

TOPIC

EXECUTION OF MONEY DECREE – DIFFERENT MODES OF EXECUTION- PROVISIONS OF LAW & CASE LAW

— Paper Presentation by —

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EXECUTION OF DECREE MEANING

The CPC contains no definition for the word “execution.” The act of carrying out, upholding, or giving effect to a court of justice’s order or verdict is referred to as “execution.”

In simple terms, “execution” refers to the act of putting the court’s decree or judgment into effect by requiring the judgment debtor to follow the directives in the decree or order and allowing the decree holder to retrieve the item that was awarded to him by the decree.

In Execution Proceedings a party who files the suit will be anxious as to how his suit will be determined. A party who obtains a decree is certain about the relief he got. But however, he will be uncertain as to when he could realize the fruits of the decree obtained by him. He has to sweat for enforcement.

RELEVANT PROVISIONS WITH REGARD TO THE EXECUTION OF DECREE

The relevant provisions with regard to the Execution are Sections 36 to 75 Sections 144, 146, 148 Civil Procedure Code. Order - 21 of Civil Procedure Code which contains 106 Rules. Rules 205 to 285 in Chapter-16 of Civil Rules of Practice also deals with Execution. Articles 125 to 129 and 134 to 137 deal with Limitation Aspects with regard to Execution proceedings. The provisions under Court Fee Act Process Fee Rules, A.P.Advocate Fee Rules are also relevant to some extent.

LIMITATION & EXECUTING COURT

Period of limitation under ‘*The Limitation Act, 1963*’ for filing of execution petition is 12 years from the date that the decree becomes enforceable. The same shall be filed

in the very court that exercised original jurisdiction. However, the court may transfer the same for execution to any other court directly, even if it is situated outside the State. This could be for various reasons such as the immovable property to be sold falls under the territorial jurisdiction of that court etc. While transferring the decree for execution, the court shall send all relevant documents viz. copy of the decree, certificate setting forth that due claim remains unsatisfied or any part that remains, etc.

WRITTEN APPLICATION

DHr shall move a written application in the court that originally passed the decree or the court to which it has been transferred for execution. The application shall contain all the essential information viz. suit number, name of parties, date of the decree, any appeal preferred or pending, amount due, name of the person against whom execution is sought, and most importantly the mode in which the assistance of the court is required.

SHOW CAUSE NOTICE

After the executing court has satisfied itself that all defects if any have been cured in the application and has provisionally evaluated without prejudice to the right of the parties the correct amount for the execution of the decree vis-à-vis value of the immovable property a show-cause notice is issued to the judgment debtor. It is an opportunity for him to raise his claims or objections against the execution of the decree on the day and date fixed for hearing. Show cause notice is necessary only if the execution petition is filed after 2 years of passing of the decree, or is against a legal representative or assignee or receiver where DHr is declared to be insolvent. However, the court may in its wisdom issue process instead of show cause notice if it foresees unreasonable delay or ends of justice are threatened.

What are the various modes of execution of decree under CPC?

A decree may be carried out in a number of ways, but the Court must adhere to the relevant guidelines outlined in Order 21. Order XXI Rule 10 states that in order for the decree-holder to have it executed, he must submit an application to the court. The various **modes of execution of decree under CPC** are as follows:

1. By Delivery of any Property specifically decreed
2. By attachment and sale or by sale without attachment of any property

3. By arrest and detention in prison
4. By appointing a receiver
5. In such other manner as the nature of the relief granted may require.

BY DELIVERY OF PROPERTY

MOVABLE PROPERTY: In the event that the property is movable, the decree is carried out by taking possession of it and giving it to the decree-holder or another individual he appoints. The confiscated movable property must be handed to the buyer if it is going to be sold.

IMMOVABLE PROPERTY: Immovable property may be delivered to the individual to whom it has been awarded or to that person's representative when the decree calls for the delivery of such property.

Mostly, the decree of sale of immovable property is awarded for enforcing mortgage deed, charge, or for recovery of money or any other kind of encumbrances as deemed fit by the court. The person in whose favor decree is awarded is called the '*Decree Holder*', (DHr) and the one incumbent to satisfy it is '*Judgment Debtor*' (JDr). Decree of sale comes into being upon adjudication by any court exercising original jurisdiction, and the same can be applied for execution after the prescribed period of appeal, provided it is not preferred by the JDr. Per contra, this can go on until the JDr gives up or exhausts all his legal remedies.

ARREST AND DETENTION OF JUDGMENT DEBTOR

Arrest and detention of J.Dr (Judgment Debtors) in prison for a duration not exceeding the period defined in Section 58, where arrest and detention is permitted under the provision (see Section 51 (c) CPC) is one of the modes of execution of a decree or order. Detaining a person in civil custody, notwithstanding the law's permissiveness, is a court order that violates the individual's human rights. As a result, the judge-made-law has imposed a number of restrictions on the executing Courts' powers when ordering arrest and detention in this mode of execution. Before dealing with the intricate issues of law and procedure in this regard, relevant provisions in the CPC can be referred to once more.

SECTION 55 OF CIVIL PROCEDURE CODE**ARREST AND DETENTION:**

1. judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained.
 1. Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise;
 2. Provided, secondly, that, no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;
 3. Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;
 4. Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.
2. The State Government has the authority to exempt such people from arrest: The State Government may declare, by notification in the Official Gazette, that any person or class of people whose arrest might cause danger or inconvenience to

the public shall not be subject to arrest in execution of a decree unless the State Government prescribes a procedure.

3. JDr under arrest will be told of his right to file an insolvency petition: When a judgment debtor is arrested and brought before the Court in order to comply with a court order for payment of money, the Court shall advise him that he will request to be declared insolvent and that he may be discharged if he has not committed any act of bad faith in connection with the application and complies with the provisions of the insolvency law in place at the time.
4. When a judgment debtor declares his intention to apply to be declared insolvent and furnishes protection, to the satisfaction of the Court, that he will apply within one month and that he will appear, when called upon, in any proceeding relating to the application or the decree in execution of which he was arrested, he can be released from custody. If he fails to comply with the court's orders, as a result of the application and appearance, the Court can either order the protection to be realized or not. In order to carry out the decision, commit him in a civil jail.

INTERPRETATION OF ORDER 21 RULE 37 (1)

Case Law: **N. Ramachandra Iyer vs Thomas Mathai** 1980 AIR 470, 1980 SCR (2) 913

It must be noted that Order 21, Rule 37(1) will apply as per the very words used therein, only where the application is for the execution of a money decree by arrest and detention of a judgment-debtor who is liable to be arrested in pursuance of the application. So, notice under Order 21, Rule 37(1), C.P.C. cannot be issued to the judgment-debtor, if he is not Liable to be arrested.

As per the Interpretation, while dealing with execution of money decree by arrest and detention, four situations are expressly and specifically mentioned in the Civil Procedure Code, where the execution court could order arrest and, even in these situations it has to be seen whether the judgment-debtor is actually liable to be arrested.

The first such situation is indicated in the proviso to Order 21, Rule 37(1), C.P.C. that is, where the court is satisfied by affidavit or otherwise that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to

abscond or leave the local limits of the jurisdiction of the court. In such a case, without issuing the notice under Order 21, Rule 37(1), C.P.C., straightaway the court can order arrest.

The second situation is provided in Order 21, Rule 37(2), C.P.C., as indicated above, that is where appearance of the judgment-debtor is not made in obedience to the notice of the court under Order 21, Rule 37(1), C.P.C. and the decree-holder requires issuance of a warrant for the arrest.

The third situation is under Order 21, Rule 40(3), C.P.C. that is, after the conclusion of the enquiry under Order 21, Rule 40(1), C.P.C. for detention in prison and, subject to Section 51, C.P.C. an Order for detention is passed. In such an event, the court can also pass an order of arrest, if the judgment-debtor is not already under arrest.

The fourth situation is mentioned in Order 21, Rule 40(4), C.P.C., which says that a judgment-debtor released under Rule 40 may be re-arrested. Even In the above said four cases, before arrest order could be passed, the court should find that any one of the reasons mentioned in the proviso to Section 51, C.P.C. exists, in the light of the construction placed by the Supreme Court in the **Jolly George Varghese v. Bank of Cochin**, on Section 51, C.P.C.

When Arrest and Detention may be ordered?

When a decree-holder approaches the court to have a decree executed, Section 51(c) of the CPC states that the court can execute the decree by arresting and detaining the judgment debtor.

IN THE CASES MENTIONED IN ORDER XXI, A DECREE FOR ARREST AND DETENTION MAY BE ISSUED:

1. Under Rule 30, a decree for the payment of 'money can be executed by the arrest and detention of the judgment debtor.
2. Under Rule 31 (1) (b), where the decree is for a specific moveable party, it can be executed by the arrest and detention of the judgment; debtor.

3. Under Rule 32, where the decree is for specific performance of the contract or an injunction, the court can execute the decree by arrest and detention of the judgment debtor.

CASE LAW

In **Venkatanarayana vs. Sakku Bai** it was held that Arrest and imprisonment in custody was mentioned as one of the modes of administering the decree in Section 51 of the Code of Civil Procedure. When the said mode is used, however, the proviso to the section provides a protection in favour of the judgment debtor. The judgment debtor must be given an opportunity to prove why he should not be sent to jail as a safeguard. The proviso goes on to list the different factors that the court should take into account before ordering execution by arrest and imprisonment. These are the factors:

Reliance Was Also Placed In:

K.Karunakar Chetty Vs. Syndicate Bank

Viswanathan Vs. Karnataka Bank Limited

In "**Patnana Venkata Ramana Vs. Vungatla Appa Rao**" reported in 2010(5) **ALD 234** it was held that "A decree holder can choose any of modes of execution available to him and merely because the J.Dr. is a salaried employee, argument that the amount can only be realized by attaching his salary, but not by means of arrest and detention in civil prison has no foundation in Law".

Arrest and imprisonment are matters concerning citizens' personal liberty, so arbitrary arrests have been widely condemned.

PERIOD OF DETENTION U/S.58:

Section 58 determines the duration of detention during which a person can be held, which is determined by the amount of the court's order against him and whether or not he has paid the decreed amount. It states that if the decretal amount exceeds five thousand rupees, an individual cannot be detained for more than three months, and that detention for amounts between two and five thousand rupees cannot exceed six weeks.

No order for detention of the judgment debtor may be made if the total is less than two thousand rupees.

The object of arrest and detention is to provide relief to a decree holder and to send a judgment debtor to civil prison if he fails to pay the decretal sum despite having the financial means to do so. It does, however, protect honest debtors whose failure to pay is due to a fair cause. In order to ensure equal justice, the court must grant debtors the right to be heard.

The clause is a corrective measure. It aims to give the decree-holder a remedy after a suit has been determined in his favour. If the judgment debtor fails to comply with the decree issued against him, such a remedy may be taken in the form of arrest and imprisonment.

The rule extends to someone who is the target of a Code-enforced decree. If a decision is issued in a person's favour, the person must go to court to get the decree carried out. The court will then order the judgment debtor's arrest and imprisonment based on the Code's provisions.

ATTACHMENT AND SALE OF PROPERTIES etc,

There are several provisions in the Order 21 which provide for attachment such as attachment of movables, agricultural produce, debt, shares, attachment of salary of Govt.employees , attachment of salary of private employees, attachment of partition property, negotiable instruments, property in the custody of court, attachment of decree and attachment of immovable properties etc. The different provisions provide for different modes of execution and provide specific manner of attachment and the consequences for the breach of an order of attachment and the fastening of liability. We are going to see the same in the present discussion.

Attachment is provided in the Civil Procedure Code at Two Stages:

(i) One is stage before passing of Judgment which is provided under Order-38 of CPC from Rules 5 to 13;

(ii) Second is after passing of decree by way of attachment of movables, attachment of Salary Attachment of a decree attachment of Negotiable Instruments,

attachment of Immovables. The contours of attachment and sale in Execution of decrees is provided under Section -60 of CPC.

A decree may be executed in either by the Court which passed the decree or the court to which the decree is sent for execution (Sec.38).

Section -39(1)(b) says: that if the Judgment Debtor has no property within the local limits of the jurisdiction of the Court which passed the decree, the decree may be transferred to such Court within the local limits of whose jurisdiction the Judgment Debtor has property.

Section -39(4) says: that nothing in Sec.39 shall be deemed to authorize the court which passed a decree to execute such a decree against any person or property outside the local limits of its jurisdiction. A decree may also be transferred to the court in another State.

PRECEPT

UNDER SECTION 46 : a decree holder may apply to the court which passed a decree for issuing a precept to any other court which would be competent to execute such decree to attach any property belonging to the Judgment Debtor and specify in the precept. That court to which precept is sent shall proceed to attach the property in the manner prescribed in regard to attachment of property in execution of a decree. However, attachment under precept shall not continue for more than two months, unless the period of attachment is extended by an order of the Court which passed the decree or unless before determination of such attachment, the decree has been transferred to the Court by which attachment has been made and the decree holder has applied for an order for sale of such property. The issue of a precept U/s.46 of CPC will not have the effect of transfer of decree for execution to the court to which precept is issued. A precept U/s.46 of CPC becomes necessary when the Judgment Debtor's property is situated within the limits of another Court and when it is necessary to prevent the Judgment debtor from alienating or otherwise dealing with the property to the detriment of decree holder till proper proceedings for the sale of the property in pursuance of an application can be taken.

