regarding the transmission of attachment order to/through the District Magistrate at jurisdiction concerned, "the court can issue appropriate direction to cure the defect in the procedure. such an objection was not raised within a reasonable time, we do not think that the attachment order itself could be treated as invalid."

In this regard, the Hon'ble Supreme Court in **Kerala State Financial Enterprises Ltd. v. Official Liquidator**[38]**,**it was observed that an order of attachment before judgment passed under Order 38 seeks to safeguard the interests of the plaintiff so that in the event a decree is passed, the same stands satisfied. On the other hand, the essential parties (sic purpose) of Order 21 is to see that the process of court is not defeated once execution starts, …

The Hon'ble Supreme Court in **Vareed Jacob v. Sosamma Geevarghese**[39]**,** unquestionably declared, "the scheme of Order 38 is different from Order 39 or Order

---

37 . **(2001) 6 SCC 213**.

38 . **(2006) 10 SCC 709.**

39 . **(2004) 6 SCC 378.**

40". Order 39 Rule 1 contemplates temporary relief to a petitioner on an imminent risk to the property in dispute in the suit being wasted by certain acts of the respondent. … the Court is empowered to pass orders to prevent the property from being dealt with in such manner or in any way which is prejudicial to the petitioner until the suit is disposed of or until further orders are passed by the Court. On the other hand Order 38 Rule 5 applies at a later stage in a suit where the petitioner seeks to execute a decree. The section, by its very description, applies to an order which lends finality to the suit and aims at preserving the state of affairs after the interim stage in the suit is over.

COMPENSATION UNDER SECTION 95 CPC:

PURPOSE OF SECTION 95

The extraordinary powers of arrest and attachment are accompanied by a statutory safeguard against abuse.

Section 95 CPC permits the defendant to seek compensation where:

- arrest or attachment was applied for on insufficient grounds; or
- the plaintiff's suit fails and the Court finds that there was no reasonable or probable ground for instituting it.

The compensation may be awarded for expense or injury, including injury to reputation, caused by the arrest, attachment or injunction. Under the central statutory text, the amount cannot exceed ₹50,000 and cannot exceed the pecuniary jurisdiction of the Court.

An order determining the application bars a separate suit for compensation in respect of the same arrest, attachment or injunction.

COMPENSATION IS NOT AUTOMATIC

Dismissal of an application for arrest or attachment does not automatically entitle the defendant to compensation.

The Court must examine:

- whether the application was based on insufficient grounds;
- whether the plaintiff acted bona fide;
- whether material facts were suppressed;
- whether allegations were recklessly made;

- whether actual expense or injury was caused;
- and whether the suit itself lacked reasonable or probable grounds.

The amount should correspond to the proved expense or injury and the circumstances of the misuse.

For a court to exercise its power under Order XXXVIII Rule 5, certain conditions must be satisfied:

Prima Facie Case:-

The plaintiff must establish a bona fide and valid claim. Mere allegations without substantial evidence are insufficient. In Raman Tech. & Process Engg. Co. & Anr. vs. Solanki Traders, the Hon'ble Supreme Court held that the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant.

Intent to Obstruct or Delay:-

There must be credible evidence indicating that the defendant intends to obstruct or delay the execution of any decree that may be passed against them by:

Disposing of the whole or part of their property:-

Removing the whole or part of their property from the local limits of the court's jurisdiction.

The Hon'ble Calcutta High Court, in **Premraj Mundra vs. Md. Maneck Gazi[40],** laid down guiding principles, stating that mere allegations are not sufficient; particulars must be stated, and the evidence should not be vague.

PROCEDURE FOR ATTACHMENT BEFORE JUDGMENT

The procedure under Order XXXVIII Rule 5 involves the following steps:

Application by Plaintiff:

The plaintiff must file an application supported by an affidavit detailing the grounds for attachment, demonstrating the defendant's intent to obstruct or delay the execution of the decree.

---

40 . **AIR 1951 Cal 156.**

Court's Satisfaction:

The court must be satisfied, based on the affidavit or other evidence, that the defendant is about to dispose of or remove their property with the intent to obstruct or delay the execution of any decree that may be passed against them.

Show Cause Notice:

The court may issue a notice to the defendant to show cause why they should not furnish security for the plaintiff's claim.

Conditional Attachment:

If the court believes that the delay in issuing notice may defeat the purpose of the attachment, it may order a conditional attachment of the defendant's property.

Furnishing Security:

If the defendant fails to show cause or furnish the required security, the court may confirm the attachment to the extent necessary to satisfy the decree.

:: IMPORTANCE OF REASONED ORDERS ::

The principle of natural justice has twin ingredients:-

1. The person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of being heard;

2. The order so passed by the judge should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself.

A reasoned order is a vital for ensuring genuine justice and fostering public trust. Which adherence to natural justice standards and prevents arbitrary decisions. Such accountability ensures transparency and comprehension of the rationale underlying the verdict. A well structured reasoned order contains key components: summerized facts, presented evidence, applicable legal framework, reasoning process and final decision.

The reason is the heartbeat of every conclusion. It introduces clarity in order, and without the same, the order becomes lifeless. Reasons substitute subjectivity with

objectivity. The absence of reasons renders an order indefensible/unsustainable, particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice, and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. Same is held in the case of **Sant Lal Gupta v. Modern Coop. Housing Group Society Ltd[41].** it was stated in para "27. … While deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation of the court to record reasons while disposing of the case. …

The requirement of indicating reasons has been judicially recognised as imperative same is opined by Hon'ble Apex court in **Sugaram v State of Rajasthan[42]**.

In **'Siemens Engineering and Manufacturing Co. of India Ltd., V. Union of India and another'[43]**the Hon'ble Apex Court held as under-

The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of Natural Justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere presence of compliance with it would not satisfy the requirement of law"

In **Mc Dermott International Inc. V. Burn Standard Co. and others[44],** the Hon'ble Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows: "Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

In **Gujarat Singh Fijji V. State of Punjab[45],** it was held that "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions.

---

41 . **(2010) 13 SCC 336.**

42 . **2006(8) SCC 641.**

43 . **AIR 1976 SC 1785.**

44 . **(2006) SLR 345.**

45 .**(1979) 2 SCC 368.**

In **State of Maharashtra V. Vithal Rao Pritirao Chawan**[46], it was opined that the requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard some judgments may be referred to.

In the case of **State of UP V. Battan and others**[47], the Hon'ble Supreme Court held that the courts ought to have set forth its reasons for an order passed by it. The order passed with out any reasons is not sustainable.

The Hon'ble Supreme Court in the case of **State of Rajasthan V. Rajendra Prasad Jain**[48]**,** stated that reason is the heartbeat of every conclusion and without the same it becomes lifeless.

In **Assistant Commissioner, Commercial Tax Department V. Shukla & Brothers**[49]**,** Hon'ble Supreme Court held that providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the court with a prayer is entitled to know the reasons for acceptance or rejection of such request

In **Manohar s/o Manikrao Anchule vs. State of Maharastra**[50]**,** it was held that reasoned orders reveals the judicial thought process.

In**Yogendranath Nath Dubey Vs. Additional District and Sessions Judge/ F.T.C. II, Sultanpur and Another**[51]**,** it was held that courts must articulate cogent, clear, and succinct reasons, mere pretence or rubber stamp affirmations are invalid. Recording reasons is a cardinal principle and it promotes accountability and sustain trust in judiciary.

---

46 . **(1981) 4 SCC 129.**

47 . **(2001) 10 SCC 607.**

48 . **2008 (15) SCC 711.**

49 .**(2010) 4 SCC 785.**

50 . **2012 Supreme (SC) 922.**

51 . **2012 Supreme (All) 496.**

CLOSING THOUGHT

Before passing an order under Order XXVI or Order XXXVIII CPC, the Court may ask:

> *«What precise necessity requires the proposed order, what prejudice will arise if it is refused, and what prejudice will be caused if it is granted?»*

Where the answers are supported by the statute, the material and recorded reasons, the discretion is judicial.

Where they rest merely upon apprehension, formulaic allegations or the desire of a party to secure an advantage, the Court must decline the relief.

The most significant practical point is the distinction between the two parts of Order XXXVIII: Rules 1–4 secure the defendant's appearance, whereas Rules 5–13 preserve the defendant's property for possible execution. The two remedies should not be mixed in either the application or the judicial order.

Civil Judge (Junior Division)
Prathipadu

TIMELINE FOR DISPOSAL OF EXECUTION PETITION – PRACTICAL CHALLENGES

-SUBMITTED BY
P.GOVARDHAN,
VI ADDITIONAL DISTRICT JUDGE,
KAKINADA

Part – II of Civil Procedure Code (CPC) vide Sections 36 to 74, Order XXI Rules 1 to 106 CPC and Chapter 16 Rules 205 to 293 of A.P. Civil Rules of Practice and Circular Orders, 1990 deal with Execution.

Execution is the bridge between "You have won" and "You have received". Execution is the most fruitful chapter in the Code of Civil Procedure. It is where paper becomes possession, words become wealth and justice becomes reality. Execution is the final stage where the decree holder gets the real fruits of litigation. Therefore, every endeavor shall be made by the Executing Court to expedite the process in dealing with execution petitions.

As per Judgment of the Hon'ble Supreme Court of India in **PERIYAMMAL (DEAD) THROUGH LRS & ORS. Vs. V. RAJAMANI & ANR**.in **CIVIL APPEAL NOS. 3640-3642 OF 2025 (ARISING OUT OF SLP (C) NOS. 8490-8492 OF 2020) 2025 INSC 329**, wherein it is laid down that execution petitions must be disposed off **within six months of the filing** and the Presiding Officer will be held accountable for any undue delay in execution proceedings. Even Hon'ble High Court of A.P. issued a circular in **ROC.No.208/SO/2025, dated 28.04.2025** for speedy disposal of the execution petitions fixing accountability on the Presiding Officers for non disposal of the E.P. within six months.

Part – II of Civil Procedure Code (CPC) vide Sections 36 to 74 – Relevant provisions:

Section 47 CPC is the enabling provision for the parties to the suit to raise all questions pertaining to the Decree relating to execution, discharge or satisfaction of the Decree which shall be determined by the Executing

Court. While deciding said question, even the questions relating to the delivery of possession of property to the purchaser or its representatives shall be deemed to the question relating to the execution, discharge or satisfaction of the Decree. Therefore, within the scope of Section 47 CPC, the parties to the suit or their representatives, the purchaser of the property at a sale or the representative of the purchaser can only maintain an application U/Sec.47 CPC. Thus, necessary care is to be taken while numbering an application under Section 47 CPC if it is filed by a 3rd party other than a purchaser who is not concerned to the suit.

In the **arrest EP** as per **Sec.55(4) CPC** whenever the Judgment Debtor is arrested in execution of Decree and brought before the court, it is the duty of the court to inform the Judgment Debtor that he may apply to be declared as an insolvent. If the Judgment Debtor expresses his intention to apply to be declared an insolvent and furnishes security, **to the satisfaction of the court**, that he will apply within one month, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested. After furnishing a security to the satisfaction of the Court, if the Judgment Debtor fails to comply and appear before the court, the Court can direct the security to be realized or commit him to the Civil Prison in execution of the Decree. In view of the said Proviso, for speedy disposal of the execution petition, the moment Judgment Debtor expresses his intention to be declared as an insolvent, that does not by itself absolves the liability of the Judgment Debtor from arrest. A duty is cast upon to the court to order security from the Judgment Debtor for his appearance when called upon and if he fails to furnish security, it is for the Executing Court to commit him to the Civil Prison after one month. If he furnishes security, in case of the failure of the Judgment Debtor in appearing before the court as and when called upon, the Court will have a power to realize the security by issuing necessary directions.

With regard to the **salary attachments**, the attachable portion is stated in the proviso of Section 60 CPC. One crucial aspect which the executing court has to consider in the first attached installment of the salary of the Judgment Debtor is that necessary directions are to be given to the

concerned account's clerk and EP bench clerk to verify whether the provisions of Sec.60 CPC are followed or not i.e., whether the attachable portion is properly attached and sent to the court or not. The Proviso to Sec.60 CPC lays down that "any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion can be exempted from attachment until the expiry of a further period of twelve months. It also laid down that once attachment has been made in execution of same decree, if the attachment is continued for a period of twenty four months, it is exempted from attachment in execution of that Decree. Therefore, if attachable portion is not deducted from the first installment, the subsequent installments will run for twenty four installments, when a lesser portion of the salary is attached violating the proviso to Section 60 CPC , it will cause loss to the Decree Holder and the Decree Holder cannot realise the salary of the Judgment Debtor after conclusion of the attachment for a total period of twenty four months or till the realization of decretal amount, whichever is earlier. Thus, a duty is cast upon the Court to verify whether Sec.60 CPC is properly complied or not. If the said verification is done at the earliest i.e., at the time of receipt of first installment, it would ensure a proper deduction of salary of the Judgment Debtor.

According to Section 74 CPC, while issuing **delivery warrants,** or when it is brought to the notice of the court that Decree Holder or purchase of immovable property were obstructed or resisted in the execution of decree, **without any just cause**, the Court may at the instance of the Decree Holder or purchaser, order the Judgment Debtor or such other person to be detained in the civil prison for a term which may extend to 30 days. The said enabling proviso vide Sec.74 CPC is to be mentioned in the delivery warrant, so that the obstructor would have a deterrence that he would be committed to civil prison for willful disobedience of the order of the Civil Court.

Order XXI Rules 1 to 106 CPC – Relevant provisions:

The count down to dispose of execution petition within six months runs from the date on which the execution petition is numbered. Therefore, if an

application for attachment of immovable property is filed, the office has to verify whether the said application is filed in terms of **Or.XXI Rule 13 CPC**, with a proper description of the property which is sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries and numbers. In case the share of the Judgment Debtor is involved, the share is to be specified in the application.

