

Questions/problems faced by Judicial Officers regarding NI Act Matters and Execution Cases.

I. FACTORS RESPONSIBLE FOR DELAY IN DISPOSAL OF TRIALS UNDER THE NI ACT:-

1. Non-service of process on the accused in the case.

A) The recent **Rajasthan Electronic Processes (Issuance, Service, and Execution) Rules, 2024**, notified on August 16, 2024, are designed to address several challenges that contribute to delays in the disposal of trials under the Negotiable Instruments (NI) Act, particularly the issue of **non-service of process on the accused**. This problem often leads to unnecessary adjournments and prolongs the trial process. The new rules, along with relevant provisions and additional recommendations, provide a comprehensive approach to streamline the service of processes in NI Act cases.

- i. **Electronic Issuance and Service of Processes:** The rules mandate that courts can generate and issue processes, such as summons and warrants, electronically through systems like the Case Information System (CIS) and National Service and Tracking of Electronic Processes (NSTEP). These processes will be served via secured electronic communication methods, including email, messaging applications, and other digital platforms.
- ii. Under Rule 7, in cases filed on the basis of a private complaint, such as those under the NI Act, the complainant is required to provide the address, recognized electronic mail address, phone number, and messaging application details of the accused and witnesses, if known. If the complainant lacks this information, they must make an endorsement to that effect. Additionally, police officers are responsible for collecting verified contact information (including email addresses and phone numbers) of the accused, complainants, and witnesses during the investigation or arrest. This information is then recorded in the CCTNS and CIS systems and utilized for issuing electronic processes.
- iii. The presumption of service is addressed under **Rule 11**. Rule 11 establishes that when electronic processes are generated and served through secure systems, such as CCTNS, they are presumed to be validly issued by the court unless proven otherwise. This presumption

reduces the likelihood of disputes over whether a summons was properly served, thereby helping to prevent delays caused by contested service.

- iv. **Rules 14 and 15** provide clear procedures for cases where electronic service fails, such as when an email bounces back. In such cases, the Officer In-charge must prepare a report and proceed with alternative methods of service, including physical service if necessary.

B) Bank Account and Email ID of Accused to be Provided by Complainant :In every complaint under Section 138 of the NI Act, it is advisable for the complainant to provide their bank account number and, if possible, the email ID of the accused. If the accused's email ID is available with the bank, the bank should furnish this information to the payee of the cheque upon request. This recommendation is based on the precedent set in *Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560*.

C) Issuance of Summons: Summons should be properly addressed and sent by both post and email, using the addresses provided by the complainant. Courts may also seek the assistance of the police or nearby courts to serve the summons on the accused. A short date for appearance should be fixed, and if the summons is returned unserved, immediate follow-up action should be taken. This approach is supported by the ruling in *Indian Bank Assn. v. Union of India (2014) 5 SCC 590*.

D) Deemed Service of Summons: When multiple complaints under Section 138 of the NI Act arise from the same transaction, the service of summons in one complaint should be deemed as service in all related complaints filed before the same court. This principle was established in *In Re: Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325*.

These are some of the practices that can be adopted by courts handling NI Act cases to effectively address the issue of non-service of process on the accused. By implementing these measures, courts can significantly reduce delays, streamline the trial process, and ensure a more efficient and timely resolution of cases under the NI Act.

2. Repeated non-appearance of the accused in the court, resulting in forfeiture of his bail-bonds

A) When an accused fails to appear in court on a scheduled hearing date, the court must follow the procedure prescribed in the Code of Criminal Procedure, 1973 or Bhartiya Nagrik Suraksha Sanhita (BNSS 2023). In such instances, the court has the authority to forfeit the bail bonds and

initiate legal proceedings against both the accused and the surety who furnished the bail. If the non-appearance is deliberate and prolonged, the court should adopt a stricter approach when considering future bail applications. In such cases, a firm order should be passed, citing the accused's previous conduct, which demonstrated a clear intention to frustrate the trial process and cause unnecessary delay to the detriment of the complainant.

- B) Concurrently, proceedings under Section 446 of the CrPC must be initiated and handled diligently, not as a mere formality. If the accused later appears before the court and requests the withdrawal of these proceedings, the court should impose a reasonable penalty to serve as a deterrent and set a strong example.
- C) It is often observed that accused persons deliberately forfeit bail as a tactic to delay proceedings, expecting the court to issue multiple arrest warrants over an extended period before finally initiating proceedings under Sections 82 and 83 of the CrPC. This strategy can buy the accused valuable time, often years. To counter this, the court should avoid granting unnecessary leniency. Proceedings under Sections 82 and 83 CrPC should be initiated promptly, to prevent such deliberate delays and ensure the timely administration of justice.

3. Filing of frivolous applications by the parties.

- A) To effectively address the common issue of delay tactics in Negotiable Instruments (NI) cases, where the accused often files frivolous applications, a practical courtroom management approach is essential. While filing applications is a right of the counsel, courts have the authority to decide them, and this balance must be tactically managed to minimize delays.
- B) Few suggestions for Courts:
 - i. **Immediate Disposal of Applications:** The primary intent behind frivolous applications is to waste time. Courts should aim to hear and dispose of such applications on the same day, preventing unnecessary adjournments and frustrating delay tactics.
 - ii. **Recording Findings in Orders:** When a court determines that an application is filed solely to delay proceedings, this finding should be explicitly recorded in the order. Such a clear acknowledgment of misuse discourages future baseless applications.

iii. **Imposing Substantial Costs:** Merely rejecting a frivolous application may not be sufficient. The application should be either rejected or accepted with costs, depending on its merits. The key is that the cost imposed must be substantial and proportionate to the objective behind the application, rather than a token amount. This financial deterrent will discourage future frivolous filings and help minimize unnecessary delays. Courts should impose significant costs to protect judicial time and deter meritless petitions. Courts dealing in NI Act Cases can adopt a similar approach by setting strict timelines for trial completion and penalizing repeated frivolous applications with substantial costs.

By adopting these measures—swiftly dealing with applications, recording abuse of proceedings by parties in the orders, and imposing meaningful costs—courts can deter delay tactics, streamline the trial process, and ensure that justice is not unduly delayed.

4. Seeking regular adjournments for arguments on miscellaneous applications.

A) The issue of seeking regular adjournments for arguments on miscellaneous applications is not a legal problem but rather a matter of courtroom management and tact. To address this, a practical rule should be established: whenever an application is filed during the trial, it must be decided either on the same day or by the next working day. Applications filed during the trial are generally those under Sections 45 and 65 of the Evidence Act or Sections 91, 311, 319, and 219 of the Code of Criminal Procedure (CrPC). The law governing these provisions has been clearly settled by the Hon'ble Supreme Court and various the High Courts in numerous cases. Since there is little complexity involved, these applications can and should be decided promptly.

B) The key is to cultivate a mindset that such applications must be disposed of either on the same day or the next, without unnecessary delay. Courts should also adopt a stricter stance regarding adjournments for arguments on these applications. In many cases, the accused submits a written application, while the complainant responds orally to save time. In such situations, the presiding officer should insist that counsel for the accused argue the application on the same day it is filed. Although courts have the discretion to grant adjournments, they must remain mindful of the time limits prescribed for trial proceedings, particularly in cases involving

Negotiable Instruments, where the trial should ideally be concluded within six months. Delays that lead to exceeding this time frame should be avoided at all costs.

5. Non-rotation of matters due to high pendency.

A) This is a common challenge faced by NI (Negotiable Instruments) Courts. It is observed that in nearly 84% of cases, the proceedings are stalled at the stage of the accused's appearance, with only 16% of cases moving forward where the accused is regularly appearing and the trial is progressing. These 16% cases are the ones that require the court's focused attention.

B) To manage this effectively, courts can prioritize and streamline their case management. The 16% of cases where the trial is ongoing can be rotated efficiently, ensuring steady progress. For the remaining 84% of cases, which are pending due to the non-appearance of the accused, procedural directions can be given to the court reader right at the beginning of the day. This would allow those files to be managed within the first hour of court proceedings, leaving ample time and attention for cases where trials are actively proceeding. Ultimately, this is not a legal issue but a matter of efficient court, file, and docket management. By optimizing how cases are handled at different stages, courts can balance their workload and ensure that trials progress without unnecessary delays.