The same is held In **Champal Heerachand and another vs.Mohanlal Narayandass and others,**

Whenever an application for precept is filed, it shall not be numbered as an E.P. It has to be numbered as an E.A. For this. **Shaik Fazal ELLAHI vs. Sri Krishna Makkal ,** can be referred.

A precept may be issued under Sec.46 by a court which passed the decree to a court to which the Decree holder seeks issuance of precept. After receiving the precept, the court which received the precept shall proceed to attach the property, in the manner prescribed in regard to the attachment of property in execution of decree. An attachment under a precept shall not continue beyond two months unless the court which passed the decree extends it. The attachment would get extended if the Decree holder files an E.P. before the court to which precept is issued when he has filed the Execution Petition for sale of the property within two months of issuance of precept.

Section 51 (b) says: that the court may order execution of the decree by attachment and sale or by the sale without attachment of any property.

Section 52 says; where a decree is passed against a legal representative of a deceased person, and if a decree is for payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property of the deceased which has come to the hands of a legal representative.

Section 60 CPC lays down which properties are liable for attachment. The land, houses or other building, goods, money, bank notes, cheques, bills of exchange, hundies, promissory notes, Government securities, bonds or other securities for money, debts, shares in a Corporation and all other saleable property such as movables or immovable properties belonging to the Judgment Debtor or the property profits from the property over which he has disposing power are liable to be attached.

Proviso, and the Explanations would state what properties are exempted from Attachment of Sale and the limits for such attachments.

Section 60 also says which property is not liable for attachment and the extent of attachment and the manner of such attachment etc. The particulars laid down in clauses (a) to (k) ka kb kc (l) to (p) are not liable to be attached. These aspects are self-explanatory. Explanations I to VI also can also be looked into.

When the property is attached in execution of decrees in several courts, the court which shall receive or realize such property and shall determine any claim to such property and any objection to the attachment shall be a Court of highest grade. When there is no such difference in grade between such courts, the Court under whose decree a property was first attached shall be competent to receive and realize the property. The said Court may also receive any claim or objections to the property attached.

EFFECT OF ATTACHMENT:

We have to see what is the effect of attachment. According Section 64 where attachment has been made any private transfer or delivery of the property attached or transfer of interest in such property is prohibited. When shares or Negotiable Instruments are attached any payment made to the J.Dr. of any debt or payment of dividends or other monies contrary to attachment is void as against all claims of enforcement under the attachment. If there is a contract entered into and registered before attachment, this will not come in the way of making private transfer of property or delivering the property which is attached or transfer of interest of the property.

Section 94 (b) says in order to prevent the ends of justice from being defeated the court may if it is so prescribed, direct the defendant to furnish the security or order attachment of any property.

Section 95 says that where in any suit in which attachment has been affected and it appears to the court that such attachment was applied for on insufficient grounds, on the application made by the defendant, the court may order reasonable compensation not exceeding Rs.50,000/- to the defendant.

What can be Attached?

In Execution Proceedings provided for attachment of the property of the Judgment debtor is provided under different Rules. It also provides for the manner of the attachment of movables and agricultural property and custody of the movables and agricultural property.

The following items can be attached:

- 1) Movables (R. 43 and 43-A)
- 2) Agricultural produce (R.44 and 45)

- 3) Debt, Shares and movable property not in the possession of the Judgment debtor (R.46).
- 4) Attachment of share in the movables (R.47)
- 5) Attachment of Salary of Govt. Employees, Railway Company or Local Authority (R.48).
- 6) Attachment of salary or allowances of private employees (R.48.A)
- 7) Attachment of partnership property - (R.41)
- 8) Attachment of Negotiable Instruments (R.51)
- 9) Attachment of property in the custody of Court or Public Officer (R.52)
- 10) Attachment of Decree (R.53)
- 11) Attachment of Immovable property (R.54).

ATTACHMENT OF MOVABLES

Where the property to be attached is movable property in the possession of Judgment Debtor, the attachment shall be made by actual seizure and the Attaching Officer shall keep the property in his own custody or in the custody of one of his subordinates and shall be responsible for the due custody of the property. If the property is subject to speedy and natural decay the Attaching Officer may sell it at once. (R.43).

R.43 A provides for keeping the attached property in the village and alternatively to bring it to the Court. R-43 B provides for the custody of the livestock etc. R.43-A provides that if the property attached consists of livestock or agricultural equipments or other articles which cannot be conveniently removed and where the Attaching Officer does not proceed under Proviso to R.43 i.e. of selling the same he may at the instance of the J.Dr. or the Decree holder or any other person claiming to be interested in such property, keep it in the village or place where it has been attached in the custody of a custodian, who shall be respectable person.

The custodian is liable to produce the property before the Officer deputed. He is liable to restore the property if an order of restoration is ordered by the court. He has to produce the property in the same condition as it was when it was entrusted to him. The custodian is liable to pay compensation to the Decree Holder or Judgment Debtor or any other person in whose favour the Order of restoration is passed for any loss or damage caused by default of the custodian to produce the property. A custodian can also be a

surety U/s.145 of CPC. Such liability may be enforced at the instance of D.Hr. or J.Dr. or such other person entitled to property. As per R.43-A whenever attached property is kept in the village or place where it is attached, attaching Officer shall forthwith report the fact of attachment to the Court. He shall forward a list of property seized.

Sometimes break open petitions will be filed before the Court. In such cases, it shall be ordered to prepare inventory in the presence and replace lock at the expense of the Judgment debtor and all the keys shall also be deposited into Court.

If the property is not sold, it has to be brought to the Court house and deliver to the proper Officer of the Court. As per Rule-43-B if the property attached is livestock, the person at whose instance the property attached is retained shall provide for the maintenance of the livestock. If such person fails to do so, if the property is in the charge of the Officer of the Court, it shall be removed to the Court house. Attachment of livestock shall not prevent the Judgment debtor or person claiming to be interested in the property to make arrangements for feeding of the animals, the amount expended for maintenance can be recovered as costs.

ATTACHMENT OF AGRICULTURAL PRODUCE:

When the agricultural produce is attached a copy of the warrant of attachment shall be affixed on the land where a growing crop is there. If such produce is cut and gathered on the threshing floor, the warrant of attachment shall be affixed there. One copy shall be affixed on the out door of the Court Hall. One copy where the Judgment Debtor ordinarily resides.(R.44).

Where the agricultural produce is attached, the Court may make arrangement for the custody of the property. If the property attached is growing crop, it shall be specified when the property is fit to be cut and gathered. The Judgment Debtor may also be permitted to tend, cut gather or store the produce.

ATTACHMENT OF DEBT, SHARES AND MOVABLE PROPERTY NOT IN POSSESSION OF THE JUDGMENT DEBTOR:

Debt may be of two types. A debt secured by Negotiable Instrument and a debt not secured by Negotiable Instrument. Attachment of Negotiable Instrument is provided under Rule-51 and attachment of debt not secured by Negotiable Instrument is provided

under Rule-46. Apart from unsecured debt a share in the capital of a corporation, or property not in possession of the Judgment Debtor can be attached. When an unsecured debt is attached, the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment to his creditor until further orders of the court. In the case of share the person in whose name the share may be standing may be prohibited from transferring the said property and receiving any dividend.

If the property attached is growing crop, and when it takes considerable time for the crop to mature for cutting and gathering the Court may suspend the execution of the order for such time fit.

The copy of attachment for debt, share or other property which is not in possession of the Judgment debtor shall be affixed in the court house. Its copy shall be sent to the debtor in the case of debt and to the proper officer of the corporation in case of attachment of share and to the person in possession of the property if the property is movable.

The debtor may pay the amount of his debt into the court. Such payment would discharge effectually his liability as payment to his creditor.

NOTICE AND ORDERS AGAINST GARNISHEE:

Apart from sub rule (2) of Rule-46.A provides for issuance of notice to the Garnishee who is liable to pay such debt, other than a debt secured by a mortgage or a charge requiring him either to pay into the court the debt due from him to the J.Dr. or so much thereof as may be sufficient to satisfy the decree and costs of execution or to show cause why he shall not do so. Where the Garnishee pays into the court, the debt due to Judgment debtor the court may direct that the amount be paid to the D.Hr. towards satisfaction of the decree or part of the decree. (R.46-A).

Where the Garnishee does not pay or fails to show cause by making appearance, the court may order the garnishee to comply with the terms of notice under Rule 46-A and on such order, the execution may issue as though such order is a decree against the garnishee.

DETERMINATION OF DISPUTED QUESTIONS IN GARNISHEE ORDERS:

Upon issuing notice under Rule-46.A if garnishee disputes his liability, the Court may order that an issue or question necessary for the determination of liability of the garnishee shall be tried as if in a suit and upon determining the said question the court may make necessary orders.(R.46-C).

Where the debt in respect of which an application under Order 46-A is made is beyond pecuniary jurisdiction of the Executing Court, it shall send the execution petition to the Court of the District Judge to which the Execution Court is subordinate. Thereupon the Court of District Judge or any other competent Court to which the said execution case is transferred shall deal with the same as if the said execution proceedings are initiated in that court. (Proviso to R.46-C).

PROCEDURE WHERE THE DEBT BELONGS TO SOME THIRD PERSON:

When it is contended or appears that the debt belongs to some 3rd person but not the Judgment debtor or when the 3rd person has lien or charge or other interest in such debt, the court may issue notice to the 3rd person to appear and state the nature of extent of his claim to such debt and to prove about his interest lien or charge. (R.46-B).

Upon hearing the 3rd person or when the 3rd person does not appear as ordered, the Court may pass such order or may pass order upon such terms with respect to his lien, charge or interest of the 3rd person as it may deem fit and proper in the circumstances. (Rr.46 D & 46E)

As in the case of an unsecured debt payment by garnishee would be a valid discharge by him against the Judgment debtor and any other person ordered to appear when he claims interest against. An order passed in such proceedings may be set-aside or reversed. (R.46F)

APPEALS FROM GARNISHEE ORDERS:

An order with regard to unsecured debt, a share in the capital of the corporation or an order with regard to movable property in possession of a Pawnee or person having lien or having possession under Rule-46. An order determining the disputed question raised by the garnishee or an order passed against 3rd person who is directed to appear with regard to his claim under Rr.46 (C) & (E) respectively or appealable as a decree.

ATTACHMENT OF NEGOTIABLE INSTRUMENTS :

The attachment of negotiable instruments shall be by actual seizure and the instrument shall be brought into the court and shall be held subject to further orders of the court –(Rr.51, R.46(i)). The provisions relating to the notice to Garnishee U/s.46-A and appeal from an order against the said creditor of the Judgment debtor U/s.46-H are applicable in relation to the attachment of negotiable instruments which are attached under R.51.

ATTACHMENT OF SHARE IN MOVABLES:

Sometimes, the Judgment debtor may not be owning movables by himself. The movables may belong to Judgment debtor and another as co-owner. In such a case, the share or interest of the Judgment debtor can be ordered to be attached by issuing notice to the Judgment debtor prohibiting him from transferring his share or interest or charging it in any manner. (R.47). Such share of the Judgment debtor may be ordered to be auctioned. However, it has to be remembered that equity demands to give a preferential right to other co-owner to purchase share of the Judgment debtor and to deposit the same into the court.

ATTACHMENT OF SALARY:

In cases where the JDr is a salaried employee, the executing court can attach a maximum of one-third of their salary for a period of up to 2 years under Order 21 Rule 48 read with Section 60 CPC. However, this process often fails to recover substantial amounts. Attachment of salary is provided under Rr.48 and 48-A of CPC. We often come across instances of the D.Hrs. filing petitions under R.48 even in the case of private employees. Such petitions have to be returned. There is distinction between the attachment of salary of a Govt. employee or employee in Railways or employee or other Govt. company and the attachment of salary of private employees or employees of private companies etc., with regard to liability in the case of breach of order. Sec.48 is applicable for Govt. employees and Section 48-A is applicable to the movables of private companies or private movables. The attachment of salary is subject to the provisions of Section 60 of CPC. Attachment of salary can be made whether the disbursing officer of the Judgment debtor is or is not within the local limits of the jurisdiction of the Executing Court. When the salary or allowances are attached, it may be directed to deposit in

lumpsum or in monthly installments depending upon the amount to be recovered towards claim in the execution.

When attachment of salary is made disbursing officer shall withhold the salary and remit the same into the court. Where the attachable portion of salary or allowances is already being withheld and is being remitted to a court in pursuance of a previous and unsatisfied order of the attachment, the Disbursing Officer or the employee as the case may be shall forthwith return the subsequent order of attachment to the court issuing such attachment by stating full particulars of the existing attachment. Unless such warrant of attachment is so returned, an order of attachment of salary or allowances by the appropriate Govt. or Railways, Port Authorities etc., in case of breach of the order, the Central Govt. or State Govt. is liable for any sum paid to the Judgment debtor in contravention of the order of attachment.

In case of breach of order with regard to a private employee or his disbursing Officer or the employer is liable.

ATTACHMENT OF THE COINS OR CURRENCY NOTES:

Where the currency coins or currency notes are attached, the court may at any time during the continuance of the attachment direct that such coins or notes which are sufficient to satisfy the decree be paid over the property to the party entitled under decree. In lighter way, I have to say that this order is not effective against demontired currency of Rs.1000/- and 500 notes.