Or.XXI Rule 17 CPC is the enabling provision which describes procedure on receiving an application for execution of a decree as provided by R.11(2) CPC, it is the duty of the court to ascertain whether the requirements of Rules 11 to 14 as may be applicable are complied with and if they are not complied, the court shall allow the defect to be remedied then and there, or within a time to be fixed by the Court. In case of failure to comply the defect, as per Rule 1-A of Or.XXI R.17 CPC, the court shall reject the application. With certain exceptions in Clause (g) and (h) of Sub Rule (2) of Rule 11 CPC, the court can decide provisionally about the inaccuracy as to the amount referred in the said clauses, and to make an order for execution of the decree for the amount provisionally decided.

Or.XXI R.22 CPC is a provision which prescribes a notice to the Judgment Debtor if the execution petition is filed more than two years after the date of decree. So far as arrest EPs are concerned, in the light of the Judgment of the Hon'ble High Court, in a case of **B.Gangadharam Vs. D.Siva Sankar Reddy** reported in **2011(3) ALD 831** the Hon'ble High Court held at **Para No.6** that "*a notice U/Or.XXI Rule.22 CPC cannot be made applicable to any execution petition filed U/R.37, Or.XXI CPC, the reason being that a separate procedure altogether is prescribed for that set of proceedings"*. Further, the Hon'ble High Court held at **Para No.5** that "*Once the Judgment debtor appears before the Court, almost a trial like procedure needs to be followed*".

Hence, **in arrest EPs**, the prior issuance of notice U/Or.XXI, R.22 CPC can be dispensed with and **straight away a notice under Rule 37 can be ordered to the Judgment Debtor**.

In, appropriate cases where the Court opines that Judgment Debtor has not sustained substantial injury, it has also got the discretion to dispense with Rule 22 notice, in view of A.P. Amendment to Sub Rule II of Or.XXI R.22 of CPC.

The scope of deciding an application at the stage under Or.XXI R.22 CPC is only to decide the objections raised by the Judgment Debtor **as to execution to the decree** as such, the court has to consider the said scope of deciding an application at the stage U/Or.XXI R.22 of CPC in terms of Order XXI Rule 23 Clause (2) of CPC.

Order XXI Rules 24 and 25 are the enabling provisions relating to the process of execution. **Or.XXI R.24 (3) of CPC** lays down that in every process a day shall be specified on or before which it shall be executed and day shall also be specified on or before it shall be returned to the court.

A similar endorsement is to be made by the Officer who is entrusted with the process, U/Or.XXI R.25 CPC, the entrusted officer is also under an obligation to mention the reason for the delay if the process could not be executed till the last day specified in the process. An AP State Amendment is made to Or.XXI R.25(2) CPC and Sub Rule 3 is added that “the court shall examine the officer entrusted with the execution of process regarding his inability to execute the process and a proviso is made to the said provision that the Nazar/Duputy Nazar under General and special orders of the court can examine the officer entrusted with the execution of the process and it is a sufficient compliance with the requirement of this clause.

Or.XXI Rules 37 to 40 CPC deals with the arrest and detention of the Judgment Debtor in civil prison. Under Rule 37 a notice is to be issued to the Judgment Debtor and as per Rule 37(1) CPC a notice is to be issued for execution of decree for payment of money. As per Proviso to Or.XXI R.37(1) CPC, even a notice U/Or.XXI R.37 CPC can be dispensed with in exceptional cases, if the court is satisfied by the affidavit or otherwise that the Judgment Debtor is likely to abscond or leave local limits of the jurisdiction with an object or effect of delaying the execution of the decree. A practice prevalent in some courts is that whenever the Judgment Debtor fails

to obey the notice U/Or.XXXI R.37 CPC he is set ex-parte and the evidence of the Dhr is taken and then an arrest warrant is issued. However, as per provisions of Or.XXI R.37(2) of CPC if an appearance is not made by the Judgment Debtor in obedience of notice under R.37 CPC the court **'shall'** issue a warrant for the arrest of the Judgment Debtor. Therefore, it is obligatory on the part of the court to issue a warrant under R.37(2) CPC with a direction to the officer entrusted with the execution of the warrant, as per the provisions of Or.XXI R.38 CPC to bring the Judgment Debtor to the court unless the amount is paid with interest. U/Or.XXI R.39 CPC, it is for the Decree Holder to pay into the court the process for subsistence allowance for bringing the Judgment Debtor from the time of arrest till he is brought before the court. Only on payment of the said substance allowance, R.37(2) warrant can be executed. When the Judgment Debtor is brought on arrest U/Or.XXI R.37(2) CPC, he shall be given an opportunity to file counter and participate in means enquiry by ordering an officer of the court to release him after obtaining securing security to the satisfaction of the court. The same is the case of a warrant issued on the Judgment Debtor under Or.XXI R.40 CPC after means enquiry. When an order for detention of the Judgment Debtor is issued under Rule 38 r/w Rule 40 (3) CPC, after completion of means enquiry, the Judgment Debtor is to be given an opportunity to satisfy the decree and he can be kept under a custody of an officer for a specified period not extending 15 days or he can be released on his furnishing security to the satisfaction of the court, for his appearance after 15 days.

Order XX1 Rule 48 CPC: SALARY ATTACHMENT:

The practice prevalent in some parts of state of Andhra Pradesh in regard to execution petitions under Order XXI Rule 48 CPC is that at the time of giving notice under Order XXI Rule 48 CPC, before ordering an attachment under Rule 48 CPC, salary particulars are called for to determine the attachable portion subject to Section 60 CPC. Calling for salary particulars will cause certain amount of delay. During the period of calling the salary particulars, some other attachment of another decree may be effected which will frustrate the existing EP. If a notice and attachment under Order XXI Rule 48 CPC are issued at the first instance, duly taking process for

notice and attachment under Order XXI Rule 48 CPC, before numbering E.P. itself, at the time of numbering the same process will be used to make an entry in N-Step which will cut short time of service. In case of non-compliance of attachment warrant under Order XXI Rule 48 CPC, separate procedure is prescribed under Order XXI Rule 46-B CPC. In view of such separate procedure, when an attachment is effected on the garnishee, if the JDR remains ex-parte, the EP can be closed making the attachment absolute.

When the garnishee fails to remit the amount due from the Judgment Debtor by way of salary attachment, if he fails to answer to the show cause notice, the court has power U/Or.XXI R.46 (B) CPC, to order the garnishee to comply with the terms of notice and on such order execution may issue as though such order were a **decree** against him.

Order XXI Rule 54, 64 and 66 CPC: Sale of immovable property:

Coming to sale of property which is not attached before judgment nor mortgaged, for those cases, execution petition is filed under Order XXI Rules 54, 64 and 66 CPC to sell the landed property or house property. In those cases, initially there is prescription of a notice under Order XXI Rule 54 CPC, followed by an attachment order under Order XXI Rule 54 CPC, thereafter, in the next stage a notice is prescribed under Order XXI Rule 64 CPC, then proclamation shall be drawn up duly giving a notice to the decree holder and the judgment debtor under Order XXI Rule 66 CPC.

Significance of notice and attachment under Order XXI Rule 54 (1A) CPC:

Rule 54 of Order XXI CPC has an amendment with effect from 01.02.1977 by virtue of Act 104 of 1976, wherein it is prescribed that apart from attachment under Order XXI Rule 54 CPC, it is stated that the order shall also require the judgment debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale. The said order is inserted by virtue of said amendment as **Order XXI Rule 54 (1A) CPC.**

As per **objects and reasons** for making said amendment, by virtue of Clause 75 Sub clause xxiii wherein Rule 54 provides for attachment of

immovable property and the procedure for proclamation of such attachment. In order **to minimize the delay in execution proceedings**, new Sub Rule (1-A) is being inserted to provide that the order shall also specify a date on which the judgment debtor is to attend Court in order to take notice of the date fixed for settling the terms of the proclamation.

Order 21 Rule 66(2) CPC proviso lays down that where notice of the date for settling the terms of the proclamation has been given to the judgment debtor by means of an order under Rule 54, it shall not be necessary to give notice under this rule to the judgment debtor unless the Court otherwise directs. Therefore, when a notice and attachment under Order XXI Rule 54(1A) CPC are given in terms of amended **Appendix-E Form No.24** which prescribes a notice and attachment under Order XXI Rule 54 (1A) CPC, apart from that, judgment debtor is called upon to take notice of the date fixed for settling the terms of the proclamation of the sale. If such a notice and attachment are ordered before hand at the time of numbering of execution petitions filed under Order XXI Rule 54, 64 and 66 CPC, it minimizes delay in execution proceedings wherein a separate notice for settling terms of proclamation of sale is not necessary. At the stage of the numbering, process is taken for a simultaneous notice and attachment under Order XXI Rule 54 (1A) CPC which would reduce lot of time of service of process which facilitates speedy disposal of the E.P.

In view of seriousness of the issue, if process under Order XXI Rule 54 (1A) CPC is filed before numbering, immediately after numbering straightaway a notice and attachment under Order XXI Rule 54(1A) CPC can be ordered and necessary data can be entered in the N-Step for immediate allocation of the process to the concerned Nazarath. At the end of Nazarath, a direction should be given to give top priority to process in execution petitions and to see that process is served within 15 days and returned to the concerned Court.

Claim applications :

Or.XXI R.58 CPC deals adjudication of claims and objections. While numbering the claim application, it is to be seen that objection is to be made to the attachment of any property attached in execution of a decree, on the

ground that such property is not liable to such an attachment. The claim application shall not be entertained if the property attached is already sold or if the court considers that the claim or objection was **"designedly or unnecessary delayed"**. Whenever the court refuses to entertain a claim application U/Or.XXI R.58(1) CPC, the party against whom such order is made may institute a suit to establish his right over the property but subject to the result of the such suit, an order so refusing to entertain the claim or objection shall be conclusive, vide Or.XXI R.58(5) CPC. Therefore, in fit cases, on the face of it if the claim application is found to be "designedly or unnecessary delayed", a duty is cast upon the executing court to reject the claim application and proceed with the execution. The Executing Court has absolute right to adjudicate the claim application and in case of deciding the claim application for part of the property, executing court can continue the attachment for the remaining extent to save the time and money of the Decree Holder.

Civil Rules of Practice and Circular Orders, 1990 – Relevant rules:

Rule 212: The procedure prescribed after hearing of an execution petition is under Rule 212 of A.P. Civil Rules of Practice and Circular Orders, 1990. As per the said provision once the petition is filed, it is the duty of the court to hear on the petition to determine whether notice is to be served on any person or not. Once the petition is admitted, the court shall fix a date and the applicant shall within two days or such other period fixed by the Judge, bring into the court, the fees prescribed for issue process and if the application is for arrest of the Judgment Debtor the subsistence moneys fixed by the Judge U/Or.XXI Rule 39(1) of the Code is to be paid.

Rule 212 further lays down that on payment of the process, order can be passed to issue process and in a case of default, time can be granted or the EP can be dismissed. This provision is the enabling provision to check the delay in payment of process. Almost all the execution petitions are getting delayed for want of payment of process. Therefore, at the inception itself when the execution petition is numbered, there are two options to the court. One option is to check process before numbering itself. The second option is post the execution petition to a nearer date specifically for the

payment of process and in case of non payment of process, one or two days time can be granted and then the EP can be dismissed. At the time of receipt of process itself, the process is to be observed whether it is paid correctly or not so that it saves lot of time for return or representation.

Rule 220 of Civil Rules of Practice lays down that whenever a notice under Or.XXI Rule 34 (1) CPC, is to given to the Judgment Debtor, the Decree Holder shall file a duplicate of the draft sale deed along with two copies of notice in Form No.54 to save time of the Judgment Debtor. Rule 211 of Civil Rules of Practice lays down that a petition not complying with the provisions of the Civil rules of Practice or not claiming any substantial relief, shall be returned for amendment or rejected. This provision can also be effectively used at the time of numbering and at the time of process.

Rule 260 of the Civil Rules of Practice is the provision regarding payment of Batta/Process for proclamation of sale and for sale warrant. For proclamation of sale, the application shall be adjourned to a fixed date and within two days process is to be paid. After an order of Sale is made, the process of sale warrant shall be paid in a week and then warrant of sale shall be issued. In case of default, the court may adjourn to a fixed date or may dismiss the execution petition.

Rule 272 of Civil Rules of Practice deals with manner of conducting sale: A direction is to be given to the party applying for the sale to bring into court certain particulars: In case of the property is situated within the limits of Municipality, affidavit stating the municipal tax if any, due on the property sought to be sold, and the affidavit shall be accompanied by a certificate from the Municipality showing the particulars of tax due. Rule 272 (4) of Civil Rules of Practice lays down that in the case of immovable property, as per Rule 273, an Encumbrance Certificate/certificate of the result of the search is to be filed. It shows that Rule 272 of Civil Rules of Practice is an enabling provision in case the property comes under the Municipality, then the Decree Holder has to file the tax demand particulars to know the tax due over the schedule property in terms of Or.XXI R.66(2) of CPC that it is the duty of the purchaser to know every other material thing in order to judge the nature and value of the property. Therefore, tax demand particulars and the

Encumbrance Certificates are mandatory if the property is situated within the limits of the Municipality. In case of other immovable properties outside the limits of Municipality, Encumbrance certificate is mandatory in terms of Rule 273.

Rule 276 of Civil rules of Practice deal with proclamation of sale, which says that for mortgaged immovable properties, the court has to direct the publication of the sale proclamation in the local District Gazette so as to enable the collector to apprise the land mortgage bank concerned of the impending sale. For other proclamations, the publication of proclamation of sale can be made in Official Gazette or in a local News Paper or in both.

OTHER PRACTICAL ASPECTS

1) There are many incidents wherein the notices or warrants issued by the court are returned for want of sufficient address of the Judgment Debtor. In case of arrest EPs, if the Judgment Debtor does not reside in the jurisdiction, the EP is not maintainable. Therefore, it is the duty of the Executing Court to know whether the Judgment Debtor resides in the jurisdiction or not and the enabling provision to appreciate the said aspect is Or.VI R.14(A) (3) of CPC wherein it is laid down that the address furnished in the statement given under the said Rule regarding the registered address of the party shall be deemed to the address to the party, **even for the purpose of execution** and it shall hold good for a period of **two years** after the final determining of the case or matter. Therefore, the moment two years lapsed from the date of decree, again Decree Holder is under an obligation to mention in a Form filled up by him stating the correct address of the Judgment Debtor. Failure to comply with the said provision, results into dismissal of the execution petition. If the registered address furnished by the Decree Holder is false, the EP can also be dismissed on that ground. Before ordering dismissal, all these provisions are to be scrupulously followed and the Decree Holder shall be given a reasonable opportunity to furnish fresh

address of the Judgment Debtor and failure to furnish would result into dismissal of the E.P.