6. Insufficient staff to ensure compliance of order-sheets.

A) This is not a legal issue but rather a structural one. Upon closer observation, in cases related to Negotiable Instruments (NI), the primary task assigned to the court clerk is limited to issuing either Bailable Warrants or Non-Bailable Arrest Warrants for the accused. Since witnesses in NI matters are brought by the parties themselves, the clerk is not burdened with the responsibility of issuing summons or warrants for witnesses. Thus, the workload for the criminal clerk in such cases is largely confined to the issuance of warrants, which is not an overwhelming task.

B) To further streamline this process, the integration of CIS and computers and AI should be considered for managing these tasks. Using electronic systems to issue warrants would be faster, more efficient, and significantly reduce manual effort. The adoption of such technologies would also improve overall case management and expedite proceedings in NI matters.

7. Unavailability of the correct address of the accused.

A) In Negotiable Instruments (NI) Courts, it is often observed that many complaints remain pending solely because the complainant's counsel does not have the correct address of the accused. However, this issue is not the court's responsibility but rather that of the complainant. It is crucial to remember that India follows an adversarial form of the judicial system, not an inquisitorial one. In an adversarial system, it is the responsibility of the parties to present the facts and evidence before the court, and the court adjudicates the dispute based on the evidence brought forth by the parties. It is the duty of the Complainant to pursue the correct address of the accused otherwise the consequences as per law shall be follow.

8. Repeated, non-appearance of the complainant in the Court despite clear directions of the Court in this regard.

A) In complaint cases under the Negotiable Instruments (NI) Act, it is typically the complainant who is eager and prepared to move the proceedings forward. However, there are instances where the complainant themselves becomes the cause of delays. This is more commonly observed in cases involving juristic entities, such as companies or societies, where the complainant is not an individual but an artificial legal person.

B) When a complaint is filed by a natural person, they are usually ready and willing to actively participate in court proceedings and are present for all hearings. However, in cases involving juristic entities like companies, societies, banks, Non-Banking Financial Companies (NBFCs), or other financial institutions, delays are more likely to occur. This happens because these organizations operate through natural persons, such as employees, who often have multiple responsibilities beyond appearing in court. In some cases, these individuals may be transferred, forcing the company or society to initiate the process of changing the power of attorney holder by filing an application under Section 302 of the CrPC. At times, the appointed power of attorney holder may not act in the best interest of the organization, pursuing their own agenda instead.

C) In such situations, courts should exercise their powers under the CrPC/ BNSS with firmness and ensure that complainants are held to the same standard of diligence as accused. Courts should grant only reasonable opportunities to the complainant to comply with proceedings. If the complainant fails to appear or delays the process unnecessarily, the court should invoke the provisions of Section 256 of the CrPC, either dismissing

the complaint for non-appearance or moving forward by closing the complainant's evidence and advancing the case to the next stage.

By adopting these approaches, courts can ensure greater accountability on the part of complainants, reducing the likelihood of disobedience to court orders and preventing unnecessary delays in the administration of justice.

9. Advocate of the complainants seeking repeated adjournments for filing of affidavit for evidence.

A) This issue closely mirrors the one discussed earlier. While advocates may request adjournments, it is ultimately the court that grants them. Often, advocates seek adjournments on flimsy grounds, but what is more concerning is the casual and callous manner in which courts frequently grant these requests. This practice stands in stark contrast to the principles outlined in the CrPC and the law laid down by the Hon'ble Supreme Court.

B) Whenever an adjournment is requested, the court must rigorously examine the grounds presented and should only grant the adjournment there are sufficient ground to do so. While Section 309 grants the court the power to adjourn proceedings, it also stipulates that such adjournments should, where appropriate, be granted with costs. Imposing costs as a general rule when granting adjournments could effectively curtail this practice and deter unnecessary delays.

Under Section 346 of BNSS, 2023 it is provided that inter alia that “there the circumstances are beyond the control of a party, not more than two adjournments may be granted nu the Court, after hearing the objections of the other party and for the reasons to be recorded in writing.

C) Regarding adjournments for filing affidavits, it is crucial to highlight the ruling in the *Indian Bank Association Case (2014) 5 SCC 590.*, where the Supreme Court clearly held that there is no need to file a separate affidavit for the oral examination-in-chief of the complainant at the stage of evidence. The affidavit submitted at the time of filing the complaint is sufficient for the purpose of evidence. Consequently, there is no need to require the complainant to file an additional affidavit for evidence, which can save significant court time. Strict adherence to this judgment is essential to prevent unnecessary delays and ensure efficient case management.

10. Filing of transfer applications by the parties and delay in disposal of such transfer applications results in the delay in disposal of such matters.

- A) This practice now a days is quite prevalent. It is often observed that when a court attempts to advance proceedings, accused, in an effort to delay and obstruct the trial, files a transfer petition under Section 408 of the CrPC before the Court of Session, and sometimes simultaneously before the court handling the matter.
- B) In such situations, it is important to note two key points. Firstly, if a transfer application is filed before the court that is trying the matter, it is clearly not maintainable. The accused cannot seek the relief of transferring his case from a Court of Judicial Magistrate. According to the CrPC, only the **Court of Sessions** has the authority to transfer a case from one criminal court to another. Therefore, if such an application is filed before the trial court, it should be summarily rejected as not maintainable.
- C) Secondly, the general principle is that the trial court should not stay its proceedings merely because a transfer petition has been filed before the Court of Session. Simply filing a transfer application is not sufficient reason for halting the proceedings. It would be prudent to grant the accused a single opportunity to produce an order from the superior court staying the proceedings of the trial court. However, if the accused fails to produce such an order by the next hearing date, for any reason, the trial court should proceed with the matter and continue toward the disposal of the case.

This approach ensures that the proceedings are not unnecessarily delayed and that justice is not hindered by frivolous applications.

11. Stay of proceedings by the Appellate Court throughout the duration of the pendency of the appeal

- A) It is generally seen that appellate court is very careful of the fact as not to stay the proceedings of a trial court in a casual manner. However, if somehow an appellate court stays the proceeding of a trial court, then the trial court must not proceed with the file, owing to the stay order of the superior court.

12. Settlement between the parties with regards to payment of the cheque amount in several installment often results delay in disposal of the matter.

- A) In cases involving Negotiable Instruments, it is often observed that parties enter into a settlement agreement, where the accused agrees to pay the settled amount in installments. For instance, an amount of Rs. 25 lakhs

might be agreed upon to be paid in installments of Rs. 1 lakh each. This practice can lead to the disposal of the case after an extended period, sometimes two years, even though the prescribed time limit for the disposal of such cases is only six months. This, too, is contingent upon the accused making the payments regularly without default. With regard to such practices, several points need to be emphasized:

- i. **Non-Compliance with CrPC:** Such a practice is not in accordance with the provisions of the CrPC. Courts must adhere strictly to the procedure prescribed for Summons Cases and Summary Trials as outlined in the CrPC. There is no provision in the CrPC that allows for the court to await payment in installments over a prolonged period while holding off on proceedings.
- ii. **Compoundable Offense under Section 147 of the NI Act:** As per Section 147 of the NI Act, the offense is compoundable. This means that if a compromise is presented under Section 320 of the CrPC, or if the complainant withdraws the complaint under Section 256 of the CrPC, the court can dispose of the case based on that compromise. However, this does not imply that the court should halt proceedings to give the parties time to fulfill a settlement agreement involving installment payments.

By adhering to these principles, courts can ensure that proceedings are conducted efficiently and in accordance with the law, without unnecessary delays caused by conditional or installment-based settlements.

13. Refusal on behalf of the complainant to settle the matter despite repeated requests by the accused, as the complainant is only interested in ensuring corporal punishment for the accused

- A) The offense under **Section 138 of the Negotiable Instruments Act, 1881** is punishable by imprisonment of up to two years and/or a fine of double the cheque amount. The plain reading of the statute makes it clear that the legislature's intent is for those dealing with negotiable instruments to do so seriously, and for those guilty of cheque dishonor to face appropriate punishment, including imprisonment, if deserved.
- B) When a complainant files a complaint under Section 138, they are specifically seeking such punishment. It is incorrect to assume that the sole objective of the proceedings is the recovery of the money, and that once the

money is recovered, the accused should not be subject to corporal punishment. If a complainant seeks to punish the accused for dishonor of a cheque, they are fully within their rights to do so under the law.