ATTACHMENT OF PARTNERSHIP PROPERTY OR PROPERTY OF FIRM:

Attachment of the partnership property may be in the form of a charge. The property belonging to a partnership firm shall not be attached or sold in execution of a decree unless such decree is passed against the firm or against the partners in the firm. Rr.49 and 50 of Order.21 provide for attachment of partnership property and execution of decree against the firm.

If a decree holder obtains a decree against a partner, the decree holder may make an application to the Court for making an order charging interest of the partner in the partnership property and profits which are already decreed or which may be accruing for making payment of the amount due under the decree and for realizing the same. He

may make a simultaneous application or may make an application subsequently, for appointing a Receiver of the share of such partner in the profits or any other money which is due to the partner and he may require that the Receiver may be directed to look into the accounts and to may make an order for the sale of such interest, if a charge had been created in favour of the decree holder by such partner. For making such an application by the decree holder notice shall be served not only on the Judgment debtor but also on his partners.

The other partner or partners are at liberty to redeem the interest charged or if a sale is directed he is at liberty to purchase the same. The other partners may make such an application by serving notice on Judgment debtor, Decree holder and on such other partners who do not join in such application for redeeming the charge or for purchasing the partnership property ordered to be sold.

Where a decree has been obtained against a Partnership Firm or against any person who has applied as partner in a suit filed by or against firm under Rr.6 and 7 Order 30 of CPC. It can also be executed against any person who is shown as a partner of the firm in the suit and to whom summons have been served but failed to appear. It however, does not limit or affect the provisions of Section 30 of Partnership Act 1932.

If the Decree holder claims that he is entitled to make a claim against other persons who did not appear as partners or persons having control or management under Rr.6 and 7 of the partnership business or against a person to whom summons were not sent, the decree holder may seek leave of the Court for filing Execution Petition against such person also. In such a case if the liability of the person against whom proceedings are proposed does not dispute his liability the court may grant leave. If the liability is disputed the question of liability may be tried and determined by framing an issue as in a suit. If such liability is determined, such an order is appealable as if it is a decree.

A decree against a firm unless it is against the property of the partnership it will not release or render liable any partner of the partnership firm unless he has been served with summons to appear and answer. The proceedings provide under R.50 of Order 21 are not applicable to a decree passed against Hindu undivided family.

ATTACHMENT OF PROPERTY IN THE CUSTODY OF COURT OR PUBLIC OFFICER:

We also come across the some of the decree holders filing petitions under R.52 of CPC. If the property to be attached is in the custody of any Court or Public Officer the attachment shall be made by notice to such Court or Officer requesting that such property or property along with interest or dividend payable thereon may be held subject to further orders of the court from which the notice is issued. If a question of title or priority arising between the decree holder and any other person who is not the Judgment debtor and who is claiming to be interested in such property by virtue of assignment attachment or otherwise, the same shall be determined by such court. There is an insertion of a provision for the Tamilnadu State. The same is adopted by A.P. which says that where the Court whose attachment is determined to be prior receives or realizes such property attached the receipt or realization shall be deemed to be on behalf of the courts in which there has been attachment of such property in execution of money decrees prior to the receipt of such assets. It should be borne in mind that decree must have been passed where attachment may have been made prior to making attachment. The priority of attachment in the case of attachment of property in the custody of a Court shall be determined on the same principles as in the case of attachment of property not in the custody of the Court as we have seen Rr.46 (D) and (46-E).

Rule- 242 of Civil Rules of Practice applies for attachment of property in custody of Public Officer.

ATTACHMENT OF DECREE:

According to Rule 53 of Order 21 two types of decree can be attached. A decree for payment of money or for sale in enforcement of mortgage or charge and decree which is not such an aforesaid decree. It can also be attached. A decree for sale in enforcement of mortgage or charge can be attached by the same Court. If such decree is not passed by the same Court but by a different Court, the court in which an application for attachment of decree is made shall issue a notice to the Court whose decree is sought to be attached requesting such Court to stay the execution of its own decree till the notice is cancelled.

In case of other decrees, notice shall be sent to the decree holder in the other decrees who obtained a decree prohibiting him from transferring or charging the said decree in any way and where such a decree is passed by any other Court by sending notice to such other Court to abstain from executing decree sought to be attached until such notice is cancelled by the court from which it was sent.

When an application for attachment of decree is filed as per Rule. 243 of Civil Rules of Practice notice shall be given to the holder to the decree the applicant may also apply praying for transmission of decree sought to be executed to that Court which passed a decree together with notice in Form-65. Rule-244 of Civil Rules of Practice says no decree shall be ordered to be sold in execution of another decree. When the attachment of decree is made by several decree holders, the Decree holder whose attachment is first in date has the liberty to execute the same first and for rateable distribution. These rules with regard to attachment correspondent to Rules 177 to 181 after Madras Civil Rules of Practice for the Mofusil Courts.

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY:

APPLICATION FOR ATTACHMENT:

Once after the court has decided upon the claims or objections if any, raised by the judgment debtor, against the execution of a decree; the DHr shall move an application requesting attachment of immovable property preceding sale. Though sale can take place without attachment, this shall further help in protecting the interests of the DHr. The application shall contain complete details of the immovable property so as to help in its identification. Also elaborate the extent of JDr interest in the said property, as per his information and belief. Whenever possible, the DHr shall produce extracts from the registrar's office showing various details such as interest of parties if more than one, revenue due to the government, encumbrance's if any in the immovable property, etc.

PROHIBITING ALIENATION OF PROPERTY:

The attachment of immovable property is provided under R.54. Attachment shall be made by an order prohibiting the Judgment debtor from transferring or charging the property in any way and prohibiting all persons from taking any benefit from such transfer or charge. . The same shall be drawn in writing and posted at a conspicuous place adjacent to the immovable property in question, and also at collector's office if the said property is land paying revenue to the government. Besides affixing, it shall be

publicly proclaimed with the beating of drums and other means. This order shall also require the presence of the JDr in court on date fixed for settling the terms of the proclamation for sale. R.54(1A) says the order shall also require the Judgment debtor to attend the court on a specified date to take notice of the date to be fixed for setting the terms of proclamation of the sale. If such a notice under R.54(1A) is issued , it is again not necessary to issue fresh notice under R.66 for making proclamation of sale.

How attachment effected?

It is important to note how the order of attachment shall be proclaimed. The order shall be proclaimed adjacent to the property sought to be attached by beat of Drum, Tom Tom or other customary mode. A copy of the order of attachment shall be affixed at the following places:

- 1) on conspicuous part of the property,
- 2) in the Court house
- 3) if revenue is payable to the Government from such property, the District Collector's office and in the Tahsildar office
- 4) If the property is a land situated in a village in the Gram panchayat office.
- 5) By an amendment made in Madras Sub Rule (2) of R.54 is amended. It requires that if the property is situated within the cantonment limits the order of attachment shall be affixed in the office of the local cantonment Board and the Military Assets Officers concerned.
- 6) if the property is situated within the limits of Municipality, the order of attachment shall be affixed in the office of the Municipality within the limits of which the property is situated.

It is necessary to know from which date the order of attachment is effective. The order of attachment shall be deemed to have been made against the transferee from the Judgment debtor , without consideration from the date of order of attachment . Against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed whichever is earlier.

OBJECTIONS TO ATTACHMENT: (Rule 58 of Order 21)

All claims or objections regard to the attachment of property on the ground that such property is not liable to be attached shall be filed before the executing court. However, such applications shall not be entertained by the court if the claim or objections is preferred after the attached property has already been sold or is unnecessarily delayed by design. In such circumstances, only remedy available to the applicant is to file a separate suit, and the court shall be bound by such outcome. However, all questions pertaining to *right, title or interest* they shall be adjudicated by the executing court itself.

PREPARING NOTICE OF SALE & ITS PROCLAMATION:

The executing court is empowered to attach property, and publicly auction it to pay the person entitled proceeds of the sale in satisfaction of the decretal amount. In this regards, the court shall issue a notice to both DHr and JDr to present themselves in court on the day and date fixed for drawing proclamation of sale notice. It is prepared in the language of the court and contains all the essentials viz. time and place of sale, specifications and description of property to be sold, revenue assessed if any due, any encumbrance to which the property is liable, decreed amount, estimate value of the property as ascertained by the court, judgment debtor and decree-holder or any other material information necessary that shall aid the purchaser in its evaluation. Care is taken to sell only that part of the property that is necessary to satisfy the decree. The court is also empowered to summon anyone, or demand documents deemed necessary in preparation of this proclamation notice. Henceforth, the court shall order the Nazir of the Court for causing service of this drawn proclamation of sale. The same shall be published and announced by beat of drums. A copy of the same is affixed on a conspicuous part of the property and the courthouse. After performing all such acts, Nazir shall prepare a report for the information of the executing court.

WARRANT OF SALE:

The court shall issue a warrant of sale order in the name of the bailiff to publicly auction as per the details mentioned in the warrant on the date and place specified and report back to court with an endorsement certifying the manner in which sale has been executed or the reason why it has not been executed.

Adjournment, postponement or stoppage of sale:

1. The court may at its discretion adjourn sale to a specified date and hour, and so can an officer conducting the sale but after recording reasons thereto. And if the auction is taking place within the precincts of the courthouse then only after leave of court.
2. Sale can be adjourned when the bid amount is not adequate.
3. Sale can be adjourned if the purchaser fails to pay 25% of the bid amount immediately on closing of bid, and postponed if he does not pay the remaining sum within 15 days of the successful bid.
4. Provided, if the JDr is able to satisfy the court that if the given time he shall be able to raise the decreed amount either by way of leasing, mortgaging or selling the property in question or other property the court may postpone the sale on such terms and for such period as it deems fit. The court shall grant a certificate to the JDr in this respect. All monies raised by JDr shall be paid to the DHR.
5. If for any reason purchaser defaults on paying the full bid amount then after defraying the expenses involved in the auction, the remainder sum may be forfeited in the favor of the government, if the court so decides. And the property shall be resold after issuing a fresh proclamation.
6. The sale could be stopped any time before the lot is knocked down if the JDr tenders to the officer conducting the sale the full decreed amount along with costs and expenses or on producing proof of its deposit in executing court.
7. Sale can stay pending adjudication of any claim or objection even if it is received after proclamation of attachment and advertisement for sale. Or conditionally allowed pending adjudication that if property is sold the same shall not be confirmed or pass orders subject to such terms and conditions as to security etc.

Note: If adjournment exceeds 30 days then fresh proclamation is to be issued, published and affixed as mentioned earlier.

APPLICATION TO SET ASIDE THE SALE:

1. Any person claiming an interest in the property sold may apply to the court to set it aside subject to payment in court 5% of purchase money and sum equal to that specified in proclamation notice i.e. decreed amount.
2. DHr, purchaser or any other person having interest in the distribution of proceeds from the sale may apply for setting aside the sale on grounds of fraud or material irregularity in publishing or conducting the auction, provided injury sustained is substantial. No such application shall be accepted if the applicant had an opportunity to approach the court on an earlier occasion but has failed to do so.
3. Purchaser may apply to set aside the sale on the ground that the JDr has no saleable interest in the decreed property.

Pertaining to all of the above cases, notice is issued to the other party to show cause before adjudication.

SUCCESSFUL SALE:

If a sale is successful, then the purchaser is required to immediately deposit 25% of the sale amount and the rest within 15 days of successful bid unless DHr is the purchaser himself with the prior permission of the court.

DISTRIBUTION OF MONEY REALIZED FROM SALE:

After defraying expenses involved in the sale of property, pay to decree-holder his full entitlement, and if any balance remains that shall be given to the JDr. If on the contrary money realized from sale is not sufficient to satisfy the decreed amount then the DHr can apply to the court for recovery of balance amount provided it is legally recoverable.

CERTIFICATE TO PURCHASER:

Once the sale has become absolute, and there is no litigation pending in either of the courts i.e. executing court or courts of appeal the court shall issue a certificate in favor of the purchaser containing the details of the property and the day and date he is declared to be the absolute owner of the immovable property. If the property in question

is occupied by a tenant the court shall issue a proclamation bringing to his notice the name of the new owner.

Finally, if for any reason the purchaser is being obstructed from gaining possession the court shall intervene on the application, and order the bailiff to put the purchaser in possession of the sold property.

THE DURATION OF ATTACHMENT:

If the amount decreed with costs along with the charges and expenses resulting from attachment is deposited into the court, the attachment shall be deemed to be withdrawn.

Secondly if the satisfaction of the decree is otherwise made through the Court or certified to the Court and

Thirdly if a decree is set-aside or reversed, the attachment shall be deemed to be withdrawn and in case of immovable property, if the judgment debtor so desires the withdrawal of attachment shall be proclaimed at the expenses of the judgment debtor and a copy of the proclamation shall be affixed in the manner prescribed under sub-rule (2) of R.55 of CPC.

If the Court for any reason dismisses an Execution petition filed for attachment or sale of property, the Court shall direct whether the attachment shall continue or cease, the Court shall also indicate the period up to which such attachment shall continue or the date on which such attachment will cease. We often find the Courts dismissing E.Ps. by making an order that attachment shall continue for a period of three months or six months etc, to enable the diligent decree holder whose E.P. is being dismissed for some reason or other to come up with fresh application. If the court omits to give direction of such continuance attachment, the attachment shall be deemed to have ceased. (R.57).