2) **Claim application** – Before numbering it, admissibility is to be seen whether it is hit by Section 64 CPC or not. If the transaction covered by the claim application happened after the attachment is effected, it is liable to be rejected at the admission itself.

   Under **Section 64** of the Code of Civil Procedure, any private transfer of property made after an order of attachment is void against all claims enforceable under that attachment.

3) **Arrest of JDr being a public servant** – In the arrest execution petitions, certain situations emerge wherein if an arrest warrant is issued to the Judgment Debtor under Order XXI Rule 37 (2) of CPC or similar arrest warrant, in accordance with Rule 241 of the Civil Rules of Practice, then prior intimation is to be given to the Head of the Department. Whenever the JDR falls within the meaning of public servant as ordained under Rule 241 of Civil Rules of Practice, a clear 7 days notice is to be given to the immediate superior of the JDR and after giving clear notice, the warrant of arrest shall be executed to secure the presence of the JDR for conducting means enquiry or to send him to civil prison after the means enquiry is over.

4) **In matters involving delivery of properties**, sometimes the DHR comes with an application for police aid, blanket warrants to obstructors and application for break open locks, in those cases notice to respondent is necessary.

A) In a case of **M/s.Tanmai Jewels Pvt.Ltd., represented by its Managing Director and another vs Ch.Sreesaila Kumari and another,** in Appeal Suit No.198 of 2012 Dated: 03-04-2013, the Division bench of Hon'ble High Court of Judicature at Hyderabad held as follows:

   "A court bailiff (or amin) **cannot break open locks or request police assistance dynamically** unless the executing court has explicitly granted specific, separate orders authorizing those exact actions. Taking such steps under a generic warrant for delivery of possession constitutes serious procedural misconduct".

Established Guidelines for Execution

The judgment outlines the mandated step-by-step procedure that executing authorities must follow when encountering locked premises or resistance:

- **Prior Notice Required:** The bailiff must serve proper notice to the concerned parties regarding the execution of the decree.
- **Mandatory Reporting:** If the premises are locked, or if obstruction is encountered, the bailiff must halt the process and formally report the obstruction back to the executing court.
- **Explicit Permission for Breaking Locks:** The decree-holder must file a specific application to break open locks. The bailiff can only proceed after the court evaluates the situation and issues an explicit order authorizing it.
- **Strict Limitations on Police Aid:** Police protection or aid cannot be requested routinely by the field staff. It requires a formal judicial application where a high standard of proof regarding law-and-order threats or systematic defiance is presented to the court.

5) **Intimation to SRO** – As per the circular ROC No.1911/SO/2016 Dt.21-07-2016 issued by Honourable High Court of Judicature at Hyderabad, the orders of attachment and order raising attachment shall be communicated to the concerned District Registrar or SRO, as the case may be.
6) In case of delay by police in giving police aid, it is the duty of the Executing Court to expedite the process by issuing show cause notice for disobedience of order passed by court in a proforma showing the knowledge of the order and the breach committed.
7) All staff members who check the execution petitions are to be directed to keep the Bare Act of CPC with them along with Civil Rules of Practice and then check the execution petition following the relevant provisions and place the EP before the Presiding Officer before the execution petition is posted for hearing to decide whether notice is to be issued or

not. Necessary training is to be given to staff members with the assistance of Senior Judicial Officers or experienced staff members.

8) In a case of **Bijiga Papa Rao & Others vs Jonnalagadda Srinivasa Rao** on 7 November, 2014 in C.R.P.No.2919 of 2014, the Honourable High Court of Judicature at Hyderabad held at **Para 17** that *"it is required to be noted that the ultimate endeavour of the Courts should be in the direction of the upholding the majesty of the Courts and safeguarding the sanctity of the orders and decrees of the Courts from being invaded and flouted in the name of lame, feeble and unreasonable excuses and explanations and in the name of unsustainable technicalities".*

(P.GOVARDHAN)
VI ADDITIONAL DISTRICT JUDGE,
KAKINADA

SESSIONS - 4

EXECUTION PROCEEDINGS IN RESPECT OF

1) MONEY DECREE

2) INJUNCTION DECREE

3) DECREE FOR POSSESSION

A civil court's authority is not determined by the nicety of its judgment but by the legal system's ability to convert its judgment into effective relief. Accordingly, viewing execution proceedings merely as the last stage of litigation is not entirely correct. Execution proceedings have a constitutional and institutional setting. Although the Code of Civil Procedure, 1908 provides an elaborate framework in Sections 36 to 74 and Order XXI, ambiguously worded decrees, incomplete disclosure of assets, mechanical notices, indiscriminate recording of evidence, repetitive objections, collusive transfers and weak supervision of process-serving machinery have substantially distorted the working of that framework. As a result, Indian execution law has developed around three competing demands: fidelity to the decree, procedural fairness to persons actually affected by execution, and the expeditious realisation of the decree-holder's adjudicated right. This article examines the development of execution law with emphasis on landmark and recent cases. It outlines the classical rule that an executing court cannot travel behind the decree; the narrow exception for a decree that is a nullity; the proportionality mandate governing court sales; the constitutional safeguards applicable to civil imprisonment; and the post-1976 regime for third-party claims under Order XXI Rules 97 to 103. It then analyses the contemporary shift initiated by ***Satyawati v Rajinder Singh*** **and crystallised in** ***Rahul S. Shah v Jinendra Kumar Gandhi***. The decisions in ***Periyammal v V. Rajamani*** **and** ***Ram Lal v Jarnail Singh*** demonstrate a growing trend in judicial approach. Previously, courts often took a passive approach to adjudication after issuance of a decree. Recent cases, however, highlight more active judicial engagement with enforcement, key among these recent cases are ***Saraswati Devi v Santosh Singh***, ***Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale***, ***Challani Ginning and Pressing Factory v Kamal*** **and** ***Jennifer Messias v Leonard G. Lobo***. These cases reveal a judicial trend towards disclosure-based and time-bound enforcement. The article argues that execution must be regarded as an important part of effective civil justice, not as an administrative afterthought.

I. INTRODUCTION:

The maxim *executio est finis et fructus legis*—execution is the end or fruit of the law—is basic but often overlooked. A decree announces the existence of a right; execution enables its realisation. The successful party merely holds an enforceable promise of relief until delivery of possession, recovery of money, execution of an

instrument, compliance with an injunction or completion of a sale. The material provided for this study consistently treats execution as the final phase in which the credibility of civil adjudication is either justified or discredited.[1]

That description is not complete. The executing court is certainly confined by the decree. However, the executing court is required to make legally relevant decisions concerning jurisdiction, identity of the property, computation of the decretal amount, attachability of property, claims of legal representatives, objections by third parties, proportionality of sale, resistance to possession and satisfaction of the decree.

Consequently, the jurisdiction is adjudicatory but defined; coercive but systematised; summary in ambition, yet capable of conclusively settling issues of right in particular circumstances.

The absence of statutory machinery is not the main problem.

There is an impressive degree of statutory detail. The recurring problem is the manner in which that machinery is repeatedly activated. Execution petitions tend to be treated as if they commence a new suit. Notices are routinely issued in situations in which the Code does not require them. Questions formulated and determined in the suit are recast as objections under Section 47. Persons claiming through the judgment-debtor appear at the stage of delivery with documents created during the pendency of litigation. Court sales are challenged after prolonged silence. In money decrees, the decree-holder will often know little of the debtor's assets, while the debtor may face no effective obligation to disclose them for years. These practices enable the party who has lost on merits to retain the material benefit of the subject matter.

The Supreme Court has long expressed concern that a litigant may begin to face real difficulty after obtaining a decree. The issue acquired doctrinal force in ***Satyawati v Rajinder Singh***, where the Court condemned a system in which a decree-holder was kept away from the fruits of litigation for decades.[2]

In ***Rahul S. Shah v Jinendra Kumar Gandhi***, the concern acquired an institutional form. The Court did not confine itself to deciding the dispute between the parties but issued mandatory directions extending from the trial stage to asset disclosure, third-party screening, police assistance, staff training and a six-month norm for disposal of execution proceedings.[3]

The contemporary law of execution may therefore be understood through three normative commitments. The first is fidelity: the court charged with enforcement must apply the decree as made and may not reopen its merits. The second is fairness: attachment, sale and dispossession cannot be undertaken without the safeguards prescribed by statute, and there must be an effective forum for a person asserting a genuine independent right. The third is efficacy: procedure cannot be transformed into

---

[1] Code of Civil Procedure 1908, ss 36–74 and O XXI; Judicial Academy Jharkhand, *Training Manual for Execution Proceedings* (2023) 1–5; D Vijaya Saradhi Raju, 'Execution of Decrees After the Death of a Decree-Holder: Rights of Legal Representatives and the Requirement of a Succession Certificate' (paper supplied for this study) 1–2.
[2] *Satyawati v Rajinder Singh* (2013) 9 SCC 491.
[3] *Rahul S Shah v Jinendra Kumar Gandhi* (2021) 6 SCC 418, paras 24–42.

a means of indefinitely delaying enforcement. Much of the judicial reasoning discussed in this article represents an effort to reconcile these commitments.

The present article relies mainly on the provided judicial-academy manuals, workshop papers, execution notes and specialised studies on money decrees, delivery of possession, claim petitions and the death of a decree-holder. It also considers recent Supreme Court rulings. The central argument is that Indian jurisprudence is evolving from a reactive framework, which deals with one impediment after another, towards a preventive and managerial framework in which the court clarifies the decree, identifies interests and assets early, filters out untenable objections and supervises execution to its conclusion.

II. STATUTORY FRAMEWORK:

A. Structure of the Execution Framework:

The Code of Civil Procedure, 1908, together with the 106 rules of Order XXI, forms the statutory basis of execution.[4] Sections 36 and 37 deal with the execution of orders and the meaning of the court which passed the decree. According to Section 38, a decree may be executed by the court that passed it or by the court to which it is sent for execution. Sections 39 to 46 deal with transfer, execution by transferee courts and precepts. As a basic jurisdictional rule, effective enforcement ordinarily occurs where the person or property against which coercive process is sought is legally amenable to the executing court.[5]

Section 47 forms the jurisdictional core of the execution regime. All questions arising between the parties to the suit, or their representatives, and relating to the execution, discharge or satisfaction of the decree must be determined by the executing court and not by a separate suit. The provision is anti-multiplicatory rather than appellate. It gathers execution-related controversies in a single forum, but does not permit reconsideration of matters already embodied in the decree.

The principal modes of enforcement specified in Section 51 are: (a) delivery of property specifically decreed; (b) attachment and sale, or sale without attachment; (c) arrest and detention in civil prison; (d) appointment of a receiver; and (e) such other manner as the nature of the relief may require.[6] Sections 50 to 53 deal with execution against legal representatives and ancestral property. Sections 55 to 59 provide safeguards relating to arrest and detention. Sections 60 to 64 outline the property liable to attachment, the exemptions, seizure of property in dwelling houses, competing attachments and the effect of private alienation after attachment. Sections 65 to 73 deal with the consequences of sale and rateable distribution, while Section 74 pertains to resistance to execution.

---

[4] Code of Civil Procedure 1908, ss 36–74 and O XXI rr 1–106; K Prakasha Babu, 'Steps for Expeditious Disposal of Execution Petitions' (paper presented for an Andhra Pradesh Judicial Academy refresher course, 24 January 2026) 1–2.
[5] Code of Civil Procedure 1908, ss 37–46; Judicial Academy Jharkhand, *Training Manual for Execution Proceedings* (2023) ch 2.
[6] Code of Civil Procedure 1908, s 51.

B. The Execution Application and Preliminary Examination

The initiation and scrutiny of an execution application are governed by Order XXI Rules 10 to 17. Under Rule 11(2), the application must identify, among other matters, the suit, parties, date of decree, appellate proceedings, payments or adjustments, earlier execution applications, amount due, costs, the person against whom execution is sought and the precise manner in which the court is asked to assist. The execution notes provided treat careful scrutiny at this stage as an important safeguard against later confusion.[7] Where arrest is sought, the grounds must be stated or supported by an affidavit under Rule 11-A. If movable property outside the possession of the judgment-debtor is to be attached, an inventory must be provided. If the attachment concerns immovable property, the application must contain particulars sufficient to identify it and specify the judgment-debtor's share or interest.

Rule 17 empowers the court to reject a defective application or permit its amendment. Proper use of this power is important. A faulty description of property, an unexplained calculation of interest or a failure to disclose earlier satisfaction should be corrected at the outset. Registration of an incomplete execution petition, followed by adjournments to cure elementary defects, burdens the court with the consequences of deficient pleading.

Rule 22 provides for issuance of notice in specified situations. These include cases in which execution is sought more than two years after a decree or relevant prior order, execution is sought against a legal representative, and other situations identified by the rule. The provision does not create a general invitation to commence a retrial. Where delay would defeat the ends of justice, the court may dispense with notice for recorded reasons.[8] **Rahul S. Shah** later pointed out that routine notice practice often becomes an entry point for wholly unnecessary re-adjudication.