C) It is often observed, however, that after years of trial proceedings, the accused may move an application expressing a willingness to settle the matter by paying the cheque amount and may even seek permission to deposit the amount in court. The accused may present this action as a show of sincerity and goodwill. However, this is often a belated and unwarranted gesture. The Supreme Court has consistently held that if the accused's intentions were genuine, they could have made such an offer at the very first hearing. After years of litigation, the accused has no right to force a compromise on the complainant and expect the case to be settled merely on the basis of the cheque amount.

D) In the recent case of **Raj Reddy Kallem v. State of Haryana & Others, Criminal Appeal No. 2210 of 2024**, the Hon'ble Supreme Court reiterated that courts cannot compel a complainant in a cheque dishonor case to consent to a compromise simply because the accused has compensated them. The Court further emphasized that, while the accused may seek compounding at any stage of the proceedings, including after conviction, it is preferable for such offers to be made at the initial stages. Nonetheless, there is no legal bar to compounding later in the trial.

Therefore, courts must not compel or coerce the complainant to accept a settlement proposal initiated by the accused. If the complainant does not consent to a settlement, the case must proceed to be decided on its merits, based on the evidence presented.

14. Non-payment of process fees for issuance of process by the complainant.

A) The above issue is squarely covered by Section 204 of CrPC. As per Section 204 of CrPC, the process would be issued to the accused, only in the case when the process fees for the same is paid or submitted by the complainant. If the process fees for the issuance of the process is not paid or deposited by the complainant, then the complaint could be dismissed under Section 204 of CrPC for the non-payment of the same.

15. Issues related to admissibility of electronic evidence-

A) Where the parties do not furnish a certificate under Section 65B of the Indian Evidence Act.

- i. In cases where parties do not furnish a certificate under Section 65B(4) of the Indian Evidence Act, the Supreme Court has made it clear that the requirement of such a certificate is **mandatory** for the admissibility of electronic records. This position was first laid down in *Anvar P.V. v. P.K. Basheer* [(2014) 10 SCC 473] and was later reaffirmed in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* [2020 SCC OnLine SC 571]. According to these rulings, the certificate is a **condition precedent** for admitting any electronic evidence unless the original electronic device is produced in court as primary evidence. If the original device (such as a computer or mobile phone) is produced, the certificate requirement under Section 65B(4) does not apply, and the owner or operator of the device may directly testify to the content stored on the device.
- ii. In situations where the certificate cannot be produced because the party does not have control over the device, the electronic evidence becomes **inadmissible** unless steps are taken to remedy this. The party can request the court to issue a direction to the third party in possession of the device to provide the certificate under Section 165 of the Evidence Act, Section 91 of the CrPC. The courts have the discretion to intervene in such cases to ensure that the certificate is produced, as emphasized in *Arjun Panditrao Khotkar*.
- iii. Thus, while the certificate under Section 65B(4) is mandatory for the admissibility of secondary electronic evidence, mechanisms exist within the legal framework to address circumstances where the certificate cannot be procured, ensuring a fair and just evidentiary process. The key judgments providing guidance on this matter are *Anvar P.V. v. P.K. Basheer* [(2014) 10 SCC 473] and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* [2020 SCC OnLine SC 571].

B) Whether notice of the dishonour of cheque served on the accused via whatsapp resulting in blue ticks would amount to service of process on accused.

- i. Service of notice through WhatsApp, resulting in blue ticks (indicating the message was delivered and read), can be considered valid for service of notice under certain circumstances.

I. **Section 94 of the Negotiable Instruments Act** outlines the mode in which a notice of dishonour may be given but does not prescribe a

specific method for its delivery. The section allows for the notice to be given either orally or in writing, and if written, it may be sent by post or in any form. The critical requirement is that the notice must inform the party that the cheque has been dishonoured, explain how the dishonour occurred, and convey that the party will be held liable. The key point is that the section emphasizes that the party must be made aware of the dishonour, rather than mandating a specific mode of communication. What matters is the delivery of the notice, not the medium through which it is given. Therefore, as long as the party is informed within a reasonable time, the mode of delivery is flexible.

ii. The Supreme Court and various High Courts have increasingly recognized the service of legal notices via electronic modes such as WhatsApp, email, and other instant messaging services. This shift in approach is largely due to the challenges posed by physical service of notices, especially during the COVID-19 pandemic.

I. The *Hon'ble Supreme Court* in *Suo Motu Writ (Civil) No. 3 of 2020* (In Re: Cognizance for Extension of Limitation) order dated 10/07/2020 recognized the service of notices through email, FAX, WhatsApp, Telegram, and Signal. It directed that service of legal documents via instant messaging apps was valid, provided the same document was also served by email on the same day to ensure authenticity and reliability. This decision addressed the practical difficulties of serving legal notices during the pandemic lockdown and laid the foundation for broader acceptance of electronic service in Indian courts.

II. Several High Court judgments have also upheld the validity of service via WhatsApp:

I. **Tata Sons Ltd & Ors v. John Doe** (CS (Comm.) 1601/2016, Delhi High Court): Judge Rajiv Sahai Endlaw permitted service of summons through WhatsApp, SMS, and email in a defamation action. The order acknowledged the use of electronic means for serving notices, especially when traditional methods failed.

II. Recently, in a notable ruling *Rajendra vs. State of U.P. and Another* [APPLICATION U/S 482 No. - 45953 of 2023], dt.

25/01/2024 Hon'ble **Allahabad High Court** has held that a demand notice sent to the drawer of a cheque via email or WhatsApp, under Section 138 of the Negotiable Instruments Act, is considered a valid notice for the dishonour of a cheque. The Court further clarified that such a notice will be deemed dispatched and served on the same date, provided it meets the requirements of Section 13 of the Information Technology Act. This decision affirms that digital communication methods can serve as legitimate means for delivering legal notices under Section 138.

III. The evolving legal landscape generally supports the use of electronic modes, including WhatsApp, provided that procedural safeguards, such as simultaneous email delivery, are adhered to. Thus, if the notice of dishonour was served on the accused via WhatsApp, and blue ticks were shown, this would likely be treated as valid service, provided it is supplemented by email and meets the conditions outlined in judicial precedents.

iii. In addition to the above judgments, an analogy can be drawn from the amendments to the General Rule (Civil & Criminal), 2018, made in 2020:

I. **Criminal (Part III, Order 31):** Rule 12(a) was amended to allow the service of summons on witnesses by fax, email, SMS, or any other electronic mode, including mobile applications. Such service is considered sufficient under the amended rules.

16. The matters are often referred to the mediation center for mediation between the parties, however the parties do not appear before the mediator which results in delay in the disposal of the matter.

A) It is commonly observed that courts dealing with cases under the Negotiable Instruments (NI) Act often refer matters to ADR (Alternative Dispute Resolution) centers for mediation. However, a strict reading of the Criminal Procedure Code (CrPC) and the NI Act reveals that neither law contains any explicit provision allowing for mediation in criminal cases. The Court Shall identify whether there exist any element of compromise or not.

Module for Execution in Civil Matters

Relevant Provisions for Execution and Enforcement:

- Sections 36 to 74, Sections 144, 146 & 148 Code of Civil Procedure and Order XXI.
- General Rules (Civil & Criminal), 2018:- Order 19 Rule 30, Order 20 Rule 42A, Order 20 Rule 65A, Order 20 Rule 65B, Order 20 Rule 65C, Order 20H Rule 77-82
- Articles: 125 to 129, 134 to 137 of Limitation Act

Noting the difficulties that can be faced in enforcing decree, the Supreme Court has issued directions in *Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors (2021) 6 SCC 418* for enforcement proceedings to be expedited. The mandatory directions are:

1. In suits relating to **delivery of possession**, a trial court must examine the parties to the suit under Order X CPC in relation to third party interest and further exercise the power under Order XI Rule 14 CPC asking parties to disclose and produce documents, upon oath including declaration pertaining to third party interest.
2. In appropriate cases, **where the possession is not in dispute and not a question of fact for adjudication**, the court may appoint commissioner to assess the accurate description and status of the property.
3. After **examination of parties under Order X CPC or production of documents under Order XI CPC or receipt of commission report**, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and make such joinder of cause of action in the same suit.
4. Under **Order XL Rule 1 CPC**, a **court receiver** can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.
5. The court must, before passing the decree, **pertaining to delivery of possession of a property** ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
6. In a **money suit**, the court must invariably resort to Order XXI Rule 11 CPC, ensuring immediate execution of decree for payment of money on oral application.