The adjudication of claims and objections is provided under Rule-58.

APPOINTMENT OF RECEIVERS IN EXECUTION

The power to appoint receivers in execution should be more freely used for the purpose of realizing the money decreed where the property is sufficiently large to bear the extra cost of appointment of a receiver.

1. A Court, ordering attachment of land assessed to the payment of revenue to the Government, should send two copies of the order to the Collector with a request to have one of them affixed to the notice board in his office. As the other copy is required for the Record of Rights, one copy only need be sent, if the land is in a village where the Record of Rights has not been introduced. District Judges should obtain lists of such villages for their Courts and subordinate Courts, from the Collector.
2. Similarly, a Court by whose order attachment is removed or ceases should send intimation to the Collector in standard Form No. Civ. A-234.
3. The Collector should certify the affixing to or the removal from, his notice-board of orders of attachment.

THE CHALLENGES AND IRONIES OF EXECUTING MONEY DECREES IN INDIA

It is a well-known adage in legal circles that obtaining a money decree from an Indian court is often easier than actually executing it and recovering the awarded sum from the Judgment Debtor (hereinafter referred to as the JDr). The JDr can ultimately prevail by failing to pay the decreed amount, leaving the Decree Holder (hereinafter referred to as the DHr) unable to recover the money they are legally entitled to.

In a significant number of cases, even after successfully obtaining a money decree, the DHr faces substantial challenges in the execution proceedings, resulting in the decree remaining largely on paper. The process of executing a decree is often prolonged, expensive, and exhausting, leading many DHs to abandon their efforts out of frustration. Execution of a money decree is an arduous task, requiring great effort and perseverance on the part of the DHr to recover the sum they are entitled to as per the court's judgment.

The procedure for executing money decrees is governed by Order 21 of the Code of Civil Procedure (CPC). As per Order 21 Rule 11(2) CPC, the DHr must file a written execution petition accompanied by a certified copy of the decree. The DHr is also required to provide details of the JDr's movable assets, bank account particulars, and immovable properties that can be attached by the executing court.

Order 21 Rule 22 CPC provides that if the execution petition is filed within 2 years from the date of the decree, the executing court can issue attachment warrants without prior notice to the JDr. However, if the execution petition is filed after 2 years, notice must be served upon the JDr before proceeding with the attachment.

The executing court, upon receiving a report of non-satisfaction of the decree, issues warrants for attachment of the JDr's movable properties. A court-appointed bailiff then visits the JDr's premises to attach the movable assets as per the list provided by the DHr, if they are found at the given address.

If the DHr manages to obtain the JDr's bank account details, the executing court may issue warrants for attachment of the balance funds in the account. However, if the specific account number is not available to the DHr, attachment of the bank account becomes impossible.

After the court attaches the movable assets, objections may be raised to seek the release of properties not owned by the JDr.

However, the execution process is rarely straightforward, as JDrs often employ various means to prevent the successful execution of the decree.

INDIVIDUAL AS JUDGMENT DEBTORS:

When the JDr is an individual, they may relocate to a different place after the decree is passed, making it challenging for the DHr to trace their whereabouts. Even if some movable assets are found at the JDr's premises, they are often of little value, being mostly household items. If the JDr moves outside the jurisdiction of the executing court or to another state, the DHr faces even greater difficulty in recovering the money, as the decree must then be transferred to the court having jurisdiction over the JDr's new place of residence or business.

SALARIED PERSON AS JUDGMENT DEBTORS:

In cases where the JDr is a salaried employee, the executing court can attach a maximum of one-third of their salary for a period of up to 2 years under Order 21 Rule 48 read with Section 60 CPC. However, this process often fails to recover substantial amounts.

COMPANY AS JUDGMENT DEBTORS:

When the JDr is a private limited company, the DHr faces significant challenges in recovering the money. Private limited companies often have few assets of value, usually limited to furniture, computers, or air conditioners. The companies typically maintain current accounts with banks, which rarely hold significant funds. Moreover, the shares held by the directors are often of little market value, as they are not easily sold in the open market.

It is a common occurrence that by the time a money decree is passed against a company, the directors or shareholders have already rendered the company defunct, leaving it devoid of assets. As directors cannot be held personally liable for the company's debts, the money decree against the company remains largely unenforceable.

Furthermore, companies often have overdraft accounts with banks, allowing them to continue business operations despite maintaining a negative balance. Such overdraft accounts cannot be attached, making it nearly impossible for the DHr to recover the decreed sum.

In cases where the company is undergoing insolvency proceedings before the National Company Law Tribunal (NCLT) or is in liquidation, or a moratorium has been imposed, it becomes exceedingly difficult for the DHr to recover any money.

PARTNERSHIP FIRM AS JUDGMENT DEBTORS:

When a money decree is passed against a partnership firm, it can be executed against the partners' personal assets. However, it is common for business owners to have already pledged their personal properties, plant and machinery, and stock to secure business loans from banks. In such cases, these assets cannot be attached to satisfy the money decree, leaving the DHr unable to recover the sum.

JUDGMENT DEBTORS OUTSIDE COURT'S JURISDICTION:

If the JDr resides or is situated outside the jurisdiction of the court that passed the decree and their assets are located within another state or court's jurisdiction, the DDr faces additional hurdles in recovering the money. As per Order 21 Rule 5 & 6 CPC, the DDr must obtain a transfer certificate and approach the court having jurisdiction over the JDr's assets. This requires the DDr to travel to another state, engage a new advocate, and incur further expenses to execute the decree.

Executing a money decree in another state is a time-consuming and exhausting process, as the procedure varies from state to state. The DDr must make multiple visits, arrange for accommodation, and navigate the lengthy execution process. If the JDr relocates to different cities within the same state, fresh transfer certificates must be obtained each time. These factors make it extremely challenging for the DDr to recover the money from the JDr.

Various recourses available in law with the courts to execute the Decree.

ATTACHMENT OF IMMOVABLE PROPERTY:

If the DDr is unable to recover the decreed amount by attaching the JDr's movable properties, they may seek attachment of the JDr's immovable property under Order 21 Rule 54 CPC. However, if the JDr only owns a single dwelling house, it cannot be attached in execution of a money decree.

Even if the JDr owns multiple properties, if they are in the name of their parents, spouse, or children, who are not parties to the decree, these properties cannot be attached or sold to satisfy the decree.

Moreover, if the JDr's immovable property is mortgaged to a bank, which has a secured charge over the property, the DDr will be unable to sell the property to recover the money, as the bank's claim will take precedence.

In most cases, JDrs reside in rented properties, making it impossible for the DDr to attach any immovable property.

CIVIL ARREST OF THE JUDGMENT DEBTOR:

When the JDr fails to satisfy the decree, the DHr may seek civil arrest of the JDr under Order 21 Rule 37 CPC. However, even at this stage, the JDr may plead a lack of assets or funds, making it difficult for the executing court to order civil imprisonment. Even if the JDr is imprisoned, it is only for a maximum period of 30 days, during which the DHr must bear the cost of the JDr's subsistence allowance. This process rarely results in the recovery of money, as the JDr can be released from prison after 30 days without making any payment towards the decree.

COURT AUCTION PROCESS:

Attached movable assets are initially given to the DHr on 'safe custody' and then sold by the court through an auction under Order 21 Rule 64 CPC. The court auction process is complex and time-consuming, and the DH must incur additional expenses for the auction to take place. Rarely is a significant amount recovered unless the DHr manages to attach valuable assets such as vehicles or jewelry from bank lockers. JDr's often transfer or withdraw funds from their bank accounts after the decree is passed, making it difficult for the DHr to recover money through the attachment of bank accounts. Furthermore, obtaining details of the JDr's bank lockers is a challenging task.

The DHr must be fortunate to find valuable assets or substantial funds in the JDr's bank account for the court to attach them and enable recovery of the decreed sum. Therefore, executing a money decree is an arduous and time-consuming process, often resulting in the decree remaining unsatisfied.

PIERCING THE CORPORATE VEIL:

In cases against a company where the facts warranting the lifting of the corporate veil have been established at the time of drafting the suit, and the decree is passed against the directors after piercing the corporate veil, the executing court may attach the directors' personal assets to satisfy the decree. As companies are separate legal entities, directors are not personally liable for the company's debts unless they have been made personally liable. However, courts are generally reluctant to lift the corporate veil, allowing directors to evade personal liability.

COMPARATIVE ANALYSIS WITH SINGAPORE:

In contrast to the challenges faced by DHrs in India, the enforcement of money decrees in Singapore is more streamlined and efficient. The Singapore government has established various sources for obtaining information that can be used for the enforcement of money decrees. These include:

1. E-services of the Ministry of Law's Insolvency Office, which provide information on the bankruptcy and solvency status of individuals and body corporates.
2. The Accounting and Corporate Regulatory Authority (ACRA) Business Information database, which offers details on an individual's past and present businesses, offices held, shareholdings, and financial information for companies.

In Singapore, DHs can approach the court to obtain information on the assets of JDrs prior to the initiation of legal action. Applications can be filed for pre-action discovery and interrogatories to identify potential assets of the JDr. Moreover, applications can be made to prevent a party from disposing of its assets.

The enforcement of money decrees in Singapore is governed by the new Rules of Court 2021 and Singapore International Commercial Court Rules 2021, which came into effect on April 1, 2022. These rules provide multiple methods of enforcement and require a single application to be filed, specifying the sequence in which the enforcement methods are to be carried out. The enforcement process is conducted by the Sheriff, and the process has been simplified, typically taking between two to eight months to enforce a judgment. The JD can be burdened with legal costs, court filing fees, and expenses related to execution, such as advertising fees, auction fees, and the Sheriff's commission, as per Order 22 Rule 9 of the 2021 Rules.

CONCLUSION:

The current procedure for executing money decrees under Order 21 CPC in India is exhaustive and time-consuming. Order 21 Rule 11(1) CPC empowers the court to order the arrest of the JDr at the time of passing the decree if the JDr is present in court. However, this provision is rarely invoked, as most decrees are passed in the JDr's absence, allowing them sufficient time to dispose of their assets or move beyond the court's jurisdiction.

To address these challenges, the Supreme Court of India, in its order dated 22.04.2021 in **Rahul S Shah v. Jitendra Kumar** (Civil Appeal No. 1659-1660 of 2021), has mandated courts to exercise their powers under Order 21 Rule 11 CPC to ensure immediate execution of money decrees upon an oral application. The Court has also directed that before the settlement of issues in a suit for payment of money, the defendant may be required to disclose their assets on oath to the extent of their liability. Furthermore, courts may, at any stage during the suit's pendency, demand security from the defendant to ensure the satisfaction of any decree that may be passed.

Unfortunately, courts are often hesitant to exercise these powers, and there are few instances where defendants have been compelled to disclose assets or provide security for the decretal amount during the pendency of the suit.

Although Order 21 Rule 41 CPC empowers the court to examine the JD and compel disclosure of assets, the absence of a centralized asset database accessible to the public makes it easy for JDs to conceal their true assets.

To effectively execute money decrees, trial courts must exercise their powers in terms of the Supreme Court's ruling in *Rahul S Shah v. Jitendra Kumar* and compel defendants to disclose their assets or furnish security for the suit amount, especially when the defendant's case appears weak and a decree is likely to be passed against them.