C. Modes of Execution:

Money decrees may be enforced under Rule 30 by detention, attachment and sale, or both. Rules 37 to 40 prescribe the procedures governing notice, arrest, means inquiry and detention. Rule 41 authorises oral examination of the judgment-debtor or other relevant persons concerning assets and, where a money decree remains unsatisfied for thirty days, permits the court to require an affidavit of assets. If such an order is disobeyed, detention may follow under Rule 41(3). In contemporary execution practice, this provision can replace speculation about assets with verified information.[9]

Rules 43 to 57 deal with attachment of property. Rules 46 to 46-I create the garnishee mechanism, whereby a debt owed to the judgment-debtor, or movable property held for him by a third person, can be made available for satisfaction of the decree. The garnishee is protected through notice and an opportunity to dispute

[7] Code of Civil Procedure 1908, O XXI r 11(2); *Execution Notes (20-04-2023)* (material supplied for this study) 1–2; Judicial Academy Jharkhand, *Training Manual for Execution Proceedings* (2023) 5–7.
[8] Code of Civil Procedure 1908, O XXI r 22.
[9] Code of Civil Procedure 1908, O XXI rr 37–41; Y Srinivasa Rao, 'Execution of Money Decrees: Different Modes of Execution—Provisions of Law and Case Law' (workshop paper supplied for this study) 1–8.

liability; if liability is contested, the matter is tried substantially as an issue in a suit.[10] Rules 48 and 48-A deal with attachment of public and private salaries, subject to Section 60. Claims or objections concerning attachment are dealt with under Rule 58. By virtue of the 1976 amendment, all questions relating to right, title or interest in the attached property and relevant to adjudication must ordinarily be determined in the execution proceeding, and the resulting order has the effect of a decree.[11] Under Rule 59, sale or confirmation may be postponed pending adjudication of such a claim.

Rules 64 to 94 govern sale. Rule 64, which is of great importance, empowers the court to sell the attached property, or only so much of it as appears necessary to satisfy the decree. Rule 66 mandates judicial settlement of the sale proclamation. The provisions concerning applications to set aside a sale are also contained in this group of rules. A court sale is not a routine administrative act; it is a judicial act affecting title and therefore requires strict adherence to notice, valuation, proportionality and deposit requirements.[12]

D. Possession and Resistance by Third Parties:

Rules 35 and 36 distinguish actual and symbolic delivery of possession. Rule 35 provides for actual delivery against a person bound by the decree, while Rule 36 addresses delivery where the property is in the occupancy of a tenant or other person entitled to occupy it and not bound to relinquish possession. Rules 97 to 103 form a self-contained adjudicatory structure for resistance, obstruction and dispossession. Under Rule 97, a decree-holder or auction purchaser facing obstruction may apply to the court; Rule 98 authorises removal of unjustified obstruction and, in certain circumstances, detention. Under Rule 99, a third party who has been dispossessed may seek restitution. Rule 101 directs the executing court to decide all questions of right, title or interest arising between the parties to such proceedings, and Rule 103 gives the order the same force as a decree. Rule 102 excludes a transferee pendente lite from the benefit of Rules 98 and 100.[13] The 1976 scheme was deliberately designed to avoid the earlier sequence in which possession was delivered, a third party instituted an independent suit, and the decree-holder faced another full cycle of litigation. The present framework concentrates adjudication in the executing court while preserving appellate review of the resulting order.

E. Limitation, Transfer and Death of the Decree-Holder:

Article 136 of the Limitation Act, 1963 ordinarily allows twelve years for execution of a decree or order from the date when it becomes enforceable. The proviso states that an application to enforce a decree granting a perpetual injunction is not subject to that period.[14] Certain applications relating to court sales and delivery to auction purchasers

---

[10] Code of Civil Procedure 1908, O XXI rr 46–46-I.
[11] Code of Civil Procedure 1908, O XXI rr 58(2)–(4) and 59.
[12] Code of Civil Procedure 1908, O XXI rr 64–94; *Ambati Narasayya v M Subba Rao* 1989 Supp (2) SCC 693; *Desh Bandhu Gupta v NL Anand & Rajinder Singh* (1994) 1 SCC 131.
[13] Code of Civil Procedure 1908, O XXI rr 35–36 and 97–103; Y Srinivasa Rao, 'Execution of Decrees for Eviction and Delivery of Vacant Possession—Objections against Delivery and Determination' (workshop paper supplied for this study) 2–4.
[14] Limitation Act 1963, art 136 and proviso.

are governed by special limitation provisions.

Execution by a transferee of a decree is governed by Order XXI Rule 16. Under Section 146, proceedings may be taken by or against persons claiming under a party. The death of a decree-holder raises a recurring specialised question. The research provided on this issue distinguishes continuation of an execution petition already filed by the deceased from a fresh application by heirs seeking execution of a money decree. In the former case, the substitute ordinarily continues an existing proceeding; in the latter, where the applicant claims by succession and the decree represents a debt due to the deceased, Section 214(1)(b) of the Indian Succession Act, 1925 may require a succession certificate.[15] The requirement is therefore contextual rather than an automatic consequence of death.

III. IMPORTANT LEGAL PRINCIPLES:

A. The Executing Court Must Enforce, Not Re-Adjudicate, the Decree:

An executing court cannot go behind the decree; this is one of the most settled principles of execution law. The rule is not merely a matter of technical incapacity; it safeguards the finality of adjudication. The principle is illustrated by ***Topanmal Chhotamal v Kundomal Gangaram***, where the Supreme Court held that the executing court must take the decree according to its tenor and cannot add to or subtract from it.[16] ***Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman*** supplied the enduring formulation that even an erroneous decree binds the executing court unless the defect goes to inherent jurisdiction and renders the decree a nullity.[17]

A distinction must be drawn between an error within jurisdiction and a lack of jurisdiction. An erroneous approach to law, incorrect findings of fact or an irregular exercise of jurisdiction are generally corrected in appeal, not in execution. A decree passed by a court lacking inherent subject-matter jurisdiction stands on a different footing. The narrowness of the nullity doctrine is illustrated by ***Hiralal Patni v Kali Nath***.[18] Not every objection described as jurisdictional renders a decree a nullity.

The rule does not exclude interpretation. A court may examine the judgment, pleadings and proceedings where necessary to ascertain what the decree means. ***Bhavan Vaja v Solanki Hanuji Khodaji Mansang*** recognises this interpretive power while denying authority to alter the substantive relief.[19] The distinction is important: implementation gives effect to adjudication; modification changes it. ***Brakewel Automotive Components (India) Pvt Ltd v P.R. Selvam Alagappan*** reaffirmed that execution cannot travel beyond what the decree actually commands.[20]

---

[15] Code of Civil Procedure 1908, s 146 and O XXI r 16; Indian Succession Act 1925, s 214(1)(b); D Vijaya Saradhi Raju, 'Execution of Decrees After the Death of a Decree-Holder' (paper supplied for this study) 2–16.
[16] *Topanmal Chhotamal v Kundomal Gangaram* AIR 1960 SC 388.
[17] *Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman* (1970) 1 SCC 670.
[18] *Hiralal Patni v Kali Nath* AIR 1962 SC 199.
[19] *Bhavan Vaja v Solanki Hanuji Khodaji Mansang* (1973) 2 SCC 40.
[20] *Brakewel Automotive Components (India) Pvt Ltd v PR Selvam Alagappan* (2017) 5 SCC 371.

B. Section 47 Prevents Multiplicity but Does Not Permit a Retrial:

Section 47 is sometimes invoked as though its breadth permits the parties to argue again any question remotely connected with the suit. That approach defeats the purpose of the provision. Section 47 aims to prevent a separate suit concerning execution, discharge or satisfaction; it does not reopen matters that were, or should have been, resolved before the decree attained finality. In ***Harnandrai Badridas v Debidutt Bhagwati Prasad***, the Court held that questions between the auction purchaser and the judgment-debtor concerning delivery should be determined by the executing court.[21] The concern is the breadth of the execution forum, not reconsideration of the merits of the original adjudication.

The modern synthesis is that Section 47 is both inclusive and restrictive. The word 'all' and the breadth of the phrase concerning questions relating to execution, discharge or satisfaction reflect an inclusive legislative intention. At the same time, the executing court is competent to intervene only when the controversy genuinely concerns execution, discharge or satisfaction of the decree. A petition aimed at challenging the correctness of the decree, or raising an issue that could and should have been taken in the suit but was deliberately withheld, is not a legitimate use of Section 47.

C. Coercive Measures Must Be Proportionate:

Execution is necessary, but coercion should correspond to the decretal obligation. Rule 64 embodies this principle in relation to sale. In ***Ambati Narasayya v M. Subba Rao***, approximately ten acres were sold to satisfy a comparatively small decree. The Supreme Court held that the executing court has a mandatory duty to consider whether sale of only a portion of the property would suffice. If the court fails to discharge this duty, the sale is vulnerable as an exercise beyond the power conferred by Rule 64.[22] Proportionality also informs attachment under Section 60, the choice between modes under Section 51 and the use of arrest. The decree-holder is entitled to effective enforcement, but not to punishment unrelated to satisfaction. At the same time, proportionality should not be converted into a requirement that the decree-holder exhaust every milder measure before invoking an effective mode expressly authorised by statute. The court should choose a method that is adequate, lawful and no more burdensome than necessary.

D. Civil Imprisonment Requires a Finding of Means and Refusal:

Jolly George Varghese v Bank of Cochin is a landmark constitutional authority on arrest and detention for non-payment of a money decree.[23] The Court rejected the proposition that mere non-payment is sufficient. To detain a judgment-debtor under the proviso to Section 51, the court must reach a reasoned conclusion that the debtor has, or has had, the means to pay but has refused or neglected to do so, or that another

---

[21] Code of Civil Procedure 1908, s 47; *Harnandrai Badridas v Debidutt Bhagwati Prasad* (1973) 2 SCC 467.
[22] *Ambati Narasayya v M Subba Rao* 1989 Supp (2) SCC 693.
[23] *Jolly George Varghese v Bank of Cochin* (1980) 2 SCC 360.

statutory condition is satisfied. Poverty is not the same as defiance.

The judgment harmonised the Code with personal liberty and with the principle against imprisonment merely because of inability to perform a contractual obligation. It remains relevant in practical proceedings, where an application for arrest must contain material concerning means, assets, income, conduct or bad-faith alienation. A mechanical order followed by a mechanical warrant is inconsistent with Sections 51 and 55 to 59 and Rules 37 to 40. The means inquiry is not an empty formality, nor should it become an unfettered inquiry disconnected from the evidence.

E. Asset Disclosure Is Essential for Effective Execution of Money Decrees:

Traditional execution assumes that the decree-holder can identify the debtor's property. In the modern economic environment, that assumption is frequently unrealistic. Assets may include cash balances, securities, receivables, partnership interests, corporate stock or assets nominally held by others. Rule 41 permits examination and an affidavit of assets, while garnishee proceedings can intercept a debt before it reaches the judgment-debtor.

Rahul S. Shah made asset disclosure a central element of effective enforcement. It directed courts in money suits to consider disclosure of assets on oath even before settlement of issues and, in appropriate cases, security under Section 151 of the Code. It further directed courts to give a liberal reading to the relevant expression in Section 60.[24] The shift is preventive in character: the system should seek to reduce the information advantage ordinarily enjoyed by a judgment-debtor.

F. Third-Party Adjudication Must Be Real but Not Naive:

The post-1976 rules protect a bona fide independent claimant. In ***Bhanwar Lal v Satyanarain***, the Supreme Court held that substance must prevail over the label of an application and that resistance falling within Rule 97 must be adjudicated through Rules 98 to 103.[25] ***Brahmdeo Chaudhary v Rishikesh Prasad Jaiswal*** rejected the proposition that an obstructionist must first be dispossessed and only thereafter invoke Rule 99; adjudication by the executing court may take place before dispossession.[26] ***Shreenath v Rajesh*** confirmed that even a stranger asserting an independent right may seek adjudication in execution.[27]

Silverline Forum Pvt Ltd v Rajiv Trust clarified that the executing court is concerned with determining the right, title or interest only to the extent relevant to the resistance raised and is not obliged to direct a separate suit.[28] ***N.S.S. Narayana Sarma v Goldstone Exports (P) Ltd*** described Rules 97 to 103 as a complete code designed to prevent technical fragmentation.[29] ***Ashan Devi v Phulwasi Devi*** reinforced the legislative preference for adjudicating third-party claims within execution

---

[24] *Rahul S Shah v Jinendra Kumar Gandhi* (2021) 6 SCC 418, paras 42.7 and 42.11.
[25] *Bhanwar Lal v Satyanarain* (1995) 1 SCC 6.
[26] *Brahmdeo Chaudhary v Rishikesh Prasad Jaiswal* (1997) 3 SCC 694.
[27] *Shreenath v Rajesh* (1998) 4 SCC 543.
[28] *Silverline Forum Pvt Ltd v Rajiv Trust* (1998) 3 SCC 723.
[29] *NSS Narayana Sarma v Goldstone Exports (P) Ltd* (2002) 1 SCC 662.

itself.[30]

Fair adjudication does not mean that every objection must proceed to a full oral trial. The objector must disclose a legally cognisable basis and prima facie material. A transferee pendente lite is not protected by Rule 102; ***Usha Sinha v Dina Ram*** applied that exclusion to prevent a transfer made during litigation from defeating execution.[31] ***Asgar v Mohan Varma*** emphasised the finality and res judicata effect of adjudication under Rules 97 to 101.[32] The contemporary challenge is therefore to distinguish a genuine independent title from a derivative, collusive or belated obstructionist claim.

G. Execution Sales Require Strict Procedural Discipline:

An execution sale affects title and must therefore be preceded by strict compliance with the statutory safeguards. In ***Desh Bandhu Gupta v N.L. Anand & Rajinder Singh***, the Supreme Court stressed the mandatory character of notice and settlement of the sale proclamation and warned against treating valuation as a clerical task.[33] The court conducting an auction is not required to certify a market price as an auctioneer would; it must place material particulars and rival valuations before prospective bidders. An erroneous proclamation may depress competition, cause injury to the judgment-debtor and expose the sale to challenge. A defective sale ultimately disadvantages the decree-holder as well.

The sale provisions require reciprocal discipline. The court must comply with Rules 64 and 66; the auction purchaser must make the prescribed deposits; the judgment-debtor must raise permissible objections within the statutory framework; and the decree-holder must seek satisfaction without causing an excessive sale. The object is not merely a formally valid auction but a sale capable of attaining finality.