7. In a suit **for payment of money**, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may also demand security under Section 151 CPC to ensure satisfaction of any decree.
8. The court exercising jurisdiction under Section 47 or under Order XXI CPC, **must not issue notice on an application of third-party claiming rights in a mechanical manner**. Further, the Court should refrain from entertaining application(s) already 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.
9. The court should allow **taking of evidence** during the execution proceedings only **in exceptional and rare cases** where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
10. The court 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 CPC as well as grant compensatory costs in accordance with Section 35A CPC.
11. Under Section 60 CPC the term "*...in name of the judgment- debtor or by another person in trust for him or on his behalf*" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit, or property.
12. The executing court must **dispose of the execution proceedings within six months from the date of filing** which may be extended only by recording reasons in writing for such delay.
13. 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. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt with stringently in accordance with law.

***Limitation period for Execution of Decrees
as provided in Limitation Act (Sched.1)***

125.	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126.	For the payment of the amount of a decree by installments	Thirty days	The date of the decree.
127.	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128.	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129.	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134.	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135.	For the enforcement of a decree granting a mandatory injunction	Three years	The date of the decree or where a date is fixed, for performance, such date.
136.	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default, in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.

Sections 51 to 54 CPC: procedure in execution or mode for execution

Mode of executing decree under Section 51 CPC:

- (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).

Types of Execution:

- (a) Against Judgment-Debtor
- (b) Against Property

Persons who may apply for Execution of a decree (Order 21 Rule 15-16)

- 1. A decree holder
- 2. When decree passed jointly any one or more of such persons (R15)
- 3. Assignee/Transferee (R16)
(But notice is necessary to be served on the Transferee/ Judgment-Debtor)
- 4. Legal representatives- If decree holder died before applying for execution (R16)
[Succession Certificate is necessary] (*Ganeshmal vs. Smt. Anand Kanwar*, AIR 1968 Raj 273; *Aparta Panda vs. Govinda Sahu*, AIR 1984 Ori 1; *Basha Khan vs. K. Selvaraj*, AIR 1999 Mad 374; *Smt. Kariyamma vs. Asst. Commissioner and LAO*, AIR 1993 Kant 321)

If there are more than one decree holder, the rest can continue and Succession certificate in this case, not necessary. (**Nand Lal vs. Mahaveer**, AIR 1974 Raj 189)

While the execution is pending and the decree holder dies, Succession Certificate under Order 21 Rule 16 is not necessary for taking Legal Representatives on record. The execution proceedings shall continue

(Venkatchalam Chetti vs. Ramaswami Servai (dead) and ors. AIR 1932

Mad 73; Sukhdev Bhagat vs. Vishwanath Singh AIR 1965 Pat 85)

Court by which decree may be executed :-

- (a) The court that passed the decree (**Section 37 CPC**)
- (b) The Transferee Court (TC) to which the decree has been sent for execution. (**Section 38 CPC**)

Only the Court in whose jurisdiction the property is situated can execute the decree according to Section 39(4) CPC as inserted by Act 22 of 2002.

Mohit Bhargav vs. Bharat Bhushan Bhargav (2007) 4 SCC 795 : Hon'ble Supreme Court held that if the decree holder wants to proceed against a property situated outside the jurisdiction of the Court which passed the decree, he has to get the decree transferred to the appropriate Court for execution on moving the executing Court in that behalf.

Salem Advocate Bar Association vs. Union of India (2005) 6 SCC 344: Section 39 does not authorize the Court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance of conditions stipulated in those provisions thus the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code.

Procedure for Transfer of a decree and When can it be transferred:

Section 39 provides for the provisions relating to the transfer of the decree to another court (Transferee Court) for execution on the application of the decree holder. **Order 21 Rule 5 and Order 21 Rule 6 CPC** provides for the mode and procedure for transfer of the decree to another Court for execution.

Conditions under which the decree is sent to the Transferee Court for Execution are:

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court. (Section 39 CPC)

Mode and Procedure for transfer to the Transferee Court ***[Order 21 Rule 5 and Order 21 Rule 6 CPC]***

Requirements:

- (a) Execution Application
- (b) Copy of the Decree
- (c) Certificate of satisfaction of decree (partly or whole)
- (d) If any execution order, then its copy. And if no such order has been made, then certificate in that effect.

Role of the Transferee Court after receiving the execution order being transferred to it (Section 42 CPC):

The procedure related to this is provided under section 42 CPC. The Transferee Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

The procedure on the completion of execution (Section 41 CPC)

The Transferee Court shall certify to the court which passed it the fact of such execution, or where the TC fails to execute the same, the circumstances attending such failure.

Execution of Arbitral Award

Hon'ble Apex Court in **Sundaram Finance Ltd. vs. Abdul Samad and ors.** (2018) 3 SCC 622 held that the enforcement of an award through its execution can be *filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court*, which would have jurisdiction over the arbitral proceedings.

Questions to be determined by the Court executing decree (Section 47 CPC) :

1. All questions arising **between the parties** to the suit in which the decree was passed or their **representatives** and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
2. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Parties to the suit are :

- (a) A plaintiff whose suit has been dismissed
 - (b) A defendant against whom suit has been dismissed.
 - (c) A purchaser of a property at a sale in execution of a decree.
3. All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

Nature and Scope of Section 47 CPC :-

1. Where decree directs delivery of only symbolic possession by persons in possession, (eg. subtenants), decree-holder cannot claim actual possession in execution. The stranger (other than the judgment-debtor) has a right to object to execution proceedings if attempts are made to dispossess him physically. **Ratan Lal Jain vs. Uma Shankar Vyas (2002) 2 SCC 656.**
2. Application under Section 47 can be made at any stage. **(Sushila Devi vs. Ran Veer Singh and Ors. (2009) 16 SCC 244).**
3. The question whether a decree has been obtained by collusion, cannot be decided by executing Court :
 - a. **Mohd. Masthan vs. Society of Congregation of the Brothers of the Sacred Heart (2006) 9 SCC 344**

b. Kumar Dhirendra Mullick vs. Tivoli Part Apartments (P) Ltd. (2005) 9 SCC 262.

4. Executing court does not have power to award interest if not mentioned in decree **State of Punjab vs. Harvinder Singh (2008) 3 SCC 394.**
5. No limitation period prescribed for filing objections under Section 47 CPC (**Arun Lal vs. Union of India (2010) 14 SCC 384.**)

6. **Objections related to jurisdiction**

a) An objection to territorial jurisdiction and pecuniary jurisdiction is different from an objection to jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of or to inherent lack of jurisdiction of a Civil Court to entertain the suit (**Snehlata Goyal vs. Pushplata (2019) 3 SCC 594.**)

b) For the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the executing Court cannot enter upon an enquiry into those facts. **Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and Ors. (1970) 1 SCC 670.**

7. Where the Court lacks **Inherent Jurisdiction**, but matter is decided then decree is nullity and such objection can be decided by the Executing Court.