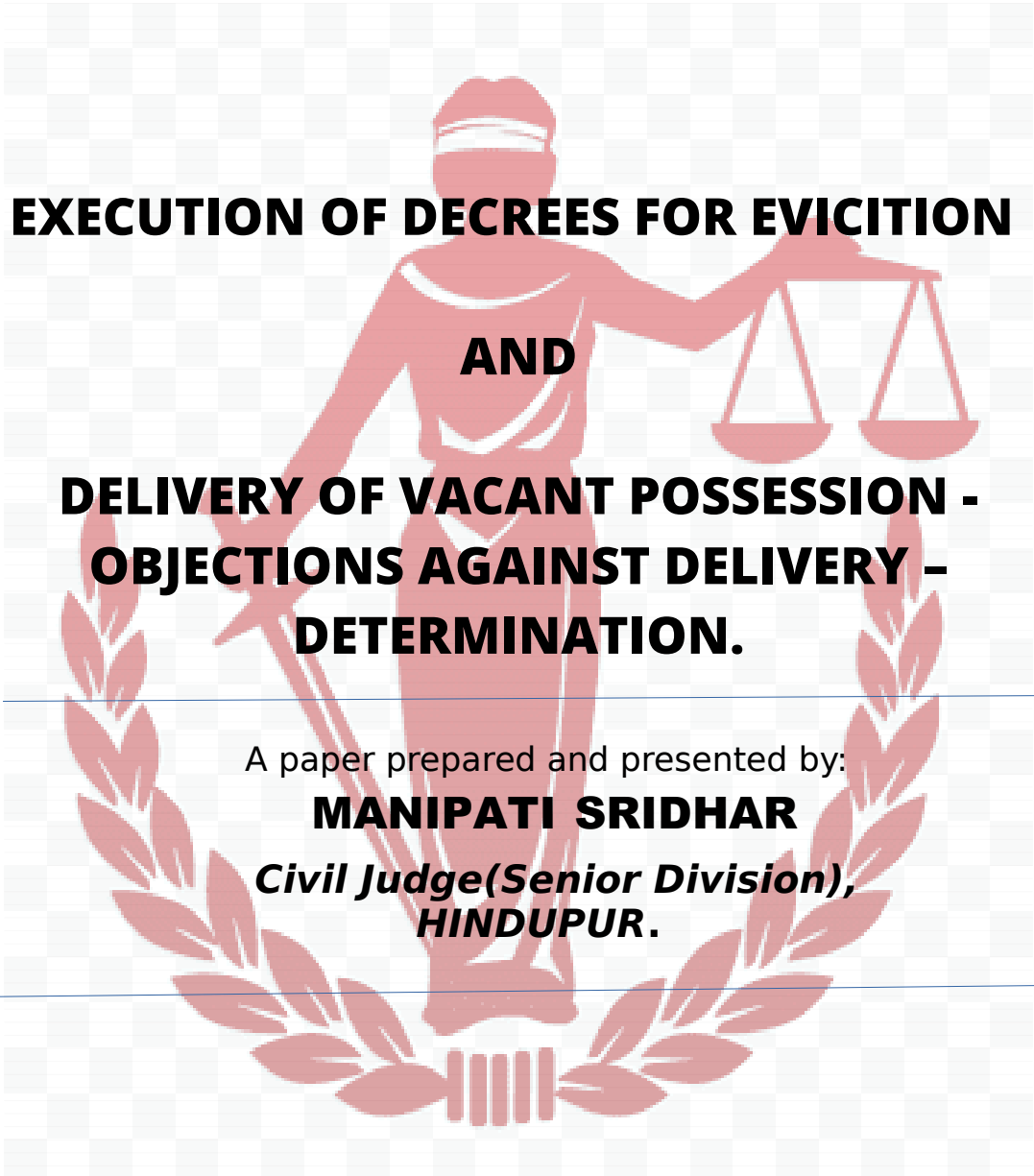
During the trial of a money suit, courts should carefully examine the defendant's defence and assess the likelihood of success, similar to their approach in summary suits filed under Order 37 CPC. If the court finds the defendant's defence to be weak, it should direct the defendant to provide security for the suit amount, disclose their assets, and restrain them from disposing of those assets during the pendency of the suit. The trial court must protect the plaintiff's interests and, at the time of passing the decree, secure the defendant's presence and immediately initiate execution proceedings upon an oral application to ensure the decree's satisfaction.

To further aid the execution of money decrees, the Indian Parliament can draw inspiration from the efficient enforcement mechanisms in place in Singapore. Establishing centralized databases for accessing information on the assets and financial status of individuals and companies, as well as streamlining the enforcement process, can significantly improve the success rate of money decree executions in India.

Until such reforms are implemented, DHs will continue to face a laborious and often futile process of executing money decrees, with many decrees remaining unsatisfied due to the challenges posed by uncooperative JDs and the limitations of the current legal framework. By adopting best practices from jurisdictions like Singapore, India can work towards ensuring that money decrees are effectively enforced, providing much-needed relief to DHs and strengthening the integrity of the judicial system.



WORKSHOP
Session-II & III



**EXECUTION OF DECREES FOR EVICTION
AND
DELIVERY OF VACANT POSSESSION -
OBJECTIONS AGAINST DELIVERY -
DETERMINATION.**

A paper prepared and presented by:

MANIPATI SRIDHAR

*Civil Judge(Senior Division),
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EXECUTION OF DECREES FOR EVICTION & DELIVERY OF VACANT POSSESSION - OBJECTIONS AGAINST DELIVERY - DETERMINATION.

A paper prepared and presented by:

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1. CONCEPTUAL:-

Execution is the most important aspect of Civil justice. Success or failure of the system of Civil justice depends on the rate of success in executing the decrees of Civil Courts. Legislature has drafted and introduced exhaustive and exemplary provisions of execution in the Code of Civil Procedure. There are as many as 106 rules in order 21 which deals with execution and from section 36 to 74 (both inclusive) embodied in the Code of Civil Procedure. From the vast number of sections and rules a beginner might feel intimidated but in reality the work of execution is anything but complicated. The thing is , as has been mentioned somewhere, a good vehicle is not to be badly driven. Procedure is but a safe vehicle of justice.

The journey of execution of decree is started from filing of execution petition in terms of rule 11(2) of Order XXI of CPC. Initially, there must be application for execution of a decree. The application require verification of the Decree holder or authorized person should be mentioned in the execution petition so that the court can proceed smoothly. The verification of pleading (Order 6 rule 15) and verification of execution petition are distinct. The requirement of rule 11(2) are fulfilled if the verification is to the satisfaction of the court.

2. INTRODUCTION:-

Under Section 47 all questions relating to execution, discharge, or satisfaction of the decree should be determined by the executing Court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under Section 47. Post sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered O.21 Rule 90 CPC. In such case, the applicant must prove substantial injury and the same was reported in the decision of **(1994) 1 SCC 131 – Desh Bandhu Gupta vs. M.L. Anand & Rajinder Singh.16**

Explanation 1 — For the purposes of this Section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II — (a) For the purposes of this Section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) 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.

The scope of Section 47 has been explained by the Apex Court in **AIR 1996 SC 1005 = (1996) 2 SCC 371 – Umashasnkar vs. Sarabjeet**. In the decision in the case of **Sneh Lata Goel vs. Pushplata and Ors., reported in AIR 2019 SC 824**, it is held that “objection to validity of decree for want of territorial jurisdiction, would not lie before Executing Court”.

The Apex Court has held that there is no conflict between Section 47 and Order 21 Rule 2 in **Sultana Begum vs. Prem Chnd Jain, 1997 (1) SCC 373**. Even if there is any conflict, general provision contained in Section 47 must yield to the special provisions contained in O.21 Rule 2 CPC.

2.1 WHETHER QUESTION OF TENANCY CAN BE DECIDED BY THE EXECUTING COURT?

ANS: NO, and the same was reported in decision of **(2005) 8 SCC 41 – TCI Finance Ltd vs. Culcutta Medical Centre Ltd.**

The Hon'ble Court held that High Court's order is clearly unsustainable on more grounds that Respondent No.1 claimed its tenancy from Mrs.Prema Gupta. Her application to be impleaded as a party in the present proceedings was rejected. At no point of time she had pressed a claim of being the owner of the property. It is to be noted that the appellant has not accepted that the respondent No.1 was a tenant in respect of the attached properties. In any event, the question of tenancy cannot be decided by the Execution Court. The Executing Court cannot go beyond the decree. It is the settled position in law which flows from Section 38 of CPC; except when the decree is a nullity or is without jurisdiction. The crucial expression in Section 47 is "All questions arising between the parties to the suit" "or the irrepresentatives". Order 21 Rule 54 deals with attachment of immovable property, while Rule 58 deals with adjudication of claims to, or objections to attachment of property. Case of respondent No.1 is not covered by Section 47 or Order 21 Rule 54 or Rule 58. The High Court misconceived the nature of claim set up by respondent No.1. Learned Single Judge rightly noted that respondent No.1 was not having independent right to the properties. It found that the right claimed was as assignee under the judgment debtor. The agreement, if any, in that regard was not produced before the Court and, therefore, learned Single Judge drew adverse inference. Before the Division Bench, the stand of respondent No.1 was that it was a tenant. Without indicating any reason as to how reasoning of learned Single Judge was wrong the Division Bench enlarged the scope of the controversy and directed the Execution Court to decide question of tenancy which is legally impermissible.

The Division Bench unnecessarily enlarged the scope of the controversy observing that the matter has assumed the proportion of a full blown suit. It

permitted the Execution Court to deal with the matters which are clearly beyond the scope of its adjudication. We, therefore, set aside the impugned order of the Division Bench and affirm that of the learned Single Judge of the High Court. However, it is made clear that if the question of dis-possession of respondent No. 1 arises, even if it is treated to be a trespasser the same can only be decided in accordance with law. With the aforesaid observations, the appeals are allowed but without any order as to costs.

3. EXECUTION OF DECREES FOR EVICTION:

3.1 MEANING OF EVICTION:-

Eviction is the civil process by which a landlord can legally remove a tenant from a rental property. An eviction may occur when the tenant stops paying rent, when the terms of the rental agreement are breached, or in other situations permitted by law.

Section 10 of Andhra Pradesh Buildings (Lease, Rent And Eviction) Control Act, 1960 read as follows:-

10. EVICTION OF TENANTS:-

- (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 12 and 13:

Provided that where the tenant, denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied:

(i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable; or

(ii) that the tenant has, in the Andhra area, after the 23rd October, 1945, and in the Telangana area after the commencement of the Hyderabad House Rent Control Order of 1353 Fasli, without the written consent of the landlord:

(a) transferred his right under the lease or sub-let, the entire building or any portion thereof if the lease does not confer on him any right to do so; or

(b) used the building for a purpose other than that for which it was leased; or

(iii) that the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building; or

(iv) that the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood; or

(v) that the tenant has secured alternative building or ceased to occupy the building for a continuous period of four months without reasonable cause; or

(vi) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona

vide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender the rent was not wilful, he may, notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

(3) (a) A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building

(i) in case it is a residential building -

(a) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation;

(b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise.

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence :

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered;

Provided further that, where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this Clause-

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

(b) Where the landlord of a building, whether residential or non-residential, is a religious, charitable, educational or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller subject to the provisions of clause (a) for an order directing the tenant to put the institution in possession of the building.

(c) a landlord who is occupying only a part of a building, whether residential or non-residential may, notwithstanding anything in

clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on, as the case may be.

- d) Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period.
- (e) The controller shall, if he is satisfied that the claim of the landlord is bona fide, makes an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to landlord:

Provided further that, the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate.

- (4) No order for eviction shall be passed under sub-section (3)-
 - (i) against any tenant who is engaged in any employment or class of employment notified by the Government as an essential service for the purposes of this sub-section unless the landlord is himself engaged in any employment or class of employment which has been so notified; or

(ii) in respect of any building which has been let for use as an educational institution and is actually being used as such, provided that the institution has been recognised by the government or any authority empowered by them in this behalf, so long as such recognition continues.

(5) (a) Where a landlord who has obtained possession of a building in pursuance of an order under sub-section (3) does not himself occupy it and for the purpose specified in the order within one month of the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building and the Controller shall make an order accordingly notwithstanding anything in Section, 3.

(b) Where a tenant who is entitled to apply for possession under clause (a) fails to do so within one month from the date on which the right to make the application accrued to him, the Government or the authorised officer shall have power, if the building is required for any of the purposes, or for occupation by any of the officers specified in sub-section (3) of that the building is so required, and thereupon the provisions of sub-sections (6) and (8) of Section 3 shall apply to the building:

Provided that this clause shall not apply to a residential building the monthly rent of which does not exceed twenty five rupees or to a non-residential building the monthly rent of which does not exceed fifty rupees.

(6) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the

Controller may direct that Compensation, not exceeding fifty rupees be paid by such landlord or the tenant.

- (7) When an application under sub-section (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3).
- (8) Notwithstanding anything in this Section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant.

Section 10 of Andhra Pradesh Buildings (Lease, Rent And Eviction) Control Act, 1960 read as follows:-

10. EXECUTION OF ORDERS: -

Every order made under Section 10. Section 12. Section 13 or Section 14 and every order passed on appeal under Section 20 or on revision under Section 22 and every order as to costs under Section 21 shall be executed by the Controller :

Provided that an order passed in execution under th Section, shall not be subject to an appeal, but shall be subje to revi-sion under Section 22.

C O M M E N T S

Orders passed under Section 15 and 20 alone are revisable. AIR 1964 AP 271.

In view of Section 15 of the Act the order of the Rent Controller passed under section 4 of the Act is not an executable order but for the

purpose of considering Section 10 (2) of the Act the rent as fixed by the Rent Controller has to be treated as the rent payable by the tenant. Rajender Prasad Agarwal and another vs. Mysari Anasuya, 2006 (5) ALD 118 2006 (4) ALT 732.

Appeal against the order:- (1)S.Venkata Reddy vs. New Tirumala Emporium, 2001 (5) ALD 311 = 2001 (4) ALT 604.

Application for restoration of lease:- (1)Amtul Quayyum Humsira vs. Munnawar Fatima, 2001 (6) ALD 205.

Provisions of Section 47 Code of Civil Procedure in execution proceeding:- (1) Amtul Quayyum Humsira vs. Munnawar Fatima, 2001 (6) ALD 205 = 2002 AIHC 414

3.2 WHAT ARE EVICTION LAWS IN INDIA?

A rental tenancy is simply a type of a lease in which the property is temporarily transferred from the owner, who is known as the lessor, to the tenant, who is referred to as the lessee, according to [Section 105](#) of the [Transfer of Property Act, 1882](#). But, [The Rent Control Act of 1948](#), which was enacted by the Government of India to calibrate the rentals of real properties and to govern the evictions of tenants in India, encompasses all the provisions relating to tenants and landlords. The most important requirement, however, is that you should have a proper rental agreement in place with your tenant, which defines details such as the rent amount, the duration of the agreement, the security deposit, and the purpose of the stay. While tenants are protected from arbitrary eviction from their homes except for specified reasons and under specified conditions under the Rent Control Act, the landlord retains the right to evict a tenant if the tenant commits certain specified acts or if the landlord requires the home for his own personal use.