H. Computation and Appropriation Are Functions of Execution:

Disputes concerning interest and appropriation frequently arise in the execution of money decrees. ***Gurpreet Singh v Union of India*** provided important clarification on appropriation where payments are made and the decree specifies principal, interest and costs.[34]

The executing court must compute the amount in accordance with the decree and the governing rule. It may not enlarge the award, but it must give due credit for payments and determine what remains payable. A clear calculation sheet at the filing stage can prevent years of unnecessary dispute.

---

[30] *Ashan Devi v Phulwasi Devi* (2003) 12 SCC 219.
[31] *Usha Sinha v Dina Ram* (2008) 7 SCC 144; Transfer of Property Act 1882, s 52; Code of Civil Procedure 1908, O XXI r 102.
[32] *Asgar v Mohan Varma* (2020) 16 SCC 230.
[33] *Desh Bandhu Gupta v NL Anand & Rajinder Singh* (1994) 1 SCC 131.
[34] *Gurpreet Singh v Union of India* (2006) 8 SCC 457.

IV. TO WHOM EXECUTION APPLICATION MAY BE MADE:

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

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

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

V. WHO MAY APPLY FOR EXECUTION (Rule 10):

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

(i) Decree holder,
(ii) Legal representative of the decree-holder, if the decree-holder is dead,
(iii) Representative of or a person claiming under the decree-holder,
(iv) Any person claiming under the decree-holder; and
(v) Transferee of the decree-holder.

VI. AGAINST WHOM EXECUTION MAY BE TAKEN OUT:

Execution may be taken out against the following persons:-

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

VII. APPLICATION FOR EXECUTION:

When the decree becomes final an application for execution of decree is to be made in the prescribed proforma (Form No. 6 of Appendix E to the 1 Schedule of

CPC) to the court which passed the decree 24 33 EXECUTION OF DECREE containing interalia, the following information as required by Rule 11 (2) or Order 21):

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any, appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustments of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest(if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs(if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether-

  (i) by the delivery of any property specifically decreed;

  (ii) by the attachment or by the attachment and sale, or by the sale without attachment, of any property;

  (iii) by the arrest and detention in prison of any person;

  (iv) by the appointment of a receiver;

  (v) otherwise, as the nature of the relief granted may require.

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

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

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

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

(a) the description of such property sufficient to identify the same, and

(b) the specification of the judgment debtor’s share or interest therein.

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

arrest is applied for.

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

VIII.PROCEDURE IN EXECUTION:

Section 51 to 54 deals with the procedure in execution or mode for execution:

A. **Section 51**: this section gives the power to court to enforce the decree in general. This section defines the jurisdiction and power of the court to enforce execution. Application for execution of decree under this section may be either oral (order 21 rule 10) or written (order 21, rule 11). Party has to choose the mode of implementation of decree. Court may execute decree as per the choice prayed by the decree-holder or as court may thinks fit.

B. **Mode of executing decree under section 51**: (a) By delivery of any property specifically decreed. Property may be movable or immovable (b) By attachment and sale of the property or by sale without attachment of the property. (c) by arrest and detention. (d) by appointing a receiver. (e) is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d).

C. **Section 52** deals with a case where the decree is passed against the legal representative of the judgement-debtor.

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

E. **Section 52 (2)** empowers a creditor to execute his decree against the legal representative personally if he fails to accounts for the properties received by him from deceased person.

Exception to section 52:

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

representative has alienated the property of the deceased person.

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

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

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

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

The nature of suits determines how decree should be implemented.

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

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

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

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

Section 54 comes into play when a decree has been passed for partition, or for the separate possession of a share of an undivided state paying revenue to the government, that is the partition of the state or share will be made by the collector. However if the collector refuses to make the partition of the revenue paying property,

the civil court can do so. To attract the provision of this section it is not necessary that the plaintiff should ask for the division of government revenue.

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

IX. TYPES OF DECREE AND THEIR MODES OF EXECUTION:

The following are the different types of decrees for execution are as under:

1) **Money decree:**
2) **Decree for specific movable property : order 21 rule 31**
3) **Decree for specific immovable property: order 21 rules 35 & 36**

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

X. MODE OF EXECUTIONS :

1. By arrest and detention in civil prison (sections 51, 55 to 69, 135,135 (A), order 21 rules 37 to 40 of CPC and rule 241 of CPC.
2. By attachment and sale of movable properties.(order 21 rule 43).
3. By attachment and sale of standing crop and agricultural produce (order 21 rules 44 & 45)
4. By attachment of debt, share or other movable property not in the possession of

judgment debtor (order 21 rule 46-otherwise known as garnishee proceedings).

5. By attachment of salary of government servant (order 21 rule 48)
6. By attachment of salary of private employees (order 21 rule 48A)
7. By attachment of debtor's share in a partnership firm (order 21 rules 49 & 50)
8. By attachment of a negotiable instrument (order 21 rule 51)
9. By attachment of a decree obtained by the judgment debtor in another case (order 21 rule 53)
10. By attachment and sale of immovable property (order 21 rules 54 to 69)

Execution of Money Decree:- Decree for Specific Movable Property

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

XI. EXECUTION BY ATTACHMENT AND SALE:

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

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

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

All these facts must be stated by the decree holder in the application submitted by him seeking an order for sale. The application shall be verified under his signatures and these facts as to whether the whole of the property is required to be sold or a portion of it would be sufficient to satisfy the decree. The encumbrances on the

property and the amount for the recovery of which the sale is to be effected shall be mentioned in the said application. A notice of that application should be issued to the JD to settle the terms of sale upon which it will be determined as to how much property should be sold and only that portion is to be mentioned in the sale warrant which is to be sold (Rule 66).

The proclamation for sale shall also be issued by Executing Court in the same manner with four copies. Different dates can be given for proclamation at the court house and for proclamation at the spot. The court can also direct that the proclamation should be published in the official gazette or in a local newspaper or in both. The costs of publication shall be recovered from the JD as costs(Rule 67).

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

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

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

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

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

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

If the sale is of immovable property, the purchaser shall pay at the spot 25%

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

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

Setting aside sale :

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

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

Confirmation of sale :

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

Certificate of sale :

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

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation. A copy of the certificate, whether the property sold be land or other immovable property, and without regard to the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated, to be filed in his supplementary Book No.1.

Delivery of possession :

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

XII. Execution of decree for specific performance :

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

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

can make an application to the court for delivery of the possession, if he is not already in possession of the property. The court will issue warrant of possession and the decree holder will be put into possession as aforesaid.

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

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

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

XIII. Execution of decree by Garnishee Order:

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

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

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

XIV. Execution of a decree by Arrest and Detention:

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

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

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

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

When the court issues a warrant of arrest of judgment debtor, it shall direct the officer entrusted with its execution to bring the judgment debtor with convenient speed. If the decrial amount along with the interest and cost if any of which judgment debtor is liable to pay is paid earlier then the person should not be arrested. Every person should be given a reasonable opportunity to explain why he should not be arrested. The court must ensure that arrest and detention should only be made if the judgment debtor is willfully defaulting and if the reason to not comply with the court order is not willful then the court may give a reasonable opportunity of showing cause why he should not be committed to the civil prison. Under Rule 40, the court has discretion to refuse the arrest and detention of a debtor who is unable to pay, if the court is satisfied that no useful purpose is served by sending the judgment debtor to civil prison.

It is the duty of the court to conduct the inquiry before order of arrest is passed; if the conclusion of the inquiry is pending then the judgment debtor be detained in the custody of an officer of the court. The judgment debtor can only be detained by the officer of the court for a period not exceeding fifteen days. If at any point the judgment

debtor furnishes security to the satisfaction of the court, then the court may release him. The judgment debtor can only be arrested by the order of the court and not by mere presumptions of officer. The court can also order release of judgment debtor if the arrest is not based on a court order. Warrant without conducting an inquiry is not without jurisdiction if the court had sufficient reasons to believe that judgment debtor is willfully defaulting. Where the judgment debtor denies that they have any means to repay the decretal amount and the decree-holder failed to bring on record any material regarding the source of income or cash in hand of the judgment debtor, then the order of arrest is not justified and the order of arrest cannot be issued. In ordering the arrest of a judgment debtor to the civil prison, the execution court should exhibit care and caution to ensure each step is contemplated under Section 51 and Order 21 of CPC is followed. When the judgment debtor gives sufficient reasons to court along with the bank statements and default made by him is neither mala fide nor can be called as deliberate refusal, at such point of time the order of arrest is not justified.

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

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

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

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

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

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

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

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

The remedy of execution by arrest and execution is an extraordinary remedy, it is not punitive and neither the arrest waves off the right to comply with the court decree. It gives a realization to the decree-holder of the value of decree passed in his favour. It also protects the judgment debtor if he is not in the condition of complying with the court order. Willful defaulters are liable to be arrested. This remedy is twofold as it protects the decree-holder as well as a judgment debtor. This remedy is not exhaustive, and it also prevents unusual harassment of judgment debtor, it also protects judgment debtor by giving subsistence allowance during his period of arrest. There has been ample opportunity given to judgment debtor to prove his intention for not complying with the decree. If the judgment debtor is not a willful defaulter then he may not be arrested and given an opportunity to rectify his mistake. Therefore, these provisions are not stringent.

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

1. Having regard to the large pendency of execution proceedings, large number of instances of abuse of process of execution and legal complexities, in Rahul S. Shah versus Jinendra Kumar Gandhi and ors., 2021 SCC Online SC 341: 2021 (2) JLJR (SC) 460, a three Judge bench of Hon'ble Supreme court by exercising jurisdiction under Article 142 read with Articles 141 and 144 of the Constitution of India has issued directions in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by the parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law. In the judgment it is specifically provided that all courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned direction:-

I. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third Party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

II. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

III. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to 1 avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

IV. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

V. The Court must, before passing the decree, pertaining to Delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

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

VII. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

VIII. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

IX. The Court should allow taking of evidence during the execution

proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other 2 expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

X. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A of CPC.

XI. Under section 60 of CPC the term in name of the judgment debtor or by another person in trust for him or on his behalf should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

XII. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

XIII. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree.

XIV. In case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

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

1. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.
2. It also becomes necessary for the Trial Court to determine what is the status of

the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the defendant. Thus, the Court may also take recourse to the following actions:

a) Issue commission under Order XXVI Rule 9 of CPC. A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the Court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the Court may also appoint a Receiver under Order XL Rule 1 to secure the status of the property during the pendency of the suit or while passing a decree.

b) Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

c) Affix such notice on the said property.

d) Issue such notice specifying suit number etc. and the Court in which it is pending including details of the suit property and have the same published on the official website of the Court.

3. Based on the report of the Commissioner or an application made in that regard, the Court may proceed to add necessary or proper parties under Order I Rule 10. The Court may permit objectors or claimants upon joining as a party in exercise of power under Order I Rule 10, make a joinder order under Order II Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

4. If the above suggested recourse is taken and subsequently if an objection is received in respect of “suit property” under Order XXI Rule 97 or Rule 99 of CPC at the stage of execution of the decree, the Executing Court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued

during trial. Such claims under Order XXI Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

XV. DECREE OF INJUNCTION - EXECUTION UNDER ORDER 21 RULE 32 (1) CPC

Enforcing a decree of injunction is a crucial aspect of civil litigation, ensuring that the rights of decree holders are protected and that Court orders are not rendered meaningless. Order 21 Rule 32 (1) of CPC lays down the procedure and powers of the Court in enforcing such decrees, whether they required a party to do or refrain from doing a particular act.

AN INJUNCTION DECREE IS OF TWO TYPES:

a. Mandatory – requiring to a party to perform a specific act.
b. Prohibitory – restraining a party from performing a specific act.

Order 21 Rule 32 (1) applies to both types and provides remedies when a judgment debtor willfully disobeys the decree. Under Order 21 Rule 32(1) CPC states that if a judgment debtor willfully disobeys a decree for specific performance, restitution of conjugal rights or an injunction, the Court may enforce the decree by:-

a. Detaining the judgment debtor in civil prison
b. Attaching their property.
c. Or both.

EXPLANATION (2002 AMENDMENT):-

The 2002 amendment clarified that Rule 32 (1) applies to both mandatory and prohibitory injunctions, ensuring comprehensive coverage.

PROCEDURE FOR ENFORCEMENT:-

A. FILING AN EXECUTION APPLICATION:- The decree holder files an application under Order 21 Rule 32 (1) detailing the nature of the disobedience.

B. COURTS INQUIRY:- The Court issues notices to the judgment debtor and examines whether the disobedience was willful and whether the debtor had an opportunity to comply.

C. ENFORCEMENT ORDERS:- Upon finding willful disobedience, the Court may

i. Order detention in civil prison

ii. Attach property

iii. Authorizes the decree holder or a 3rd party to perform the act at the debtor's expense.

D. RESTORATION OF POSSESSION:- If a prohibitory injunction is violated (Example:- Illegal occupation), the Court can restore possession to the decree holder without acquiring a fresh suit.

KEY CONSIDERATIONS IN ENFORCEMENT:-

A. **WILLFUL DISOBEDIENCE**:- The Court must be satisfied that the breach was intentional and not accidental.
B. **NO LIMITATION FOR PERPETUAL INJUNCTION**:- There is no time bar for

executing decrees of perpetual injunction (proviso 2 Article 136 of Limitation Act).

C. **BINDING LEGAL REPRESENATIVES**: Legal heirs of a deceased judgment debtor are bound by the injunction and can be subjected to execution proceedings.

Order 21 Rule 32 (1) CPC is a powerful tool for decree holders to ensure compliance with injunctions. By providing for detention, attachment and restoration of possession, the law upholds the authority of Court orders and protects the rights of parties.

XVI. LANDMARK AND RECENT CASE LAW:

A. Classical Boundaries: Finality, Nullity and Interpretation:

The early authorities established a balanced relationship between the adjudicating court and the executing court. An attempt to obtain in execution something that the decree did not grant was rejected in ***Topanmal Chhotamal v Kundomal Gangaram*****.** ***Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman*** then supplied the conceptual distinction that continues to govern the field: while an executing court may refuse to enforce a decree that is a nullity for want of inherent jurisdiction, it cannot reopen an erroneous decree passed by a competent court. The nullity exception is a safety valve, not a route of appeal.