For Example

- a. Jurisdiction to decide a matter is to Wakf Board but decided by another Court having no jurisdiction.
- b. Jurisdiction to decide a matter is to Rent Tribunal but decided by another Court having no jurisdiction.
- c. Jurisdiction to decide a matter is to Industrial Tribunal but decided by another Court having no jurisdiction.
- d. If a decree is passed against a dead person, it is a nullity. The objections raised under Section 47 CPC can be decided in such a case.
- e. The objection that a decree was a nullity because the suit was barred by time cannot be raised during execution. **Ittyavira Mathai vs. Varkey Varkey and Ors. 1964 AIR (SC) 907.**
- f. Decree passed against the predecessor-in-interest, without bringing the successor-in-interest on record would not make the decree a

nullity and objection against its execution cannot be allowed under Section 47 CPC. **Dhurandhar Prasad Singh vs. Jai Prakash University and Ors. (2001) 6 SCC 534.**

- g. **Arbitral Award** passed by the unilaterally appointed arbitrator after the amendment in Section 12(5) of the Arbitration and Conciliation Act, 1996 is nullity and therefore cannot be enforced:-

TRF Ltd. vs. Energo Engineering Projects Ltd. (2017) 8 SCC 377;

Perkins Eastman Architect DPC vs. HSCC (India) Ltd. (2020) 20 SCC 760;

Bharat Broadband Network Limited vs. United Telecoms Limited (2019) 5 SCC 755;

Kotal Mahindra Bank Limited vs. Narendra Kumar Prajapat SLP(Civil) No. 47322/2023

8. An issue specifically raised during the hearing of the suit and has been decided by the Trial Court, then objection related to such an issue cannot be raised later during execution. **Ravinder Kaur vs. Ashok Kumar (2003) 8 SCC 289.**
9. Objection under Section 47 CPC can be raised in a compromise decree. It is not barred under Order 23 Rule 4 (**Motilal vs. Mohammed Hassen AIR 1968 SC 1087**)
10. The question on the mis-description of property can be determined under Section 47 CPC. Description can be corrected under Order 7 Rule 3, Order 20 Rule 3 and Section 152 CPC (**Pratibha Singh vs. Shanti Devi AIR 2003 SC 643**)

Different situations of Objections/ Obstructions during Execution

Order 21 Rule 58 CPC	Order 21 Rule 97 CPC	Order 21 Rule 99 CPC	Order 21 Rule 101 CPC
(1) Under this provision objection is made when any property is attached in execution of a decree on the ground that such property is not liable to attachment (2) The claim or objection shall not be entertained : a) Where the property attached has already been sold before the claim/objection is claimed. b) Where the Court considers that the claim or objection was designedly or unnecessarily delayed. c) All questions including questions related to right/title/interest in the property attached arising between the parties to a proceeding or their representatives shall be determined by the Court dealing with the claim or objection and not by a separate suit.	(1) Under this provision objection is filed where the holder of a decree for the possession of immovable property or the purchaser of any property sold in execution of a decree is resisted or obstructed by any person in obtaining position of the property. (2) Where any application is made under sub-Rule (1) the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.	(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. (2) Where any application is made under sub-Rule (1) the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.	All questions (including questions related to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or the representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit.

Money Decree

[Order 21 Rule 30, Sections 52,53,56,58 CPC]

Money decree can be executed by:

- (a) Attachment and sale of property
- (b) Detention in civil prison

Execution of only Money Decree can be oral as provided under Order 21 Rule 11 CPC and Order 20 Rule 77, General Rules (Civil & Criminal), 2018

(1) Arrest and detention

One of the modes of executing a decree is arrest and detention of the judgment-debtor in civil imprisonment. Where the decree is for payment of money, it can be executed by arrest and detention of the judgment-debtor.

The provisions relating to arrest and detention of the Judgment Debtor protect and safeguard the interest of the Decree Holder if the Judgment Debtor has means to pay and still he refuses or neglects to honour his obligations, he can be sent to civil prison. Mere omission to pay, however, cannot result in arrest or detention of the Judgment Debtor before ordering detention, the court must be satisfied that there was an element of bad faith, — not mere omission to pay but an attitude of refusal on demand verging on demand, verging on disowning of the obligation under the decree [**Jolly George Varghese vs. Bank of Cochin (1980) 2 SCC 360**]

(2) Attachment of property

The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. **Sections 60 to 64 and Rules 41 to 57 of Order 21 CPC** deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void.

(3) Court can pass order of simultaneous execution, against the property and against the person.

There is no statutory prohibition on passing simultaneous execution orders. But the discretion of the court should be exercised judiciously. Order 21 Rule 21 provides that the court may refuse to give simultaneous execution orders:-

SBI vs. Indexport Registered (1992) 3 SCC 159; Shyam Singh vs. Collector; Hamirpur (1993) Supp. 1 SCC 693; Radheshyam vs. Punjab National Bank, (2009) 0 AIR (SC) 930

(4) Interest cannot be given to the decree holder, when it's not ordered in the decree [State of Punjab vs. Kishan Dayal (2011) 11 SCC 212]

(5) There cannot be any interest when the Decreeal Amount is deposited in the court but if the judgment debtor has not informed the decree-holder, then the interest shall continue [*RSRTC vs. Poonam AIR 1997 SC 2951*]

(6) A receiver can be appointed in a Money Decree.

Order 21 Rule 30 of CPC is not exhaustive. In cases where there is relatable distribution, receiver can be appointed for the execution of the money decree. [*Saraswatibai vs. Govindrao Keshavrao AIR 1961 MP 145*]

(7) Persons/ circumstances exempted from being sent to prison in the execution of the money decree

- (a) Agriculturist (Section 44 of Rajasthan Sahukar Act)
- (b) Legal Representatives (Section 52 CPC)
- (c) Women
- (d) Judgment debtor is ill and does not have sufficient means (Section 59 CPC)
- (e) The decreetal amount is less than Rs. 2000 (Section 58 CPC)

(8) Procedure of arrest and detention of judgment-debtor in Civil Prison

Subsistence allowance [Order 21 Rule 39]- No judgment-debtor shall be arrested unless and until the decree holder pays into court such sums as the judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest. If on the enquiry it is proved that the judgment-debtor does not have sufficient means/is indigent/ suffering from an illness/ has made a part payment earlier and is ready for installments, then there shall be **no arrest**. (*Jolly George Varghese vs. Bank of Cochin AIR 1980(2) SCC 360; T.N. Mathur vs. U.P. AIR 1993 Suppl 1 SCC 722; Bhagvati Construction Company vs. Union of India (2021) 4 RLW (Raj.) 3238*)

It has been held by the Supreme Court that any action contrary to this rule is a violation of Article 21. (*Mohit Bharagv vs. Bharat Bhushan AIR 2007 SC 1367*)

Recently in *Sadkik Akaram vs. Kuldeep Misc. Pet. No. 7452 of 2023 Order dated 30.01.2024*, Hon'ble MP High Court while relying on Jolly George Varghese's case has held that merely because there is a money decree in favour of respondent/D.H., the petitioner/J.D. who has no property or source to pay the decreetal amount, cannot be sent to civil prison because poverty is not an offence.

(9) The decreetal amount can be ordered to be made in installments

Order 20 Rule 11 (2) CPC provides that after the decree has been passed, the decreetal amount can be ordered to be made in installments. This shall not be considered an alteration or addition in the decree. (*Motilal Banker vs. Maharaj Kumar Mahmood Hasan Khan AIR 1968 SC 1087; Khemchandra vs. Budhsingh AIR 1961 RAJ 243; Vasamma vs. S.K. Jayadeviah AIR 1974 Mys 4*)

(I) Decree for Specific Performance of a Contract and for Injunction (Order 21 Rule 32 CPC)

CAN BE EXECUTED BY

1. Detention of the judgment-debtor in civil prison
2. By the attachment and sale of property.
3. By execution of document

Attachment shall be enforceable for 6 months and if the Judgment-Debtor does not abide by the injunction decree, the property will be sold under Order 21 Rule 32 CPC. A distinction has to be drawn between the mode of enforcing decree on the one hand and actual satisfaction thereof. Sending a person to jail is a mode of enforcement. It is not a mode of satisfaction of the decree. The whole purpose of detaining a person in civil prison is to compel him to obey the mandate of the decree when he refuses to comply without sufficient cause. Detention in jail does not wipe out his liability to comply. (*Yashoda Bai Ganesh Naik Gaunekar vs. Sh. Gopi Mukund Naik AIR 2003 Bombay 77*)

Decree for Prohibitory Injunction subsists even after the disposal of first and second execution applications. Article 136 Limitation Act, deals with the limitation for execution of decrees other than a decree granting mandatory injunction. The decree for Prohibitory Injunction becomes enforceable when the judgment debtor makes fresh encroachment on the disputed land. (*Legal Representatives of Maga Ram vs. Kana Ram 1993 AIR (Raj) 208*).