3.3 CITATIONS ON EXECUTION OF DECREES FOR EVICTION:-

The delay in executing decree for eviction by Rent Control and Eviction Court is apparent in the decision reported in **(2007) 3 SCC 113 – Jagdish Prasad vs. Sampatraj**. The Supreme Court further directed in the following terms. “Delivery of possession of the premises in question shall be affected in favour of the land used after evicting the tenant therefrom any time after 31-12-2006 but not later than 31.1.2007. If for evicting delivery of possession, the executing Court requires any armed force to be deputed, the same shall be requisitioned from the Superintendent of Police concerned who shall depute the same within 48 hours from the date of the requisition is received. It is made clear that in case of any person other than the judgment debtor is found in possession of the subject matter, he shall also be evicted by the armed force”.

Though Order XXI Rule 97 empowers the DhR or the purchaser to file application for removal of obstruction, in view of Section 47 CPC even a third party can also file application under the above provision. In this regard the decision of Apex Court in the case of **Brahmadeo Choudhary vs. Rishikesh Prasad Jaswal & another reported in AIR 1997 SC 856 and AIR 1998 SC 754** in the case of **Silver line Forum Pvt. Ltd., vs. Raju Trust & another** are relevant.

Third person other than Judgment Debtor complained of its dispossession from suit property by decree holder or purchaser in execution of decree held can no longer be put back into possession merely on establishing there that it that is such Third party was in possession prior to being dispossessed from the suit property. All questions including right, title or interest in the property between the parties to the proceeding arising on the application under Rule 99 by such third person, are required to be adjudicated by executing Court itself dealing with application. Only thereafter question of possession of suit property can be decided no separate suit is required. Order of adjudicating Court shall be treated as decree, it is relevant in decision reported in **Shamsher**

Singh and another vs. Lieutenant Colonel Nahar Singh (dead) through and others, (2019) 17 SCC 279.

Where obstruction to execution of decree being caused, held it is for decree holder to take appropriate steps under Order 21 Rule 97 for removal of obstruction and to have the rights of the parties including the obstructionist adjudicated under Order 21 Rule 101 of CPC, it is relevant in decision reported in **Anwarbi vs. Pramod D.A. Joshi, (2000) 10 SCC 405.**

Once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It has also been held that with effect from the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree." it is relevant in decision reported in **Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. ,** The relevance is on several heads: namely,

- (i). that the tenancy is terminated after a decree of eviction;
- (ii) that the Appellate Court under Order XLI Rule 5 has the power to put the appellant on terms for staying of execution of a decree;
- (iii) that the Appellate Court exercises equitable discretionary jurisdiction at the stage of grant of stay of a decree on terms;
- (iv) that depriving a landlord of the fruits of the decree of eviction and postponing execution of such a decree calls for suitable compensation to the landlord and last,

(v) that the landlord/deed-holder should accordingly be suitably compensated.

In Civil Appeal No. 1024 of 1967 **Mohan Lal v. The State of Punjab**, disposed of on 25.11.1969, the Apex Court speaking through Hegde, J, observed that under our jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law. This is the essence of the rule of law. It was also observed that a person in unauthorised occupation of the suit premises can invoke the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, if they are being evicted in a manner not authorised by law.

4. DELIVERY OF VACANT POSSESSION:

The obligation to give vacant possession is generally understood to refer to the legal commitment to ensure that at the relevant date (for example, on completion of contract or termination of a lease) a given property is in a state fit to be occupied (both physically and legally) and enjoyed. Vacant possession is known to be relevant to the sale of free hold land and property (e.g. the transfer of estates in fee simple) and upon the grant, transfer and termination of leases and other tenancies (and perhaps informal agreements to occupy by consent. Vacant possession is an essential element of any land transaction where the right to occupy a property is being vested in, or passed to, a third party. Order 21 Rule 35 and 36 of Civil Procedure Code, 1908 reads as follows:-

35. Decree for immovable property:-

- (1)** Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

- (2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.
- (3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Decree for delivery of immovable property when in occupancy of tenant:-

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

4.1 DELIVERY OF IMMOVABLE PROPERTY:-

A suit for declaration of title and for recovery of possession was decreed. Execution Petition has been filed for delivery of immovable property i.e., open land under Order 21 Rule 35 C.P.C., The Executing Court ordered delivery of property. When the Bailiff proceeded to execute delivery warrant, he found that there are structures like residential houses made by Judgment Debtors in the suit land. Then the Bailiff returned delivery warrant un-executed duly reporting

to the Executing Court about existence of such structures. The executing Court ordered him to execute the delivery warrant entrusted to him, duly directing him to demolish such construction of structures and hand over vacant possession of suit land to decree holder, even though the plaintiff has not sought for the relief of mandatory injunction in the suit and in that situation, the decree under execution cannot be treated to be as an un-executable decree and it is of no consequence as to whether such structures are in existence or not in suit land which were constructed either prior or after filing of the suit, as per the language used in Order 21 Rules 35, 97 and 101 C.P.C.,

The Executing Court can pass orders directing its Bailiff to execute the delivery warrant duly demolishing structures, if any, made by the Judgment Debtors and to deliver vacant possession of suit land, on the application made by Decree holder under Order 21 Rule 97 C.P.C., requesting the Executing Court to give such specific directions to its Bailiff to demolish the structures made by Judgment Debtors in suit land and handed over its vacant possession to Decree holder.

Even if the Judgment Debtors have contended that without a prayer and decree for mandatory injunction, the trial Court/Executing Court cannot give directions to its Bailiff to remove structures on the premises that they exist even at the time of filing of the suit and if plaintiff Decree holder fails to ask for decree for mandatory injunction by way of filing separate suit, the Executing Court cannot order delivery of vacant possession of suit land and such contention of Judgment debtors is liable to be rejected by Executing Court, in view of specific language used in Order 21 Rules 35(3) 97 &101 C.P.C.

The court can execute the decree without tortuous remedy by way of filing a separate suit for mandatory injunction or possession thereof by the plaintiff – Decree holder so as to avoid delay in execution or frustration and thereby defeat decree.

Hence, the Judgment Debtors have no right or word to say or to contend that the decree under execution is only for recovery of schedule land is an un-executable decree. But the Executing Court is certainly empowered to pass specific directions to its Bailiff to execute the delivery warrant after demolishing the structures, if any, existing on schedule land and hand over vacant possession of the schedule land.

Even, if, for any reason, the Judgment Debtors do not co-operate in removing the movables from the existing structures, the Bailiff is authorized to make an 'inventory' of those movables in the presence of 2 respectable panchas i.e., Panchayat Secretary and Village Servant and keep all those movables in the custody of such Panchayath Secretary, to be delivered to the Decree holder as per the provisions of Rule 35 of Order 21 C.P.C.

Further, Sub-rule (3) of Rule 35 of Order 21 C.P.C., clearly authorizes the Executing Court through its officers i.e., Bailiffs to deliver the possession of suit land to which decree passed and if the person in possession by that time, namely Judgment Debtor, being bound by the decree under execution, do not afford free access, the Court through its officers i.e., Bailiffs, may, after giving reasonable warning to the person in possession, and facilitate to any woman not appearing in public, according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the Decree holder in possession of the suit land.

The intendment of the Parliament in introducing the important provision under Order 21 Rule 35 (3) C.P.C., which authorizes Executing Court to pass all the incidental, ancillary or necessary orders for the purpose of enforcement of the decree under execution for the relief of delivery of the possession of the suit land and those inherent powers also include the power to remove any obstructions of construction or superstructure made PENDENTI LITE i.e., either prior to or after filing of the suit, and such type of orders passed by the Executing Court in execution of decree for delivery of possession of suit land, cannot be treated to be orders not passed without having jurisdiction.

In these situations, it is also not necessary that the tenant or any person is in possession inducted by the Judgment Debtor by way of lease or the induction of that person and that person should be made as party to the suit, when the construction was made pending the suit and that person or tenant was inducted into possession without there being obtaining any leave of the Court.

It is settled law that even a tenant who claims title, right or interest in the property through Judgment Debtor or under colour of interest through Judgment Debtor, the tenant is also bound by the decree, like Judgment Debtor and that the tenant need not be treated to be econominee and there is no need to implead him as a party-defendant to the suit nor it be an impediment to remove obstruction put up by that person to deliver possession to the Decree holder, by the Bailiff while executing delivery warrant in a decree under execution passed only for declaration of title or recovery of possession.

These are two principles kept in mind by the Executing Court, while passing ancillary, incidental or necessary orders for the effective enforcement of decree under execution of delivery of possession of suit land, by following the mandatory provisions of order 21, Rule 35 (3) and 101 C.P.C., by exercising these inherent powers, so as to enable the Decree holder to get the decree fruits without there being any delay in execution.

From a reading of above parameters, it is well known and understand even not only to a law maker but also at best a prudent man, that the intendment of Parliament in introducing the provisions of Order 21 Rules 35 (3), 97 and 101 C.P.C., so as to enable the decree holder to get the decree fruits, without there being impleadment of tenant as a party to the suit, which means it is not necessary to implead tenant as a party-defendant to the suit, even if Judgment debtor inducted him as his tenant into possession of suit land pending suit i.e., PENDENTI LITE (prior to filing of the suit or after filing of the suit).

In that situation, the Executing Court is perfectly right in exercising its jurisdiction while passing ancillary, incidental or inherent powers in ordering delivery of possession of property in execution of decree and thus the Executing Court is having ample power to direct its Bailiff to execute the delivery warrant in a suit for only declaration of title and for recovery of possession of land, even though there exist structures after its due demolition and hand over the possession of suit land to the decree holder i.e., by demolishing the structures made by Judgment debtor even during the pendency of suit and such an action of the Executing Court in passing such an order exercising its inherent power, cannot be treated to be as an Order passed without having jurisdiction.

Likewise, there is no need to implead the tenant as a party-defendant to the suit when the construction was made pending suit and if tenant is inducted into possession of the same without 'leave' of the Court.

It means, the execution of decree need not be stalled in that exigency of inducting Judgment debtor's tenant in possession and another exigency of filing any separate suit for mandatory injunction.

Thus there is no impediment or there is no hard and fast rule to say that the tenant in possession must be impleaded as a party-defendant to the suit and the tenant need not be econominee to the suit and there is no bar for removal of structure put up by them to deliver possession to the decree holder who gets decree for declaration of title or possession only, without there being the relief of mandatory injunction.

The above said parameters have been rightly held by Apex Court while dealing with the above subject matter in **B.GANGADHAR Vs. B.G.RAJALINGAM (AIR 1996 SUPREME COURT 780)** in the following lines :“

.... in view of Order 21, Rule 35(3) the Court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That

power also includes the power to remove any obstruction or super-structure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. Thus where in a suit for declaration of title and vacant possession of land, the decree was passed by the trial Court directing handing over vacant possession of land by demolishing the shops constructed by the Judgment debtor during pendency of suit, the said direction in execution of decree was not without jurisdiction”.

“ It is also not necessary that the tenant should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without ‘ leave ’ of the Court. It is settled law that the tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not be impleaded as a party defendant to the suit not it be an impediment to remove obstruction put up by them to deliver possession to the decree”.

”.The Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad has also discussed the above parameters while dealing with the similar subject matter in **DONGALA VENKAIAH AND ANOTHER Vs. DONGALA RAJI REDDY (2007 (5) ALD 716)**, held as follows :

“ Execution of decree under Order 21 Rules 35, 97 and 101 C.P.C in a suit for declaration of title and recovery of possession is decreed and Structures like residential houses made by Judgment

Debtors/Defendants in suit land the Trial Court of ordered execution directing Bailiff to demolish construction and handover vacant possession of land to decree holder is Not without jurisdiction, Merely because plaintiff has not sought for relief of mandatory injunction, it cannot be said that decree is in-executable and it is of no consequence whether structures existing on suit land were constructed prior to or after filing of suit ”

“ suit filed for recovery of possession of land and Having filed written statement, defendants did not let in evidence and if suit decreed and EP for execution of decree filed Defendants instead of filing appeal, filed suit for cancellation of said decree and Defendants’ suit was dismissed and When Bailiff could not execute warrant for delivery of possession of suit land on account of existence of residential houses, Decree holder filed E.A. under Order 21 Rule 97 of C.P.C. requesting Court to give directions to bailiff to demolish constructions made by defendants (Judgment debtors) in suit land and such Directions were issued accordingly overruling Judgment debtors objections and CRP, Contention that without a prayer and decree for mandatory injunction, trial Court cannot direct bailiff to remove structures/residential houses and as the structures/residential buildings were already in existence even at time of institution of suit and plaintiff failed to ask for a decree for mandatory injunction, executing Court cannot order delivery of vacant possession ”.

“ Rejecting contention that if such constructions were made only during the pendency of the suit then the plaintiff can execute the decree without tortuous remedy of separate suit seeking mandatory injunction or possession, the Court held. ”

The Hon'ble Madras High Court has also discussed about the parameters as mentioned above while dealing with the subject matter in **KANNU GOUNDER Vs. NATESA GOUNDER (AIR 2005 MADRAS 31)** and held in the following lines:

“ under Order 21 Rule 35 C.P.C., the decree holder is entitled to get vacant possession of the schedule property after removal of any constructions or structures put up during the pendency of the suit in a suit for decree of delivery of vacant possession while executing the decree under execution”.