Bhavan Vaja v Solanki Hanuji Khodaji Mansang added an important qualification. Decrees involving appellate modification, schedules, maps or composite relief may sometimes be imperfectly drafted. The executing court may read the decree in the context of the judgment and pleadings to ascertain its real command. That power is exercised to resolve ambiguity, not to create relief that the adjudicating court declined or omitted. Fidelity therefore means fidelity to the decree as legally construed, not merely to the isolated wording of the formal decree sheet.

Brakewel Automotive Components (India) Pvt Ltd v P.R. Selvam Alagappan demonstrates the continuing validity of the classical rule. The Supreme Court disapproved execution travelling beyond the decree and reiterated that jurisdiction under Section 47 cannot alter substantive rights. These cases preserve orderly finality: the trial and appellate courts determine the merits, while the executing court gives effect to the decree and adjudicates only those objections that lawfully arise in execution.

B. Money Decrees: Liberty, Assets and Just Realisation:

1. Jolly George Varghese: Constitutionalising Civil Arrest

Jolly George Varghese transforms the technical precondition in the proviso to Section 51 into a standard protective of liberty. A judgment-debtor’s inability to pay is qualitatively different from having the means to pay and refusing to do so. The Court must make findings on evidence. The provision protects honest poverty while

preserving detention for conduct that satisfies the statutory conditions.

The case also affects the sequence of execution. Where attachable property or a garnishable debt is readily identifiable, detention should not become a reflexive substitute for asset-based enforcement. Nevertheless, the ruling does not abolish detention. The power must be used carefully and humanely. The money-decree materials accordingly place *Jolly George Varghese* at the centre of the law regulating arrest, notice, means inquiry and subsistence allowance.[35]

2. Ambati Narasayya and Desh Bandhu Gupta: Procedural Discipline in Court Sales

Ambati Narasayya is a leading authority for the rule that only so much of the property as is necessary should be sold. The power of the executing court is confined to the purpose for which sale is authorised: satisfaction of the decree. Sale of the entire property without considering whether a severable portion would suffice is not merely a valuation error; it may amount to an excess of jurisdiction under Rule 64. *Desh Bandhu Gupta* reinforces that principle. A court sale is permissible only after compliance with notice and sale-proclamation requirements. Judges must engage carefully with valuation and statutory encumbrances. These safeguards are debtor-protective in form but also decree-holder-protective in effect, because a sale conducted without proper safeguards may be set aside after years of litigation. Correct procedure at the outset is therefore an instrument of finality.

3. Gurpreet Singh: Accounting for Satisfaction

Gurpreet Singh addresses a less dramatic but frequent source of delay: the appropriation of payments towards principal, interest and costs. While preserving the terms of the decree, the Court ensures that interest does not continue on amounts already paid in accordance with law. The decision reminds executing courts that correct computation is a judicial function. Execution of a money decree should therefore be supported by a clear statement of the decretal amount, payments, dates, appropriation and outstanding balance.

C. Possession, Obstruction and Complete-Code Jurisprudence:

The development of third-party adjudication marks a major change in the law of execution. Before the 1976 amendment, a claimant might be driven to a separate suit, leaving the decree-holder in prolonged uncertainty. The amended Rules 97 to 103 are intended to resolve such disputes within execution.

Bhanwar Lal established that the court should look to the substance, not merely the nomenclature, of an application. A complaint concerning resistance to possession, even if presented under Section 47, must be dealt with under the appropriate rules governing obstruction. *Brahmdeo Chaudhary* further held that an obstructionist need not await physical dispossession before seeking adjudication. When resistance is

[35] *Jolly George Varghese v Bank of Cochin* (1980) 2 SCC 360; Y Srinivasa Rao, 'Execution of Money Decrees: Different Modes of Execution—Provisions of Law and Case Law' (workshop paper supplied for this study) 3–5.

offered, the executing court may determine competing claims before force is used.

Shreenath extended the availability of relief to a stranger asserting an independent possessory or proprietary right. *Silverline Forum* emphasised the executing court's authority to determine right, title or interest relevant to the obstruction and also recognised that, where admitted or demonstrable facts are sufficient, an objection need not result in a long-drawn trial. *N.S.S. Narayana Sarma* contributed to the complete-code understanding of Rules 97 to 103 and the decree-like character of an adjudicatory order.

The amendment aims to prevent multiplicity of civil suits. The case law rejects an approach that would compel a claimant to pursue a separate action despite the legislative scheme. At the same time, it should not be understood as giving every person who appears at the property an automatic right to extensive oral evidence. The right is to adjudication proportionate to the claim disclosed. That qualification is becoming increasingly important in contemporary execution cases.

Usha Sinha addresses the position of a transferee pendente lite. Under Section 52 of the Transfer of Property Act, 1882, such a transfer is not void but remains subject to the outcome of the suit. Rule 102 provides the execution consequence: a person who derives title during the pendency of litigation cannot invoke Rules 98 and 100 to defeat the decree. *Asgar* further establishes that, once rights under Rules 97 to 101 have been adjudicated, the same dispute cannot be revived through another procedural device.

D. **Satyawati and Rahul S. Shah**: Delay as a Failure of Justice

1. ***Satyawati v Rajinder Singh***

Satyawati marks a shift from doctrinal interpretation to institutional criticism. The Court noted that the decree-holder had been unable to enjoy the fruits of the decree for an extraordinarily long period and insisted upon a practical approach to execution.[36] The significance of the ruling lies less in creating a new rule than in insisting upon purposeful application of existing rules. Adjournments, repetitive objections and weak enforcement are not neutral administrative events; they diminish the practical value of the decree.

2. ***Rahul S. Shah v Jinendra Kumar Gandhi***

Rahul S. Shah is the contemporary charter of execution reform.[37] According to the Court, delay has its origins in both pre-decree and post-decree failures. An inaccurate description of property in a possession decree, failure to identify third-party interests, or the absence of information concerning the assets of a defendant in a money claim are all problems inherited by the executing court but capable of being avoided during trial.

---

[36] *Satyawati v Rajinder Singh* (2013) 9 SCC 491.
[37] *Rahul S Shah v Jinendra Kumar Gandhi* (2021) 6 SCC 418, para 42.

The directions therefore begin before execution. In suits concerning possession, the court must examine the parties regarding third-party interests, use discovery powers, consider appointment of commissioners and add necessary parties where appropriate. The decree must clearly identify the property and its nature and status. In money suits, the Court encouraged immediate execution through oral application where applicable, disclosure of assets and appropriate security. At the execution stage, the directions discourage mechanical notice to third-party applicants, restrict oral evidence to exceptional cases, encourage use of commissioners and electronic material, authorise compensatory costs and Rule 98(2) consequences for mala fide resistance, permit police assistance where necessary and require continuous training of court personnel.

Most importantly, the Court directed that execution proceedings should ordinarily be disposed of within six months from filing, with any extension supported by recorded reasons. The direction is not a statutory limitation that automatically terminates proceedings; it is a mandatory case-management norm. Execution is placed under active judicial supervision, and departures from the timetable must be accounted for.

E. Recent Supreme Court Litigation, 2025–2026

1. ***Periyammal (Deceased) through LRs v V. Rajamani***: Execution Cannot Become a Deferred Defence

Periyammal, decided in March 2025, is an important recent decision concerning execution of possession.[38] The Court carefully distinguished Section 47 from Rules 97 and 101. Section 47 is a general provision governing questions of execution, discharge and satisfaction; Rules 97 and 101 are specific provisions governing execution of possession decrees and questions of right, title or interest arising in that context.

The decision deepens judicial discipline in temporal terms: issues that should have been raised in the suit cannot ordinarily be reserved for execution, because doing so would undermine the decree. The Court concluded that only questions genuinely connected with execution could be entertained in the factual setting before it.

The Court found the alleged tenancy claim to be collusive and rejected an attempt to defeat a specific-performance decree and a conveyance executed by the court by relying on later revenue material.

The Court then moved beyond the individual dispute. Reiterating Rahul S. Shah, the Supreme Court directed each High Court to collect district-wise data on pending execution petitions and issue administrative directions for their disposal within six months. The presiding officer concerned would be accountable on the administrative side for default. In the case before it, possession was directed to be delivered within two months and, if necessary, with police assistance. The ruling therefore strengthens the six-month norm by connecting it with system-wide administrative accountability.

---

[38] *Periyammal (Dead) through LRs v V Rajamani* 2025 INSC 329, paras 52–79.

2. ***Ram Lal v Jarnail Singh***: Judicial Control over Specific-Performance Decrees

Ram Lal, decided in February 2025, considered whether delay in depositing the balance consideration rendered a decree for specific performance incapable of execution.[39] The trial decree required deposit within a specified period, but the judgment-debtors preferred an appeal; the appellate decree dismissed the appeal without fixing a fresh period.

The Supreme Court highlighted that, under the doctrine of merger, the appellate decree becomes the operative and executable decree. Parties and appellate courts dealing with specific-performance appeals must therefore pay careful attention to the requirements of Order XX Rule 12-A.

According to the Court, a decree for specific performance is preliminary in the sense that the court retains control under Section 28 of the Specific Relief Act, 1963. Failure to make the deposit within the original period does not per se amount to abandonment or ipso facto rescind the contract. The relevant question is whether the conduct of the decree-holder demonstrates positive refusal or wilful negligence. Extension of time is discretionary and should take into account bona fides, explanation, length of delay and intervening equities.

The execution principle is significant because *Ram Lal* rejects two extremes. It does not treat time directions as meaningless, but neither does it allow procedural uncertainty caused by an appeal to extinguish a substantive right without judicial examination of conduct and fairness. The decision also makes appellate courts responsible for formulating executable decrees with sufficient clarity.

3. ***Saraswati Devi v Santosh Singh***: Successive Breaches of a Continuing Injunction

In *Saraswati Devi*, decided in May 2025, an earlier execution petition concerning a permanent prohibitory injunction had been closed after an undertaking and recorded satisfaction. Following subsequent interference, a fresh execution petition was rejected on the ground of res judicata.[40] The Supreme Court held that a judgment-debtor cannot escape execution for a subsequent breach merely because an earlier breach had been satisfied. A perpetual injunction remains continuously binding upon the judgment-debtors and persons bound through them.

Under the proviso to Article 136 of the Limitation Act, 1963, enforcement of a decree granting a perpetual injunction is not subject to the ordinary twelve-year period. The judgment clarifies that ‘satisfaction’ must be understood with reference to the obligation enforced. A continuing negative command may be obeyed at one point and breached later; each subsequent disobedience may justify fresh enforcement.

---

[39] *Ram Lal v Jarnail Singh (Deceased) through LRs* 2025 INSC 301, paras 44–55; Specific Relief Act 1963, s 28; Code of Civil Procedure 1908, O XX r 12-A.

[40] *Saraswati Devi v Santosh Singh* 2025 INSC 715, paras 6–8; Limitation Act 1963, art 136 proviso.

4. ***Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale***: Lis Pendens and Derivative Obstruction

Alka Shrirang Chavan, decided in January 2026, concerned a specific-performance suit instituted in 1986, a decree passed in 1990, a court-executed sale deed in 1993 and continuing obstruction by purchasers whose interests were acquired pendente lite.[41] The Supreme Court held that such transfers are not void under Section 52 of the Transfer of Property Act, 1882, but remain subservient to the outcome of the litigation. Once the executing court found the objectors to be transferees pendente lite, Rule 102 prevented them from resisting delivery.

The Court rejected the argument that the purchasers had to be added as parties to the document executed by the court in order to transfer title to the decree-holder. The decision is also important for its emphasis on finality. Once rights have been determined under Rules 97 to 102, further obstruction cannot be permitted merely to prolong litigation. The Court fixed a date for delivery of possession and invoked Article 142 to restrain the obstructing parties from initiating repetitive proceedings concerning execution.

5. ***Challani Ginning and Pressing Factory v Kamal***: Threshold Standards for Third-Party Objections

Challani Ginning, decided in April 2026, adds an important qualification to the complete-code doctrine.[42] The judgment-debtor's mother claimed a one-third interest in the property after attachment, auction and several unsuccessful objections. She resided in the property and had been a director of the company involved in the transaction underlying the litigation.

The Supreme Court acknowledged that Rules 97 to 101 constitute a complete code, but held that the executing court is not bound to frame issues and record evidence on a claim resting only on conjecture. The objector produced no prima facie material suggesting co-ownership, while the surrounding circumstances indicated knowledge of the proceedings and a deliberate attempt to delay recovery. The Court restored the executing court's rejection of the objection and ordered speedy delivery.

The case has doctrinal significance because it reconciles access with screening. A bona fide independent claimant is entitled to adjudication; an unsupported, belated and factually implausible claim is not entitled to a full trial as of right. Otherwise, the very provisions designed to avoid multiplicity would become a new engine of delay.

6. ***Jennifer Messias v Leonard G. Lobo***: Substance of the Decree over Its Label

Jennifer Messias, decided in May 2026, arose from a partition decree concerning a flat that could not be physically divided.[43] The High Court treated the description of the decree as 'preliminary' as decisive and set aside the execution proceedings, directing

---

[41] *Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale* 2026 INSC 52, paras 65–75; Transfer of Property Act 1882, s 52; Code of Civil Procedure 1908, O XXI r 102.
[42] *Challani Ginning and Pressing Factory v Kamal* 2026 INSC 426, paras 5–8.
[43] *Jennifer Messias v Leonard G Lobo* 2026 INSC 502, paras 14–18.

the decree-holder to seek a final decree afresh. The Supreme Court examined what the decree actually determined rather than the label attached to it. The decree had declared equal shares, granted possession and mesne profits, appointed a commissioner, and prescribed sale and distribution if division by metes and bounds proved impossible.

The Court held that, on the facts, the executable portion had already been determined and that another formal application would create an unnecessary procedural loop. It revived the execution proceeding, directed auction and apportionment, and required completion within two months. The Court also reaffirmed ***Kattukandi Edathil Krishnan v Kattukandi Edathil Valsan***, directing trial courts, after a preliminary partition decree, to proceed suo motu towards the final decree instead of adjourning the suit sine die.[44]

The broader principle is functional construction. Whether a decree is executable depends on the rights and implementation steps that it actually determines, not merely on the label attached to it. Courts should avoid both executing a genuinely incomplete preliminary decree and insisting on empty formalism where the decree itself contains the machinery necessary to complete relief.