Construction in violation of Injunction Decree Any construction on the property without permission of the Court while pending suit does not bind the decree-holder. Decree-holder can enforce his rights by removing the construction and no separate suit is required. (*B. Gangadhar vs. B.R. Rajalingam (1995) 5 SCC 238*).

Decree for Permanent Injunction against the Legal Representatives of the Judgment-debtor is executable under Section 50(2) CPC (*Prabhakra Adiga vs. Gowri (2017) 4 SCC 97*).

(III) Decree for execution of document, or endorsement of negotiable instrument (order 21 rule 34 cpc)

(IV) Decree for immovable property (Order 21 rule 35 CPC)

(V) Decree for delivery for immovable property when an occupancy of tenant (order 21 rule 36 cpc)

OTHER PRINCIPLES RELATED TO EXECUTION

1) Police aid cannot be used without a Court order:- Officer entrusted with execution, if unable to execute the process, is required to approach Court for police assistance. Police cannot be used without a Court order. **Om Parkash and Ors. vs. Amar Singh and Ors. (2019) 10 SCC 136.**

2) Police cannot ask any person to deposit any amount for execution
:- The police is bound to provide police aid for the purpose of execution of the decree of the Court and it cannot ask any person to deposit any amount for that purpose. [**Valeed Ahmed vs. The Commissioner of Police, Jodhpur (Rajasthan High Court, Jodhpur SB Civil Writ Petition No. 2310/2022 Order dated 19th April, 2022)**]

3) The execution court cannot go beyond the decree

The execution court cannot go behind the decree. **But:**

(1) When there is a conflict between the judgment and decree and if the decree is not properly / happily drafted, the executing court can look into the judgment to know the intention of the court.

(2) It is a settled proposition of law that where there is inconsistency between judgment and decree, then the actual result needs to be read in combination by forming conciliation between them and not in isolation *Topan Mal vs. Kundan Mal* AIR 1960 SC 388

(3) It is the duty of executing court to look at the pleadings and proceedings leading the judgment. But it cannot go behind the part of the decree, where the plaintiff has been expressly denied the relief. *Bhavan Vaja and ors vs. Solanki Hanuji Khodaji Mansang and another* AIR 1972 SC 1371

Absence of the applicant/opposite party on the day of hearing of the application (Order 21 Rule 105 CPC) :-

1. When on the day fixed for the hearing of the application filed under Order 21, if the applicant does not appear the Court can dismiss the application.
2. Where the applicant appears but the opposite party does not appear then the Court may hear the application ex parte and pass such orders as it thinks fit.

Setting Aside orders passed ex parte (Order 21 Rule 106 CPC)

1. When the Court dismisses an application in absence of the applicant or passes an ex parte order against the opposite party after serving notice on the other party, if Court is satisfied that there was sufficient cause for non-appearance, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for further hearing of the application.
2. An application shall be made within thirty days from the date of the order of dismissal of the application, or where the case is proceeded ex parte and the notice was not duly served then within thirty days from the date when the applicant had knowledge of the order.

In **Damodaran Pillai and others vs. South Indian Bank Limited (2005) 7 SCC 300** Hon'ble Supreme Court held that application under Section 5 of the Limitation Act is not maintainable in a proceeding arising under Order 21 of CPC and when execution application is dismissed in default, starting point of limitation for filing of restoration of application would be date of order and not the knowledge thereabout.

Abatement not to apply in execution of Decree (Order 22 Rule 12 CPC)

Order 22 Rule 3, 4 and 8 shall not apply in execution of decree as provided in Order 22 Rule 12 CPC. In the event of death of the decree holder or judgment debtor, his LR can anytime be taken on record and there is no limitation to this, but **execution must be filed within limitation.** (VS.Uthirapathi vs. Ashrab Ali (1998) 3 SCC 148)

Enforcement of decree u/s 52 against Legal representative:

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

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

Attachment and Sale of Immovable Property

Provisions related to Attachment and Sale –

Section 60 to Section 74 CPC

Attachment of Movable Property- Order 21 Rule 41 – Rule 53 CPC

Sale of Movable Property- Order 21 Rule 74 – Rule 81 CPC

Attachment of Immovable Property- Order 21 Rule 54 – Rule 63 CPC

Sale of Immovable Property- Order 21 Rule 82 to Rule 97 CPC

Procedure:- The procedure for attachment and sale of properties in brief is stated as follows, for details the relevant provisions must be gone through.

1. The Court should assure compliance of **Order 21 Rule 22 CPC** as required by law.
2. In compliance of **Order 21 Rule 13 CPC**, a description of the property to be attached with the Execution Application, sufficient to identify it along with boundaries or numbers in record of settlement or survey and information related to judgment debtor's share or interest shall be made.
3. If the property to be attached is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office under **Order 21 Rule 14 CPC**.
4. Warrant for attachment under **Order 21 Rule 54 CPC (Form No. 24 Appendix-E)** should be issued to the judgment debtor prohibiting him from transferring or charging the property to be attached anyway and to take notice of the date fixed for settling the terms of the proclamation for sale.
5. After service of above notice on the judgment debtor, notice for Proclamation for Sales by public auction should be issued under **Order 21 Rule 66 CPC (Form No.28 Appendix-E)** wherein the date is fixed for settling the terms of the proclamation of sale. (This notice may also be sent along with the notice under Order 21 Rule 54 CPC)
6. After the service of above notice, Proclamation for Sale is issued under **Order 21 Rule 66 (Form No.29 Appendix-E)** after submission of process fees. The place and time is fixed in this proclamation.
7. Warrant for causing service of Proclamation of Sale is then sent to the Nazir/Sale Amin under Order 21 Rule 66 CPC (**Form No.30 Appendix-E**). Direction is also given that the proclamation be published by beat of drum

within each of the properties specified in the schedule and to affix a copy on a conspicuous part of the property and courthouse.

8. The decree holder may apply in the Court to participate in the auction and if he is permitted then information should be sent to the Sale Amin. If he doesn't apply, then his right is deemed to be waived.
9. On successful completion of auction for sale, expenses (poundage fees for sale) shall be deposited as provided under **Order 29 Rule 1 Article 6 and Article 7, General Rules (Civil & Criminal), 2018**. Non-judicial stamp should be paid.
10. Report of auction for sale is submitted by Nazir/Sale Amin. If sale proceedings are accomplished successfully then the purchaser **deposits 25% of the amount of purchase money** to the officer conducting the sale. In default of such deposit the property shall be put up again and resold.
11. **The full amount of the purchase money** shall be paid by the purchaser before the court closes on the **15th day after the sale** of the property.
12. After deposition of the purchase amount within 15 days and submission of non-judicial stamp as expenses of the sale, the decretal amount should be given to the decree holder in satisfaction of the decree and notice be sent to judgment debtor to receive the rest amount if left. Till then the amount left may be deposited in the **petty cash**.
13. After selling out the property as above, if there is no application **to set aside the sale** as provided in **Order 21 Rule 89, 90 & 91 CPC** then sale becomes absolute and Court confirms the sale and sale certificate under **Order 21 Rule 94 CPC** should be granted by the Court to the purchaser. **(Certificate No.38 Appendix-E)**[limitation to set aside a sale in execution of a decree, including any such application by a judgment debtor is 60 days as provided in **Article 127, Limitation Act**]
14. After confirmation of the sale, the purchaser is directed to deposit stamp duty as provided under **Article 17, Rajasthan Stamp Act, 1998** for purchase of property sold by public auction according to **Article 21, Rajasthan Stamp Act, 1998**.
15. After submitting of non-judicial stamps as per law, sale certificate is to be issued (**Order 21 Rule 94 CPC No.38 Appendix-E**).
16. The stamp paper be attached to the sale certificate and be sent for registration according to **Section 89(2), Registration Act, 1908**.