IN THE CASE OF DURAISAMI MUNDALIAR Vs. RAMASAMI CHETTIAR, 1979 TLNJ 9.

“ The salutary principle which has got to be kept in mind is that where a Court directs by a decree or order that vacant possession of land should be given, and decree could be made effective by directing its own officer to remove the superstructure on it (Emphasis applied) and to deliver vacant possession of the property to the decree holder”.

“ it may not be necessary to have any specific power in that behalf, and such a power is exercised in every case in which vacant possession is ordered. The power to remove the superstructure on the land is an

incidental power: necessary and ancillary to the power to deliver possession of the property”.

IN THE CASE OF B.GANGADHAR Vs. B.G.RAJALINGAM, 1995 (2) MLJ (SC) 107 : (AIR 1996 SC 780).

“The exercise of incidental, ancillary or inherent power inconsequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the Judgment-debtor or a person interested or claiming right through the Judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by an such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession, it is not necessary to file a separate suit when the construction was pending suit with out permission of the Court. Otherwise, the decree becomes in-executable driving the plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings”.

“ It is needless to point out that the construction put up by the defendant/Judgment/debtor whether before or after filing of the suit, is liable to be removed, if there is a prayer for possession. When there is a decree for delivery of vacant possession which would mean and include, delivery after removing all the structures or anything in the suit property and therefore, the plaintiff/decrece holder is

entitled to take delivery of possession after removal of any manner of construction or structures in the suit property and therefor.

” The Hon’ble High Court of Judicature, Andhra Pradesh at Hyderabad, while dealing with the above decision followed the decision rendered by Hon’ble Madras High Court decision and the above 2 decisions are emanated by following the above cited decision of Apex Court and thus these 3 decisions are very much useful for any Executing Court while dealing with the subject matter of the suit for decree for declaration of title and for recovery/delivery of possession of suit land.

Basing upon the verdict and holdings in the above cited 3 decisions, the Executing Courts are at liberty to exercise its inherent powers while ordering the very delivery of possession of suit land, without there being insisting upon the very filing of separate suit for mandatory injunction so also without there being insisting upon the very impleadment of tenants of Judgment debtors as parties to the suit in the event of Judgment debtors have inducted those tenants in the suit land, with a view to avoid multiplicity of proceedings, without there being any sort of creating situation to the plaintiff in driving again another round of litigation by way of filing separate suit for mandatory injunction and obtain decree in such suit. The Code of Civil Procedure expressly prohibits such a situation with a view to avoid that delay in eviction treating it ‘as abuse of the process of the court’ and also preventing the Judgment Debtors from procrastinating the executing proceedings for delivery of possession of suit land by way of introducing mala fide pleadings by raising dispute with regard to description or identity or schedule land or dispute with regard to boundaries thereof.

The above mentioned parameters which have been already dealt with by Apex Court and also Hon’ble High Court of Judicature, Andhra Pradesh at Hyderabad and also by Hon’ble Madras High Court, are guiding principles to the Executing Courts while dealing with the delivery of property and finally one

should have to bear in mind that if there is any kind of hurdle caused by the Judgment Debtors when the Bailiff of Executing Court intends to execute the delivery warrant, the said Bailiff is authorized with a power to remove or demolish any structures appearing in suit land or any tenant inducted in it by Judgment Debtors, the Bailiff is supposed to hand over vacant possession of schedule land to the Decree holder by following the provisions of Order 21 Rules 35(3), 97 & 101 C.P.C., by removing Judgment debtor or his tenant so as to enable the Decree holder to get the decree fruits for declaration of his title and for recovery of possession of the suit land, without there being relief of mandatory injunction.

4.2 RELATABLE CASE LAWS:-

1. In the case of [Mumtaz Jehan v. Insha Allah](#), it was held that under Rule 35(1) actual possession is delivered by removing all persons bound by the decree and Under Rule 36, symbolic possession is delivered where the property is in occupancy of the tenants entitled to occupy and not bound by the decree to deliver possession.
2. In the case of [Ratan Lal Jain v. Uma Shankar Vyas](#), it was held that the former is actual or physical delivery of the possession while the latter is delivery of formal or symbolic possession.
3. The case of [Shamsuddin v. Abbas](#) further cleared the difference between the two. It held that the person in actual possession is not physically dispossessed from the property given to him in execution of the decree. While delivery in Rule 36 remains delivery of formal or symbolic possession so far as the person in actual possession is concerned but as against the person bound by such decree, it amounts to delivery to possession.

5. OBJECTIONS AGAINST DELIVERY:-

[Section 47](#) of the [Code of Civil Procedure, 1908](#) specifically deals with objections to execution, discharge, and satisfaction of a decree. It deals with

such questions that have to be considered while executing any decree. According to Section 47, once a suit has been adjudicated and a decree has been passed, then all the questions related to the execution of the decree must be taken up and determined by the executing court. It further bars the filing of a separate suit for this purpose. In the case of [Harnandrai Badridas Vs. Debidutt Bhagwati Prasad \(1973\)](#), the Hon'ble Supreme Court held that in order to empower the executing court to consider and determine all questions related to the execution of a decree, unless it falls beyond its ambit, the provision of Section 47 must be interpreted liberally.

Section 47 and 74 of Civil Procedure Code, 1908 reads as follows-

47. Questions to be determined by the Court executing decree:-

(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) Sub-section (2) omitted by Act 104 of 1976, s. 20 (w.e.f. 1-2-1977).

(3) 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.

[Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) 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.

Prior to the [Amendment Act of 1976](#), various High Courts had given different opinions on whether the question related to the delivery of possession of property to an auction-purchaser falls under the ambit of Section 47. But the Supreme Court in 1973 clarified and settled that such a question is related to the execution, discharge, or satisfaction of a decree and must be determined under the Section and thus, clause (b) to Explanation 2 was added after the amendment. ([Harnandrai Badridas v. Debidutt Bhagwati Prasad, 1973](#))

Case Law:- Sh. Parveen Kumar & ors. v. Sh. Choudary Ram & ors. (2014)

Facts:- In this [case](#), there was a dispute over illegal and unlawful possession of land by the defendants, which the plaintiff claimed belonged to him and other co-sharers. The allegations of the defendants were that they had forcibly taken over possession of the property as they were neither the tenants nor the owners. The trial court asked them to vacate the land. They further filed an application for the execution of the decree under Section 47 of the Code.

The judgement debtors, on the other hand, raised questions and objections to make it inexecutable on the ground that they had already purchased some part of the property and were the co-owners along with the plaintiff. The executing court heard the pleadings and came to the conclusion that the judgement debtors were also the owners, and the plaintiff could not be given actual possession of the property. The decree-holder further filed a petition against the executing court, claiming that it failed to execute the decree.

Issue:- Whether the petition is maintainable and whether the executing court failed to execute the decree.

Judgement:- The court in this case held that it is well settled that an executing court cannot go beyond the decree, but according to Section 47 of the Code, it has the power to determine questions related to the execution of the decree and

the objections therein. In the instant case, it was proved that defendants had purchased some parts of land, and so, they were co-owners along with the plaintiff and, thus, could not be asked to vacate the land. The court further dismissed the petition.

74. Resistance to execution:-

Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was 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 thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

A. Resistance to delivery of possession: Rules 97-103

- Section 74 and Rules 97-103 of Order XXI deals with resistance to delivery of possession to decree-holders or auction-purchasers.
- Where a decree-holder or an auction-purchaser of immovable property is resisted or obstructed by any person in obtaining possession of such property, he may make an application to the court complaining of such resistance or obstruction. (Rule 97)
- Where any person other than the judgment-debtor is dispossessed of immovable property by the decree-holder or auction-purchaser, he may make an application to the court complaining of such dispossession. (Rule 99)

B. Hearing of application: Rules 105-106

- Rule 105 empowers the court to dismiss an application for default of appearance by the applicant or to pass ex-parte order when the opposite party does not appear in spite of notice to him.
- Rule 106 enables the court to set aside order passed under Rule 105, if the party adversely affected by such order shows sufficient cause for his non-appearance when the application was called on for hearing.

C. Inquiry and Adjudication: Section 74, Order XXI Rules 97-101.

- The Court shall on receipt of an application under Rule 97 proceed to adjudicate upon the application in accordance with Rule 103. The court will hold a full-fledged inquiry and determine all questions including the questions relating to right, title or interest in the property arising between the parties to the proceeding or their representatives.
- In accordance with such determination, the court shall, either:
 - i. allow the application to the decree-holder or auction-purchaser directing that the applicant be put into possession of the property; or
 - ii. dismiss the application; or
 - iii. pass such order as it deems fit.

D. Transferee pendente lite: Rule 102

- It provides that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

- “Transfer” referred to in Rule 102 includes voluntary as well as involuntary transfer. (See: **Usha Sinha v. Dina Ram, (2008) 7 SCC 144**)

E. Appeal: Rule 103

- An order passed under Rule 98 or 100 shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

F. Cases

- **In Shanti Devi and Ors. v. Chimanaram Mantri Trust and Ors., 2017 (4) RLW 2846 (Raj.)**, the Hon’ble Rajasthan High Court while deciding the issue that, whether framing of issues and recording of evidence is quintessential to the adjudication of an objection petition, in the course of execution proceedings, held that executing Court has reached to a conclusion that neither framing of issues nor recording of the evidence is required. This Court does not interfere in such discretionary order.
- **In Rajendra Kumar and Ors. v. Rameshchandra and Ors., AIR 2017 Raj. 169**, the Hon’ble Rajasthan High Court held that applicants cannot be deprived of their rights to object or obstruct the execution proceedings as a result of rejection of their impleadment applications.
- **In United Finance Corporation v. M.S.M. Haneefa, AIR 2017 SC 498**, the Hon’ble Supreme Court held that Article 134 of the Limitation Act will apply to an application filed under Order XXI Rule 95 Code of Civil Procedure by the auction purchaser for delivery of possession of property sold in execution of a decree. The limitation for filing an application under Order XXI Rule 95 Code of Civil Procedure is one year from the date when the sale becomes absolute.
- **In N.S.S. Narayana Sarma v. Goldstone Exports (P.) Ltd., AIR 2002 SC 251**, the Hon’ble Supreme Court held that on a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to

remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution. The legislature has vested the power in the executing court to deal with all questions arising in the matter, irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting around the relevant issues arising in the case. The position is manifest that when any person claiming title to the property in his possession is obstructing the attempt by the decree-holder to dispossess him from the said property, the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and to pass an appropriate order, which under the provisions of Order 21 Rule 103 is to be treated as a decree.

- It is incumbent on the court dealing with the application under Order 21 Rule 97 and 99 to first satisfy itself that the applicants can in fact maintain and bring such a proceeding before it. Such a caveat is more explicitly sounded out by the Hon'ble Supreme Court in its decision in **H.Seshadri v. K.R. Natrajan & Anr., (2003) 10 SCC 449**, where the Court observed that:

“14. For the purpose of considering an application under Order 21 Rules 99 and 100 CPC what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is

in possession of the premises in question in his own independent right or otherwise.”

- **In Brahmddeo Choudhary v. Rishikesh Prasad Jaiswal & Anr., (1997) AWC (SC)**, the Hon’ble Supreme Court observed that-

“A conjoint reading of Order XXI, Rules 97,98,99 and 101 projects the following picture: (1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI Rule 35, then the decree-holder has to move an application under Order XXI, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist, the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI, Rule 97, sub-rule (2) read with Order XXI, Rule 98. It is obvious that after such adjudication, if it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf, then such obstruction or resistance would be removed as per Order XXI, Rule 98, sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in, such an eventuality, the order passed would be treated as a decree under Order XXI, Rule 101, and no separate suit would lie against such order meaning thereby that only remedy would be to prefer an appeal before the appropriate appellate Court against such decree.

(2) If for any reason, a stranger to the decree is already dispossessed of the suit property relating to which he

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

6. DETERMINATION:-

Questions to be determined by Executing Court:-

A. General

- Section 47 is one of the most important provisions in the Code relating to execution. It applies only to matters arising subsequent to the passing of a decree; and deals with objections to execution, discharge and satisfaction of a decree.

B. Object

- The underlying object of this provision is to provide cheap and expeditious remedy for determination of certain questions in execution proceedings without recourse to a separate suit and to prevent needless and unnecessary litigation. (See: Gangabai Gopaldas Mohata v. Fulchand, AIR 1997 SC 1812)

C. Nature and Scope

- The scope of Section 47 is very wide. Exclusive jurisdiction has been conferred on the executing court in respect of all matters relating to execution, discharge or satisfaction of a decree arising between the parties or their representatives. Once the suit is decreed, this section requires that the executing court alone should determine all questions in execution proceedings and filing of a separate suit is barred. (See: Desh Bandhu Gupta v. N.L. Anand, (1994) 1 SCC 131)
- The provision is not ultra vires Article 14 of the Constitution. (Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393 and Vijay Prakash v. Collector of Customs, AIR 1988 SC 2010)

D. Conditions

- In order that this section may apply, the following conditions must be satisfied:
 - i. The question must be one arising between the parties to the suit in which the decree is passed, or their representatives and
 - ii. It must relate to the execution, discharge or satisfaction of the decree.
- Both the conditions must be satisfied cumulatively.