7. Anjani Technoplast: Execution of a Decree Cannot Be Displaced by Insolvency

In *Anjani Technoplast*, decided in April 2026, the Supreme Court held that the Insolvency and Bankruptcy Code, 2016 (IBC) cannot be used as a substitute for ordinary execution merely because the applicant holds a money decree and may also answer the description of a financial creditor.[45] Where the real controversy concerns computation and credit for payments under a final decree, the court dealing with execution, rather than the insolvency process, is the appropriate forum.

The ruling is relevant to execution jurisprudence because it preserves the distinct institutional purpose of civil enforcement. Insolvency is collective and remedial; execution is directed towards enforcement of an adjudicated obligation. Resorting to insolvency as coercive debt recovery may circumvent the procedural checks and balances established by the Code and expose a functioning debtor entity to consequences disproportionate to a mere computation dispute.

XVII. RECENT DEVELOPMENTS:

A. From Post-Decree Reaction to Pre-Decree Planning:

One of the most significant developments is the movement of execution concerns to the trial stage. Rahul S. Shah recognises that many execution disputes arise from errors or omissions in the decree itself. A court determining possession must identify the property with precision, investigate third-party interests and implead necessary parties. In a monetary claim, the court should consider asset disclosure and protective

[44] *Kattukandi Edathil Krishnan v Kattukandi Edathil Valsan* (2022) 16 SCC 71, para 35.
[45] *Anjani Technoplast Ltd v Shubh Gautam* 2026 INSC 410, paras 25–34.

security before the defendant's financial circumstances become obscured. This is not premature execution; it is responsible adjudicatory design.

The approach also changes professional requirements. Plaintiffs should clearly articulate the nature, extent and value of property. Defendants must disclose third-party occupation and proprietary claims. Advocates should ensure that the formal decree accurately reflects the judgment. Appellate orders should be capable of implementation without requiring unnecessary reference back to the trial court. *Ram Lal* illustrates the difficulty that arises when an appellate decree in a specific-performance matter does not fix time for reciprocal performance.

B. Data, Timelines and Administrative Accountability:

Initially, the six-month direction in Rahul S. Shah could have been regarded as a strong but case-specific norm. After *Periyammal*, directions concerning collection of pendency data, issuance of administrative circulars and calling for explanations from presiding officers have become institutionalised.

The focus on data is important. Delay in execution cannot be addressed merely through isolated judicial criticism; it requires categorisation of pending cases according to age, mode of execution, stage, outstanding process and reason for non-completion.

The judicial-academy manuals provided for this study demonstrate the operational dimension of reform. They contain checklists, forms, role-specific guidance for clerks and process staff, and stepwise treatment of attachment, sale, arrest and possession.[46] Such materials should not remain merely training documents. Their principles can inform standardised digital case stages, automated alerts for unreturned warrants, structured asset affidavits, sale-proclamation templates and supervisory dashboards.

C. A Two-Stage Approach to Third-Party Objections:

Recent cases show a more refined approach to objections. The process begins with screening. At this stage, the court may consider, among other matters, delay in filing the application. The applicant should identify the source of the claimed right, date of acquisition, nature of possession, relationship with the judgment-debtor and prima facie documentary basis. Prolonged objections may also leave the judgment-debtor's assets locked up during the pendency of execution.

The court should ask whether the claim was or could have been raised earlier, whether it is derivative or independent, and whether Rule 102 applies. *Periyammal*, *Alka Shrirang Chavan* and *Challani Ginning* all reject attempts to use the execution forum for deferred or derivative defences.

The second stage is fair and proportionate adjudication. If the claim raises a live question that cannot be resolved from admitted documents, the court may frame the necessary issues and receive focused evidence. If the available material is sufficient,

[46] Judicial Academy Jharkhand, *Training Manual for Execution Proceedings* (2023) chs 5, 8 and 10; *Execution Notes (20-04-2023)* (material supplied for this study).

the court may decide the matter without converting execution into a full trial. Under Rahul S. Shah, factual questions may be resolved more efficiently through commissioners, official records, photographs, video and affidavits. The objective is not summary rejection; adjudication should be calibrated to the seriousness and evidentiary foundation of the claim.

D. Execution by Different Means:

Recent case law also shows that the character of the decree must be distinguished. As *Saraswati Devi* demonstrates, successive breaches of a perpetual injunction may give rise to successive enforcement proceedings. *Ram Lal* establishes that specific-performance decrees involve reciprocal obligations and remain subject to judicial control. *Jennifer Messias* illustrates that a partition decree may contain both preliminary and executable elements. *Alka Shrirang Chavan* confirms that a transferee pendente lite is bound by the litigation and cannot displace the decree through derivative obstruction.

The death of a decree-holder requires equally careful classification. The inquiry does not merely concern whether the applicant is an heir. The court must determine whether the execution is pending or fresh; whether the decree is for payment of a debt or for proprietary, possessory or personal relief; and whether the applicant claims by succession, survivorship, testamentary disposition, assignment or operation of law. The academic paper provided for this study proposes these questions as a structured framework for applying Section 214 of the Indian Succession Act.[47]

E. Recent Application in the Field:

The materials from Andhra Pradesh suggest a High Court actively engaged with the operational details of execution. They refer to ***C. Dilip Kumar v Y. Veera Raghavulu*** **and** ***Kalepu Nagavenkata Durga Prasad v Sriram Transport Finance Co Ltd*** in relation to enforcement of money decrees and safeguards governing arrest; and to ***Ginni Ramarao Reddy v Poosapati Sreedevi***, ***Gaddipati Bullemma v Thota Venkayamma***, ***K.V. Srinivasulu Naidu v V. Bhaskar***, ***Nellore Sujanamma v Desireddy Somasekhar Reddy*** **and** ***Hemalatha v P. Kanaka Bhushnam*** in relation to delivery of immovable property.[48] Their inclusion is significant because execution practice is influenced not only by national doctrine but also by High Court amendments, civil rules of practice and local process administration. Any pan-Indian account must therefore distinguish universal CPC principles from jurisdiction-specific procedural requirements.

F. Emerging Model of Effective Enforcement:

The cases suggest that a model is emerging with six features. First, the decree should be prepared for execution, not merely for declaration. Second, details

[47] D Vijaya Saradhi Raju, 'Execution of Decrees After the Death of a Decree-Holder' (paper supplied for this study) 14–18.
[48] *C Dilip Kumar v Y Veera Raghavulu* 2024 (2) ALT 437; *Kalepu Nagavenkata Durga Prasad v Sriram Transport Finance Co Ltd* 2024 (2) ALT 327 (DB); *Ginni Ramarao Reddy v Poosapati Sreedevi* 2024 (3) ALT 640; *Gaddipati Bullemma v Thota Venkayamma* 2024 (3) ALT 483; *KV Srinivasulu Naidu v V Bhaskar* 2023 (5) ALT 674; *Nellore Sujanamma v Desireddy Somasekhar Reddy* 2023 (4) ALT 384; *Hemalatha v P Kanaka Bhushnam* 2023 (3) ALT 679; Y Srinivasa Rao, 'Execution of Decrees for Eviction and Delivery of Vacant Possession' (workshop paper supplied for this study) 5–10.

concerning assets and third-party interests should be back-loaded. Third, the executing court must preserve the finality of issues already decided. Fourth, coercive measures must comply strictly with liberty, exemption and proportionality safeguards. Fifth, third-party claims must be screened and adjudicated within execution according to their prima facie merits.

Sixth, the court should retain managerial control until actual satisfaction is recorded.

This model also requires a change in judicial culture. Execution should not be relegated to the end of the cause list or treated as a category in which adjournment causes little harm. Every adjournment prolongs the period during which the judgment-debtor or an obstructionist enjoys the practical benefit of the adjudicated wrong. Costs, police aid, commissioners, timelines and accountability are therefore not unusual indicators of seriousness; they are ordinary tools for preserving the value of the decree.

XVIII. CONCLUSION:

The law of execution under the Code of Civil Procedure is neither deficient in remedies nor uncertain in principle. A persistent weakness remains the distance between doctrine and administration. Sections 36 to 74 and Order XXI cover jurisdiction, application, notice, delivery, attachment, arrest, garnishee process, sale, claims, obstruction, satisfaction and related matters. The growing clarity of the Supreme Court's jurisprudence concerns the practical operation of that structure.

The traditional cases established fidelity to the decree. ***Topanmal Chhotamal*****,** ***Vasudev Dhanjibhai Modi*** **and** ***Bhavan Vaja*** deny the executing court an appellate role while permitting necessary construction and recognition of true nullity. *Jolly George Varghese* constitutionalised civil detention by distinguishing inability from contumacious refusal. *Desh Bandhu Gupta* and *Ambati Narasayya* imposed proportionality and procedural discipline on court sales. The post-1976 line from *Bhanwar Lal* through *Brahmdeo Chaudhary*, *Shreenath*, *Silverline Forum*, *N.S.S. Narayana Sarma* and *Ashan Devi* created a complete forum for third-party adjudication without a separate suit.

The contemporary cases address a different question: how can these principles be prevented from becoming instruments of delay? Satyawati supplied the warning. Rahul S. Shah supplied an architecture of clear rules, early disclosure, limited evidence, meaningful costs, police assistance, trained staff and a six-month norm. *Periyammal* added administrative accountability. *Alka Shrirang Chavan* and *Challani Ginning* demonstrate that derivative, belated or unsupported obstruction cannot justify endless adjudication. *Ram Lal* and *Jennifer Messias* require courts to formulate and construe decrees functionally so that procedural form does not destroy substantive relief. *Saraswati Devi* recognises the continuing enforceability of a perpetual injunction, while *Anjani Technoplast* preserves civil execution as the appropriate

method of enforcing a decree and prevents insolvency from becoming a coercive substitute.

The resulting jurisprudence is not unqualifiedly in favour of the decree-holder. It protects the judgment-debtor from imprisonment without proof of means, from sale beyond what is necessary, from defective proclamation and from attachment of exempt property. By granting the executing court authority to determine their rights, it also protects genuine third parties. What it rejects is the equation of fairness with indefinite process. Fairness belongs to the bona fide claimant, not to a collusive transferee or to a litigant seeking another trial after losing the first.

Execution must therefore be regarded as an element of the right to meaningful adjudication. Full justice is not done when a court declares a right but the institution is unable to enforce it. The best measure of a civil justice system is not the number of decrees it produces, but the proportion of lawful decrees that achieve timely and real satisfaction. Recent case law has provided the doctrinal and managerial tools. The remaining task is disciplined implementation by trial courts, executing courts, appellate courts, registries, process staff and the legal profession.

Submitted By,

DR.DEEPA DYVA KRUPA.KODALI

CIVIL JUDGE (SENIOR DIVISION)

PEDDAPURAM.

WORKSHOP-III TO BE CONDUCTED IN EAST GODAVARI,

5th SEPTEMBER, 2026

Booklet of SRI K.RATNA PRASAD,
I Addl. Civil Judge(Senior Division),
Rajamahendravaram.

Execution of Decrees for Restitution of Conjugal Rights under Order XXI Rules 32 and 33 of the Code of Civil Procedure

I. Introduction:

Restitution of conjugal rights has traditionally been conceived as a matrimonial remedy to preserve marriage by directing a spouse who has withdrawn without reasonable excuse to resume cohabitation. Section 9 of the Hindu Marriage Act, 1955 empowers the court to grant such a decree. However, its enforcement is inherently limited. Since personal cohabitation cannot be compelled, Indian law prohibits physical or coercive enforcement. Accordingly, Order XXI Rule 32 of the Code of Civil Procedure, 1908 permits execution primarily through attachment of the judgment-debtor's property, while Rule 33 authorizes the award of periodical monetary payments. Judicial interpretation of these provisions reflects a balance between enforcing matrimonial obligations and safeguarding individual dignity, privacy and personal autonomy.

II. Nature of a Decree for Restitution of Conjugal Rights

The leading authority is ***Smt. Saroj Rani vs. Sudarshan Kumar Chadha, AIR 1984 SC 1562***, in which the Hon'ble Supreme Court upheld the constitutional validity of Section 9 of the Hindu Marriage Act, 1955. The Court held that the object of a decree for restitution of conjugal rights is not coercion but reconciliation, with the aim of preserving the marital

relationship by encouraging spouses to resume cohabitation. It rejected the argument that such a decree compels sexual relations, clarifying that it enforces only the legal obligation to cohabit and not sexual intercourse. Since the decree neither authorizes physical force nor permits invasion of personal liberty, the Court held that it does not violate constitutional guarantees of bodily autonomy or personal liberty. Thus, the decree creates only legal consequences for unjustified withdrawal from cohabitation, without enabling physical compulsion.

III. Execution under Order XXI Rule 32 CPC

Order XXI Rule 32 prescribes two essential preconditions before execution may be ordered:

- the judgment-debtor must have had an opportunity to comply with the decree; and
- failure to comply must be willful.

The expression "willful" has consistently been interpreted as deliberate and intentional disobedience rather than mere inability or reluctance. Thus, execution is unavailable where non-compliance is attributable to circumstances beyond the judgment-debtor's control.

A. Attachment of Property as the Sole Coercive Measure

The most significant aspect of Rule 32 is that attachment of property constitutes the only statutory coercive sanction. Unlike decrees for specific performance or injunctions, civil imprisonment is expressly excluded.

The Hon’ble Supreme Court in **Saroj Rani** emphasized this distinction, observing that parliament deliberately omitted detention in civil prison for

decrees of restitution of conjugal rights. Consequently, personal liberty remains unaffected even in cases of persistent disobedience.

This statutory design reinforces the constitutional principle that marital cohabitation cannot be compelled through physical coercion.

IV. Judicial Discretion in Execution Proceedings

An important feature of Rule 32 is the legislature's use of the word "may".