17. On receiving of report by Registrar that sale certificate has been registered, the next step is **delivery of property** to the purchaser which is in-occupancy of the judgment debtor. Warrant under **Order 21 Rule 95 CPC (No.39 Appendix-E)** is issued after payment of process fees.
- 18.If the purchaser/decreed holder is resisted or obstructed without any just cause by the judgment debtor or any other person in obtaining possession of the property, the Court may order detention of such person in civil prison upto 30 days as provided in **Section 74 CPC** on the instance of decreed holder/purchaser.
- 19.The person so dispossessed as above may apply within 30 days from the date of dispossession. (**Article 128 Limitation Act, 1908**)
- 20.After satisfaction of the decree the amount left from the sale is returned to the judgment debtor and the file may be disposed off.

Attachment and Sale of Movable Property

When application of attachment of any movable property belonging to judgment debtor but not in his possession is made, the decreed holder shall annex an inventory of such property containing its description as per **Order 21 Rule 12 CPC**.

When decree is for payment of money, it may be executed by attachment and sale of the property of judgment debtor. Warrant of Attachment is issued as provided under **Order 21 Rule 30 CPC No. 8 of Appendix-E**.

Provisions relating to attachment of movable property are Order 21 Rule 43, 43A, 44, 45, 46 & 47 CPC.

Warrant of Sale of property in execution of money decree as provided in **Order 21 Rule 66 No. 27 Appendix-E** shall be issued.

The Process of Proclamation and Auction Sale shall be followed.

Arrest and Detention in Civil Prison

Procedure:- the application for arrest and detention in civil prison should be accompanied by an affidavit stating the grounds on which arrest is applied for as provided in **Order 21 Rule 11-A CPC**.

1. Show cause notice to the judgment debtor is issued under **Order 21 Rule 37** after deposition of process fees by the decree holder.
2. If judgment debtor does not appear after serving of above notice, the warrant for arrest be issued as provided in **Order 21 Rule 38 CPC**.
3. The judgment debtor shall not be arrested in execution of a decree until and unless the decree holder pays subsistence allowance as provided in **Order 21 Rule 39 CPC**.
4. A note in red ink should be made on the Warrant of Arrest that the judgment debtor be released on depositing the decretal amount and expenses incurred.
5. When the judgment debtor is arrested and brought before the Court, the Court is to inform him that he may apply to be declared as insolvent and he may be discharged if he has not committed any act of bad faith and if he complies with the provisions of law of insolvency. [**Section 55(3) CPC**]
6. If judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security to the satisfaction of the Court then Court shall proceed further as provided in **Section 55(4) CPC**.
7. The Court shall proceed to hear the decree holder and take all such evidence as may produced by him and give the judgment debtor an opportunity of showing cause why he should not be committed to the Civil Prison and pending the conclusion of the inquiry, the Court may detain the judgment debtor or release him on furnishing security for his appearance when required.
8. Mere omission to pay, however, cannot result in arrest or detention of the Judgment Debtor. Before ordering detention, the Court must be satisfied that there was an element of bad faith beyond mere indifference to pay not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. [**Jolly George Varghese vs. Bank of Cochin (1980) 2 SCC 360**]

9. Persons/ circumstances exempted from being sent to prison in the execution of the money decree

- Agriculturist whose debt does not exceed Fifteen Thousand Rupees (Section 44 of Rajasthan Sahukar Act)
- Legal Representatives (Section 52 CPC)
- Women (Section 56 CPC)
- Judgment debtor is ill and does not have sufficient means (Section 59 CPC)
- The decretal amount is less than Rs. 2000 (Section 58 CPC)

Reasons for Delay

I- Non-compliance of the order of the Executing Court:-

- A. Non-payment of process fees by the decree-holder
- B. Proper address of the judgment-debtor not filed by the decree-holder which results in non-service of the process
- C. Absence of decree-holder to identify the suit property in respect of which the execution is to be done.
- D. Non-furnishing of the receipt for diet money/jail expenses by the decree-holder in cases where judgment-debtor is to be sent to the civil prison.

The above reasons for delay are on account of non-compliance of the orders by the decree holder. In these cases, the Court may dismiss the execution application for default of the decree holder, under inherent powers. Order 21 Rule 105 provides for dismissing of any application under Order 21 where the applicant or the opposite party does not appear on the date of hearing. Hon'ble Madhya Pradesh High Court in *Khoobchand Jain vs. Kashi Prasad* 1986 AIR (MP) 66 has laid down that when the execution application is dismissed in default of appearance of the decree holder and the day of dismissal was not a date fixed for 'hearing' within the meaning of Rule 105 then the provisions related to limitation under Rule 106 are not attracted. When an execution application is dismissed under inherent powers, the application for its restoration will be by invoking the inherent powers of the Court and in that event no time limit is prescribed for invoking the inherent powers of the Court.

II. Non-identification of suit property in respect of which decree has been passed:-

Order 7 Rule 3 CPC requires where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the Court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers.

Firstly, it is the duty of the decree holder to comply with the provisions of Order 21 Rule 13 & 14 CPC which provides for description sufficient for identification

of the properties. In non-compliance of the above provisions, execution application is liable to be rejected by the Court under Order 21 Rule 17 CPC.

If the property is not properly identifiable:-

- It would be in the discretion of the Executing Court to take such steps as may be necessary for fixing the identity of the property.
- The Executing Court may take assistance from the pleadings, evidence, judgment, previous documents of title, revenue records etc.
- The Court may also appoint a competent commissioner.

Hon'ble Apex Court in *Pratibha Singh and Anr. vs. Shanti Devi Prasad and Anr. (2003) 2 SCC 330* has laid down that where the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of CPC, is capable of being cured by resort to Sections 152 or 47 of CPC depending on the facts and circumstances of the case.

III. Filing of frivolous miscellaneous applications by the Parties and seeking adjournments for their reply and arguments.

Hon'ble Apex Court in *Rahul S. Shah vs. Jinendra Kumar Gandhi 2021 AIR (SC) 2161* has laid down that 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.

In light of the above guidelines, the Presiding Officer of the Executing Court should pay attention on enforcement proceedings to be expedited and follow the mandatory directions issued. It is the responsibility of the Presiding Officer not to grant adjournments unnecessary and without any cogent reasons. The Presiding Officers must take keen interest to dispose off the execution applications as early as possible and in consonance with the directions of Hon'ble Supreme Court of India passed in *Rahul S. Shah vs. Jinendra Kumar Gandhi*.

IV. Filing of Objection Petitions

Hon'ble Apex Court in *Rahul S. Shah vs. Jinendra Gandhi* held that:-

- The court exercising jurisdiction under Section 47 or under Order XXI CPC, **must not issue notice on an application of third-party claiming rights in a mechanical manner.** Further, the Court should refrain from entertaining application(s) already 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.
- The court should allow **taking of evidence** during the execution proceedings only **in exceptional and rare cases** where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
- The court 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 CPC as well as grant compensatory costs in accordance with Section 35A CPC.

V. **Delay in depositing the expenses incurred for providing police force for Execution**

Hon'ble Rajasthan High Court in **Valeed Ahmed vs. The Commissioner of Police, Jodhpur (Rajasthan High Court, Jodhpur SB Civil Writ Petition No. 2310/2022 Order dated 19th April, 2022)** has laid down that the police is bound to provide police aid for the purpose of execution of the decree of the Court and it cannot ask any person to deposit any amount for that purpose. Therefore, the Court should not ask the decree holder to deposit the expenses incurred for providing police aid during Execution.

Police Aid cannot be used without a Court order:- Officer entrusted with execution, if unable to execute the process, is required to approach the Court for police assistance. Police aid cannot be used without order of the Court. [**Om Parkash and Ors. vs. Amar Singh and Ors. (2019) 10 SCC 136**].

VI. **The Suit Property or the Residence of the judgment debtor situated in another district**

The decree may be executed by:-

(a) The court that passed the decree (**Section 37 CPC**)

(b) The Transferee Court (TC) to which the decree has been sent for execution. (**Section 38 CPC**)

Only the Court in whose jurisdiction the property is situated can execute the decree according to Section 39(4) CPC as inserted by Act 22 of 2002.