In ***Pedapudi Nookaratnam vs. Pedapudi Venkata Suryanarayana 1948(2) MLJ 372, AIR 1949 MADRAS 374***, the Hon'ble Madras High Court held that the provision confers judicial discretion rather than imposing a mandatory duty to order attachment in every case. Even where willful disobedience is established, the court must consider whether attachment would serve any useful purpose in the peculiar circumstances of the matrimonial relationship.

The discretionary nature of execution is consistent with the equitable character of matrimonial jurisdiction. Courts are expected to assess the conduct of both spouses, bonafides of the decree-holder, possibility of reconciliation, proportionality of coercive measures and overall interests of justice.

This flexible approach prevents mechanical execution of matrimonial decrees.

V. Order XXI Rule 33: Periodical Payments as an Alternative Remedy

Rule 33 provides an important yet relatively under-utilized mechanism. Where execution by attachment would be ineffective, the court may direct the

judgment-debtor to make periodical monetary payments for satisfaction of the decree.

The Hon'ble Gujarat High Court in ***Mukeshkumar Ishwarlal Bhatt vs. Kailashben Mukeshkumar Bhatt 2011 AIR (Guj) 40*** upheld an order directing payment of Rs.6,000/- per month in addition to permanent alimony awarded under Section 25 of the Hindu Marriage Act. The Court held that Rule 33 constitutes an independent statutory mode of execution and may operate concurrently with maintenance orders.

The significance of Rule 33 lies in its practical utility. Since attachment of property often fails to induce reconciliation, monetary compensation may better address the consequences suffered by the decree-holder.

VI. Interaction with Divorce under Section 13(1A)

The most significant consequence of a decree for restitution of conjugal rights lies not in its execution but in its relationship with Section 13(1A)(ii) of the Hindu Marriage Act.

Where there has been no restitution of conjugal rights for one year after the decree, either spouse may seek divorce.

The Hon'ble Supreme Court in ***Dharmendra Kumar vs. Usha Kumar AIR 1977 SUPREME COURT 2218*****,** clarified that failure to comply with the decree itself constitutes a statutory ground for dissolution and Section 23(1)(a) does not automatically bar relief merely because the petitioner was responsible for non-compliance.

The decree thus performs a dual function - it provides an opportunity for reconciliation and failing reconciliation, it becomes evidence of irretrievable matrimonial breakdown recognized by statute.

VII. Sequencing of Execution and Divorce Proceedings

The Hon'ble Allahabad High Court in ***Kiran @ Karuna vs. Raj Kumar FIRST APPEAL No.32 of 2010 Dt:01-12-2017*** examined the situation where execution proceedings and a divorce petition remain pending simultaneously.

The Court held that execution proceedings ought ordinarily to be decided before adjudicating the divorce petition because the execution court must first determine whether non-compliance was deliberate and whether Rule 33 relief should be granted.

This approach promotes procedural fairness by ensuring that the conduct of the parties is judicially evaluated before dissolution of marriage is considered.

VIII. "Taking Advantage of One's Own Wrong"

Section 23(1)(a) embodies the equitable doctrine that a litigant should not benefit from his own misconduct.

Several High Courts have examined whether a spouse obtaining a decree for restitution merely to create a future ground for divorce can invoke Section 13(1A).

The judicial approach focuses upon bonafides. Courts examine whether execution was genuinely pursued, whether the decree-holder facilitated compliance, whether the defaulting spouse was prevented from returning and whether the restitution proceedings were instituted merely as a strategy for obtaining divorce.

Thus, while Section 13(1A) creates a statutory ground for divorce, Section 23 continues to operate as an equitable safeguard against abuse of process.

IX. Critical Evaluation

The jurisprudence governing execution of restitution decrees reveals three important policy considerations.

1. Respect for Personal Autonomy

Modern constitutional jurisprudence increasingly recognizes privacy, dignity and bodily autonomy under Article 21.

The limitation of execution to attachment of property demonstrates judicial recognition that cohabitation cannot be compelled through State coercion. This interpretation harmonizes matrimonial law with constitutional values.

2. Practical Ineffectiveness

Although attachment of property remains theoretically available, it rarely results in restoration of matrimonial life. In practice, execution proceedings frequently become procedural steps preceding divorce litigation.

Consequently, the remedy has increasingly assumed symbolic rather than practical significance.

3. Continuing Relevance after Constitutional Developments

Following decisions such as ***Justice K.S.Puttaswamy v. Union of India AIR 2017 SC 4161*** and ***Joseph Shine v. Union of India AIR 2018 SUPREME COURT 4898*****,** academic debate has intensified regarding the constitutional validity of restitution of conjugal rights.

While **Saroj Rani** continues to remain binding precedent, future constitutional scrutiny may revisit whether compulsory judicial directions to resume cohabitation remain compatible with contemporary notions of decisional autonomy and marital privacy.

X. Conclusion

The law governing execution of decrees for restitution of conjugal rights reflects a carefully calibrated balance between preserving marriage and protecting individual liberty. The Hon'ble Supreme Court has consistently held that such decrees cannot be physically enforced; attachment of property remains the only coercive sanction under Order XXI Rule 32, while Rule 33 empowers courts to award periodical payments where appropriate. Willful disobedience is an indispensable precondition, and execution always remains discretionary.

The real significance of the decree lies less in its execution than in its evidentiary and statutory consequences. It offers spouses an opportunity for reconciliation while simultaneously serving as the foundation for divorce under Section 13(1A) if reconciliation fails. Judicial interpretation has ensured that execution proceedings do not become instruments of oppression but remain mechanisms promoting fairness, reconciliation and orderly dissolution where the marriage has irretrievably failed.

Viewed in its entirety, the jurisprudence surrounding Order XXI Rules 32 and 33 of CPC demonstrates that Indian matrimonial law seeks not to compel marital companionship but to encourage voluntary restoration of the marital relationship while respecting constitutional guarantees of dignity, privacy and personal autonomy.

****

Executing Court's Power to Extend Time for Deposit of Balance Sale Consideration under Section 28 of the Specific Relief Act, 1963

I. Introduction

A decree for specific performance differs fundamentally from an ordinary money decree. It is an equitable decree compelling performance of contractual obligations relating to immovable property. Since execution of the sale deed necessarily involves reciprocal obligations of both parties, parliament enacted Section 28 of the Specific Relief Act to preserve the jurisdiction of the court even after the decree has been passed.

The provision recognizes that the court does not become *functus officio* immediately upon pronouncement of the decree. Rather, it continues to supervise implementation of the decree until conveyance is completed or the decree is rescinded. This continuing jurisdiction forms the foundation of the executing court's power to enlarge time for payment of the balance sale consideration.

The controversy, however, lies in determining the circumstances in which such discretion ought to be exercised.

II. Statutory Scheme of Section 28

Section 28 confers two distinct powers upon the court passing the decree:

1. to extend the time fixed for payment of the balance consideration; and
2. to rescind the contract or decree upon default by the purchaser.

Unlike ordinary execution proceedings, the decree remains under the control of the court because specific performance is regarded as a preliminary decree in substance rather than a completely exhausted adjudication.

The statutory object is equitable. It seeks to balance the rights of both vendor and purchaser while ensuring that neither party derives an unfair advantage from procedural defaults.

III. Nature of a Decree for Specific Performance

One of the settled principles repeatedly affirmed by the Hon'ble Supreme Court is that a decree for specific performance is **a continuing decree**.

In ***Hungerford Investment Trust Ltd. vs. Haridas Mundhra 1972 AIR 1826***, the Hon'ble Supreme Court recognized that the suit remains pending even after the decree until the conveyance is completed. Consequently, the court retains supervisory jurisdiction over its implementation.

The recent judgment in ***Habban Shah vs. Sheruddin 2026 in SC 451*** reiterates this doctrine, observing that the court retains complete control over the decree until execution of the sale deed or rescission of the contract.

This principle has significant consequences, the court may entertain applications relating to deposit, the court may enlarge time, the court may rescind the decree and the court may mould equitable relief according to subsequent developments.

Thus, the decree remains dynamic rather than static.

IV. Extension of Time under Section 28

Section 28 does not confer an unrestricted power. The provision becomes relevant only where the decree prescribes a time for payment and sufficient grounds exist for extension.

Where the decree contains no stipulation regarding time for deposit, several High Courts have held that Section 28 may not strictly apply because there is no period requiring extension. Instead, the court may exercise its inherent equitable jurisdiction while supervising execution.

The distinction between decrees containing express timelines and those remaining silent assumes considerable practical importance.

V. The Supreme Court in *Habban Shah vs. Sheruddin* (2026)

The latest Hon'ble Supreme Court pronouncement considerably clarifies the law, the Court held that where the decree specifically requires payment within a stipulated period, two obligations arise simultaneously the decree-holder must deposit the balance consideration within time and if unable to do so, the decree-holder must seek extension from the same court before expiry or within a reasonable period.

Failure to do either may render the decree in-executable. There is **no automatic enlargement of time** merely because execution proceedings remain pending.

The judgment marks an important development because earlier decisions had occasionally adopted a liberal approach towards delayed deposits.

VI. Is Extension of Time Automatic?

The answer emerging from judicial precedent is emphatically **No**. The power under Section 28 is discretionary.

The court considers several equitable factors, including readiness and willingness of the decree-holder, explanation for delay, conduct of the parties, prejudice to the judgment-debtor and overall interests of justice.

Thus, extension cannot be claimed as a matter of right.

VII. Importance of the Decree Holder's Conduct

The equitable nature of specific performance means that conduct assumes paramount importance.

The Hon'ble Supreme Court has repeatedly observed that "he who seeks equity must do equity."

Where the decree-holder remains inactive for years without depositing the balance consideration or seeking extension, the court is justified in refusing further relief.

Conversely, where delay is satisfactorily explained and bonafides are evident, the court may enlarge time even after expiry of the period originally fixed.

This reflects the fundamental principle that equitable jurisdiction is exercised to prevent injustice rather than reward negligence.

VIII. Whether an Application for Rescission is Mandatory

Earlier decisions occasionally suggested that unless the judgment-debtor seeks rescission, the decree continues indefinitely.

The recent Hon'ble Supreme Court decision in ***Habban Shah*** qualifies this proposition.

The Court held that filing of an application for rescission under Section 28 is **not mandatory**. Even in the absence of such an application, the court is competent to hold that the decree has become in-executable owing to the decree-holder's failure to comply with the essential conditions of the decree.

This represents a significant clarification because it prevents decree-holders from indefinitely keeping decrees alive through inaction.

IX. Contrary Liberal Approach

Notwithstanding the stricter approach adopted in ***Habban Shah***, several decisions continue to emphasize that delay alone does not extinguish the decree.

The Hon'ble Supreme Court in ***Ram Lal vs. Jarnail Singh CIVIL APPEAL NO.3245 of 2025 (Petition for Special Leave to Appeal (C) No.5638/2023) (2025)*** recognized that mere delay does not amount to abandonment, absence of rescission proceedings remains relevant and courts retain equitable discretion to permit delayed deposits.

Similarly, the Karnataka High Court has held that delay, by itself, should not defeat substantive justice where the purchaser continues to demonstrate readiness and willingness.

These authorities indicate that the law is evolving towards a balanced approach rather than rigid forfeiture.

X. Power of the Executing Court

The executing court is not a mere ministerial authority. It possesses jurisdiction to examine whether deposit was made in accordance with the decree, whether delay has been satisfactorily explained, whether the decree-holder remained ready and willing and whether equitable relief deserves to be granted.

In ***Radhey Shyam vs. Harendra Pal Rathi***, Allahabad High Court, decided on 26 May 2015; reported as ***AIR 2015 All 180*** and ***2015 SCC Online All 1588*** refusal to accept a deposit made after four years without any

explanation was upheld. The Court observed that supervisory jurisdiction should not interfere with the executing court's exercise of discretion unless it is arbitrary or perverse.

Thus, execution involves substantial judicial evaluation rather than mechanical enforcement.

XI. Circumstances Rendering the Decree In-executable

The recent jurisprudence suggests that a decree may become in-executable where the decree prescribes a definite period for payment, the purchaser neither deposits the amount nor seeks extension, no explanation for delay is offered and the conduct demonstrates abandonment or negligence.

However, executability survives where the decree fixes no time for payment, extension is sought with bonafide explanation, rescission has not been ordered and delay is not attributable to the decree-holder alone.

This nuanced approach preserves equitable flexibility while discouraging indolence.

XII. Critical Evaluation

The recent judicial developments reveal an attempt to reconcile two competing objectives.

(A) Finality of Litigation

The stricter approach adopted in ***Habban Shah*** promotes certainty and prevents indefinite continuation of decrees.

Parties cannot remain passive while expecting courts to preserve equitable relief indefinitely.

(B) Preservation of Equitable Jurisdiction

At the same time, rigid adherence to timelines may defeat genuine contractual expectations.

Specific performance remains an equitable remedy.

Minor procedural delays should not automatically extinguish substantive rights where no prejudice is caused.

(C) Emerging Judicial Trend

The modern trend appears to favour a middle path.

The court retains jurisdiction throughout execution.

However, exercise of discretion increasingly depends upon promptness, diligence, bonafides, readiness and willingness and absence of prejudice.

The burden lies squarely upon the decree-holder seeking indulgence.

XIII. Conclusion

The jurisprudence under Section 28 of the Specific Relief Act establishes that the executing court possesses continuing jurisdiction to supervise implementation of decrees for specific performance because such decrees are preliminary in nature. Nevertheless, extension of time for deposit of the balance consideration is not automatic. It is an equitable, discretionary power conditioned upon the conduct of the decree-holder and the circumstances of each case.

The recent decision in ***Habban Shah vs. Sheruddin (2026)*** represents an important refinement of the law by insisting that decree-holders must act diligently and seek extension within a reasonable time. Simultaneously, authorities such as ***Ram Lal vs. Jarnail Singh (2025)*** preserve the equitable

flexibility inherent in Section 28 by recognizing that delay alone does not necessarily extinguish the decree.

The emerging legal position therefore strikes an appropriate balance between procedural discipline and equitable justice. Courts are expected neither to condone indifference nor to deny substantive relief merely because of technical defaults. Instead, judicial discretion under Section 28 continues to operate as an instrument for achieving fairness in the enforcement of contracts relating to immovable property.

***