Mohit Bhargav vs. Bharat Bhushan Bhargav (2007) 4 SCC 795 : Hon'ble Supreme Court held that if the decree holder wants to proceed against a property situated outside the jurisdiction of the Court which passed the decree, he has to get the decree transferred to the appropriate Court for execution on moving the executing Court in that behalf.

Salem Advocate Bar Association vs. Union of India (2005) 6 SCC 344 : Section 39 does not authorize the Court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance of conditions stipulated in those provisions. Thus the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code.

If the property of the judgment debtor is situated beyond the jurisdiction of the Executing Court, the Executing Court must adopt the procedure for transfer of a decree as provided in Section 39 and Order 21 Rule 5 and Rule 6 of CPC.

VII. The process for the auction and sale of attached property is difficult one, which results in delay in disposal of the matter.

Attachment and Sale of Immovable Property

Provisions related to Attachment and Sale –

Section 60 to Section 74 CPC

Attachment of Movable Property- Order 21 Rule 41 – Rule 53 CPC

Attachment of Immovable Property- Order 21 Rule 54 – Rule 63 CPC

Sale of Property- Order 21 Rule 64 to Rule 92 CPC

Note:- The procedure for attachment and sale of properties in brief is stated as follows, for details the relevant provisions must be gone through.

1. The Court should ensure compliance of **Order 21 Rule 22 CPC** as required by law.
2. In compliance of **Order 21 Rule 13 CPC**, a description of the property to be attached with the Execution Application, sufficient to identify it along with boundaries or numbers in record of settlement or survey and information related to judgment debtor's share or interest shall be made.
3. If the property to be attached is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office under **Order 21 Rule 14 CPC**.
4. Warrant for attachment under **Order 21 Rule 54 CPC (Form No. 24 Appendix-E)** should be issued to the judgment debtor prohibiting him from transferring or charging the property to be attached anyway and to take notice of the date fixed for settling the terms of the proclamation for sale.
5. After service of above notice on the judgment debtor, notice for Proclamation for Sales by public auction should be issued under **Order 21 Rule 66 CPC (Form No.28 Appendix-E)** wherein the date is fixed for settling the terms of the proclamation of sale. (This notice may also be sent along with the notice under Order 21 Rule 54 CPC)
6. After the service of above notice, Proclamation for Sale is issued under **Order 21 Rule 66 (Form No.29 Appendix-E)** after submission of process fees. The place and time is fixed in this proclamation.
7. Warrant for causing service of Proclamation of Sale is then sent to the Nazir/Sale Amin under Order 21 Rule 66 CPC (**Form No.30 Appendix-E**). Direction is also given that the proclamation be published by beat of drum within each of the properties specified in the schedule and to affix a copy on a conspicuous part of the property and courthouse.

8. The decree holder may apply in the Court to participate in the auction and if he is permitted then information should be sent to the Sale Amin. If he doesn't apply, then his right is deemed to be waived.
9. On successful completion of auction for sale, expenses (poundage fees for sale) shall be deposited as provided under **Order 29 Rule 1 Article 6 and Article 7, General Rules (Civil & Criminal), 2018**. Non-judicial stamp should be paid.
10. Report of auction for sale is submitted by Nazir/Sale Amin. If sale proceedings are accomplished successfully then the purchaser **deposits 25% of the amount of purchase money** to the officer conducting the sale. In default of such deposit the property shall be put up again and resold.
11. **The full amount of the purchase money** shall be paid by the purchaser before the court closes on the **15th day after the sale** of the property.
12. After deposition of the purchase amount within 15 days and submission of non-judicial stamp as expenses of the sale, the decretal amount should be given to the decree holder in satisfaction of the decree and notice be sent to judgment debtor to receive the rest amount if left. Till then the amount left may be deposited in the **petty cash**.
13. After selling out the property as above, if there is no application to **set aside the sale** as provided in **Order 21 Rule 89, 90 & 91 CPC** then sale becomes absolute and Court confirms the sale and sale certificate under **Order 21 Rule 94 CPC** should be granted by the Court to the purchaser. (**Certificate No.38 Appendix-E**)[limitation to set aside a sale in execution of a decree, including any such application by a judgment debtor is 60 days as provided in **Article 127, Limitation Act**]
14. After confirmation of the sale, the purchaser is directed to deposit stamp duty as provided under **Article 17, Rajasthan Stamp Act, 1998** for purchase of property sold by public auction according to **Article 21, Rajasthan Stamp Act, 1998**.
15. After submitting of non-judicial stamps as per law, sale certificate is to be issued (**Order 21 Rule 94 CPC No.38 Appendix-E**).
16. The stamp paper be attached to the sale certificate and be sent for registration according to **Section 89(2), Registration Act, 1908**.
17. On receiving of report by Registrar that sale certificate has been registered, the next step is **delivery of property** to the purchaser which is in-occupancy

of the judgment debtor. Warrant under **Order 21 Rule 95 CPC (No.39 Appendix-E)** is issued after payment of process fees.

- 18.If the purchaser/decreed holder is resisted or obstructed without any just cause by the judgment debtor or any other person in obtaining possession of the property, the Court may order detention of such person in civil prison upto 30 days as provided in **Section 74 CPC** on the instance of decreed holder/purchaser.
- 19.The person so dispossessed as above may apply within 30 days from the date of dispossession. (**Article 128 Limitation Act, 1908**)
- 20.After satisfaction of the decree the balance amount of the sale is returned to the judgment debtor and the file may be disposed off.

Attachment and Sale of Movable Property

When application of attachment of any movable property belonging to judgment debtor but not in his possession is made, the decree holder shall annex an inventory of such property containing its description as per **Order 21 Rule 12 CPC**.

When decree is for payment of money, it may be executed by attachment and sale of the property of judgment debtor. Warrant of Attachment is issued as provided under **Order 21 Rule 30 CPC No. 8 of Appendix-E**.

Provisions relating to attachment of movable property are Order 21 Rule 43, 43A, 44, 45, 46 & 47 CPC.

Warrant of Sale of property in execution of money decree as provided in **Order 21 Rule 66 No. 27 Appendix-E** shall be issued.

The Process of Proclamation and Auction Sale shall be followed.

Arrest and Detention in Civil Prison

Procedure:- the application for arrest and detention in civil prison should be accompanied by an affidavit stating the grounds on which arrest is applied for as provided in **Order 21 Rule 11-A CPC**.

1. Show cause notice to the judgment debtor is issued under **Order 21 Rule 37** after deposition of process fees by the decree holder.
2. If judgment debtor does not appear after serving of above notice, the warrant for arrest be issued as provided in **Order 21 Rule 38 CPC**.
3. The judgment debtor shall not be arrested in execution of a decree until and unless the decree holder pays subsistence allowance as provided in **Order 21 Rule 39 CPC**.
4. A note in red ink should be made on the Warrant of Arrest that the judgment debtor be released on depositing the decretal amount and expenses incurred.
5. When the judgment debtor is arrested and brought before the Court, the Court is to inform him that he may apply to be declared as insolvent and he may be discharged if he has not committed any act of bad faith and if he complies with the provisions of law of insolvency. [**Section 55(3) CPC**]
6. If judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security to the satisfaction of the Court then Court shall proceed further as provided in **Section 55(4) CPC**.

7. The Court shall proceed to hear the decree holder and take all such evidence as may produced by him and give the judgment debtor an opportunity of showing cause why he should not be committed to the Civil Prison and pending the conclusion of the inquiry, the Court may detain the judgment debtor or release him on furnishing security for his appearance when required.
8. Mere omission to pay, however, cannot result in arrest or detention of the Judgment Debtor. Before ordering detention, the Court must be satisfied that there was an element of bad faith beyond mere indifference to pay not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree [**Jolly George Varghese vs. Bank of Cochin (1980) 2 SCC 360**].
9. **Persons/ circumstances exempted from being sent to prison in the execution of the money decree**
 - Agriculturist whose debt does not exceed Fifteen Thousand Rupees (**Section 44 of Rajasthan Sahukar Act**)
 - Legal Representatives (**Section 52 CPC**)
 - Women (**Section 56 CPC**)
 - Judgment debtor is ill and does not have sufficient means (**Section 59 CPC**)
 - The decreetal amount is less than Rs. 2000 (**Section 58 CPC**)