E. Powers of Executing Court

- An executing court has plenary power to determine all questions relating to execution of a decree. (See: M.P. Shreevastava v. Veena, AIR 1967 SC 1193)

- The section, however, applies only to matters arising subsequent to the passing of the decree.
- An executing court cannot go behind the decree. It has to execute the decree as it is. It cannot question correctness or otherwise of the decree. (See: C.F. Angadi v. Y.S. Hirannayya, AIR 1972 SC 239)
- Where there is inherent lack of jurisdiction on the part of the court passing the decree, the executing court can refuse to execute the decree. (See: Kiran Singh v. Chaman Paswan, AIR 1954 SC 340 at p. 342)

F. Appeal and Revision

- The determination of any question U/s 47 is no longer deemed to be a decree within the meaning of Section 2(2) of the Code and is, therefore, not appealable U/s 96 or 100 of the Code. Section 47(2) has, consequently, been omitted by the Amendment Act of 1976.
- A revision application U/s 115 of the Code is, therefore, maintainable provided the conditions laid down in Section 115 are satisfied.
- No writ petition, however, would be maintainable. (See: Ghan Shyam Das v. Anant Kumar Sinha, AIR 1991 SC 2251)G. Cases
- In **Narendra Singh Bhati v. Fateh Singh Rathore, 2018 (4) RLW 3425 (Raj.)**, the Hon'ble Rajasthan High Court observed that:

“Section 47 or Order XXI Rule 97 of the Code are meant or intended to determine the real issues or the disputes between the parties. In the present case when there has been no confusion, much less controversy between the parties, regarding the meaning of expression, the petitioner's application dated 01.09.2018 remains wholly ill-conceived and frivolous. The executing Court has committed no error of law in rejecting such application, vide its impugned order dated 15.09.2018.”

- In **Jugal Kishore Saraf v. M/s Raw Cotton Co. Ltd., AIR 1955 SC 376**, the Hon'ble Supreme Court observed as under:

“There could be no objection to decide questions involving investigation of complicated facts or difficult questions of law in execution proceedings, as section 47 of the Code of Civil Procedure authorises the Court executing the decree to decide all questions arising therein and relating to execution of the decree and sub-sec. (2) further authorises the executing Court to treat a proceeding under the section as a suit thus obviating the necessity of filing a separate suit for the determination of the same...”

- In **Arun Lal v. Union of India, AIR 2011 SC 506**, the Hon'ble Supreme Court held that no limitation is prescribed for filing objection U/s 47 CPC.

- In **Brakewel Automotive Components (India) Pvt. Ltd. v. P.R. Selvam Alagappan, (2017) 5 SCC 371**, the Hon'ble Supreme Court held that:

“19. An Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus inexecutable. An erroneous decree cannot be equated with one which is a nullity. There are no intervening developments as well as to render the decree inexecutable.

20. Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law

being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. The powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing.”

- In **Sneh Lata Goel v. Pushp Lata Goel, AIR 2019 SC 824**, the Hon'ble Supreme Court held that Executing Court cannot question validity of decree on objection U/s 47 CPC that the decree was passed without territorial jurisdiction. A distinction must be made between a jurisdiction with regard to the subject-matter of the suit and that of the territorial and pecuniary jurisdiction. Whereas in the case falling within the former category, the judgement would be a nullity, in the latter it would not be. (See: *Mantoo Sarkar v. Oriental Insurance Company Ltd.*, (2009) 2 SCC 244)
- In **Firm Swaroop Singh Sher Singh & Ors. v. Mohan Lal & Anr., (1999) 1 RLW 36**, the Hon'ble Rajasthan High Court held that objections/questions about dispute decided by executing court in between the parties shall not be treated as a suit. The decision of executing court U/s 47 being not a decree cannot be appealed U/s 96 CPC.

Question to be determined— All questions (including questions relating 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 their 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 and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

In the case of **N.S.S. Sharma Vs. M/S Goldstone Exports (p) Ltd. And others reported in AIR 2002 SC 251-** it has been held that Resistance or obstruction to possession made in execution – All relevant issues arising in the matter on an application under order XXI rule 97 or rule 99 shall be determined by the executing court and not by separate suit.

In the case of **Vol Builders pvt. Ltd.& Anr. Vs. Janab Salim Saheb & Anr reported in 2009 (1) JCR 318 (Jhr)**, it has been held that where two separate suits were filed – one by objector for declaration of right, title and interest, over the suit property on the basis of agreement for sale- Another suit was filed for injunction in respect of suit property- Suit on the basis of Agreement was dismissed – Appeal against is sub- Judice- Knowing about the pendency of the two suits, court below can not proceed to embark upon a separate inquiry on it own on the issue raised (Order XXI Rule 97,98,101,103,and 104 explained).

Also in the case of **Sushil Kumar Sureka Vs. Santosh Kumar Singh reported in 2009(3) JCR 740 (Jhr)** it has been held that the objection under order XXI rule 98,99,100, and 101- objection were repeatedly rejected up to High Court- Suit filed by the father of the 19 objector is pending- A case of gross abuse of process of law- order impugned set aside with a nominal cost of ₹ 2500/-.

7. EPILOGUE:-

From the above discussion, it clearly appears that execution is the enforcement of decrees and orders by the process of court, so as to enable the decree-holder to realize the fruits of the decree. The execution is complete when the judgment-creditor or decree-holder gets money or other thing awarded to him by the judgment, decree or order.

Order 21 of the code contain elaborate and exhaustive provision for execution of decrees and order, take care of the different type of situation and provide effective remedies not only to the decree-holder and judgment-debtors but also to the objectors and third parties.

Delivery of property is an important way of satisfying the decree that is passed in favour of a decree-holder. A decree for delivery of movable property is granted under Rule 31 while Rule 35 and 36 deals with decree granting immovable property. However, a situation may arise where resistance or obstruction is caused in delivery of those properties. In such situations, the provisions given under Rule 97 to 103 can be utilised.

*****SATYAMEVA JAYATE*****

-TRUTH ALONE TRIUMPHS-

BY

MANIPATI SRIDHAR
CIVIL JUDGE(SENIOR DIVISION),
HINDUPUR.



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**DISTRICT LEVEL WORKSHOPS IN THE DISTRICT
JUDICIARY FOR THE YEAR – 2024**

WORK SHOP

SESSION – IV

TOPIC

CLAIM PETITION IN EXECUTION PROCEEDINGS

**PAPER PRESENTATION BY
G MANJULA
CIVIL JUDGE (JUNIOR DIVISION)
GUNTAKAL, ANANTAPURAM DISTRICT**

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CLAIM PETITION IN EXECUTION PROCEEDINGS

1. Introduction

Execution proceedings are initiated to enforce a decree or order passed by a court. The execution means enforcement or implementation to the order or judgment passed by the court of justice. Execution has not been defined in the code of Civil Procedure. The expression execution simply means the process for enforcing or giving effect to the judgment of the court. The provisions governing execution of decree and orders are dealt in **Sections 36 to 74 and Order 21 of the Civil Procedure Code, 1908**. Order 21 of the Code of Civil Procedure, 1908 deals with the execution of decrees and orders. Order XXI of the CPC is the lengthiest order provides detailed provisions for making an application for execution and the manner that, how they are to be entertained and decided.

During Execution proceedings, various parties may file claim petitions to assert their rights or interests in the property or assets involved in the execution. Hon'ble Apex Court in *Ghanshyam Das Vs. Anant Kumar Sinha (AIR 1991 SC 2251)* dealing with provision of the code relating to execution of decree and orders, observed in following words -

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

2. Claim Petition

A claim petition in execution proceedings is a formal request submitted to the court by a third party claiming right or interest in property that is subject to attachment or sale in execution of decree. **Order 21, Rules 58 and 59** of the Civil procedure code specifically cover claim petitions in execution proceedings. A claim petition under Order 21, Rule 58 of the Civil Procedure Code is filed in the context of execution proceedings when a third party claims an interest in the property that has been attached as part of the execution process. The purpose of filing such a petition is to assert ownership or a right to possession of the property in question, which the third party believes should not be subject to attachment or sale due to their rights over it. *In Bobbileni Raj Kumar vs Dudala Veera Swamy in 2014 (1) ALT 196* it was held that “Claim petition filed in the execution proceedings be decided on merits on all questions relating to right, title and interest in respect of attached schedule property as if it is a suit”.

3. Objective and Scope

The primary purpose of Order 21, Rule 58 of CPC is to provide a mechanism through which claims and objections to the attachment of property during execution proceedings can be adjudicated. This rule is designed to protect the rights of third parties who are not parties to the original suit but claim an interest in the property being attached. It ensures that no property is wrongfully sold or disposed of when a bonafide claim or objection exists.

4. Provisions Related to Claim Petition:

The provisions related to claim petition in executing proceedings are:

- Order-XXI, Rules 58 & 59 of Code of Civil Procedure
- Rules - 246 to 248 of A.P. Civil Rules of Practice

Order-XXI, Rule-58 and 59 of the Code of Civil Procedure,1908

• Adjudication of claims to, or objections to attachment of, property –

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained.

Provided that no such claim or objection shall be entertained-

(a) Where before the claim is preferred or objection is made, the property attached has already been sold; or

(b) Where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination, -

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge, or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule, refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

- Stay of sale under Order 21, Rule 59 of the Civil Procedure Code.

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

- a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or
- b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.

5. Adjudication of Claim Petition:

Order-XXI, Rule-58 of code of Civil Procedure,1908

Adjudication represents the final judgment or pronouncement in a case that will determine the course of action taken regarding the issue presented. In ***K.B.V. Nagabhushana Gupta Vs Ramadugu Venkateswara Rao, 1996 (3) ALT 100.*** (para 30) observed the true meaning of adjudication in the Law Lexicon dictionary as herein:

“Adjudication the legal process of resolving a dispute. The final giving or pronouncing the judgment and decree in a Court proceedings it implies a hearing of a Court after notice of legal evidence of factual issues involved.” (*Black’s law Dictionary, 16th Edition, Page 42*)

a) The Claim petition shall be filed after attachment of the property:

The objections to the attachment of property as contemplated under Order 21, Rule 58 (1) of the Civil Procedure code, should only be raised once the attachment has been effected. According to Order 21, Rule 58(1) of the Civil Procedure Code, where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained.

In *K.L. Geetha Nandini & others Vs. K.L.Nagaraju, 2009 (3) APLJ 79*, as laid down that the law is well- settled that a claim petition under Order 21 Rule 58 of C.P.C cannot be maintained in execution of mortgage decrees. Proceedings by way of claim are applicable only in cases of money decrees where property of the judgment-debtor has been attached. The language of Order 21 Rule 58 of C.P.C itself makes clear that a claim can be maintained only where an attachment is subsisting and another case the Hon'ble Supreme Court was held in *Union of India Vs Jardine Henderson ((1979) 2 SCC 258)* that any person who at the time of attachment of property has some right, title or interest in or possessed the property attached, may lodge a claim or raise an objection against the attachment. In Nalini Siva Prakash vs. K.A. Ganeshan (2012), the Hon'ble Madras High Court was held that a petition filed under order 21, rule 58 is premature if filed before the actual execution of an order of attachment. The court emphasized that the petition should be filed only after the property is physically attached. *In Mirthubasini Vs. Easwaramurthy, (2011)*, the Hon'ble Madras High Court held that petition filed under order 21, rule 58, combined with section 47 was not maintainable because no property was actually attached at the time of the petition. However, a claim petition filed by simple mortgagee for raising attachment over the mortgaged property obtained by holder of money decree against the mortgagor, held, incompetent and unsustainable as laid down in *Kabidi Venku Sah V. Syed Abdul Hai, AIR 1984 SC 117*.

b) Claim can be preferred even after sale but before confirmation of sale

No claim can be entertained after the attached property is sold as per the proviso to Order-XXI, Rule-58 (1) (a) of C.P.C., which precludes entertaining a claim or objection where the property has already been sold. However, prior claims to a property under auction must be considered valid until the auction sale is confirmed, highlighting the significance of the timing and nature of objections in judicial proceedings concerning property auctions as laid down in "*Kancherla Lakshminarayana vs. Mattaparthi Syamala & Ors*" (2008) *14 SCC 258*, the Hon'ble Supreme court clarified that objections under Order XXI Rule 58 are valid even after an auction if the sale is not yet confirmed. The decision emphasizes that prior claims to a property under auction must be considered valid until the auction sale is confirmed.

Confirmation of auction Sale

A claim petition filed before the confirmation of sale is within the jurisdiction of the court and that claimants should avail themselves of the opportunity to challenge the attachment and sale of property before the confirmation of sale.

1. Court Order: The primary basis for saying that a sale is confirmed is the issuance of a court order confirming the sale. *The confirmation of a sale in the context of a court auction is determined by the order of the court that confirms the auction sale.* This occurs after ensuring no successful objections or applications to set aside the sale under **Order 21, Rule 92** of the Civil Procedure Code.

Order 21, Rule 92 of the CPC, the court shall confirm the sale if :

- No application is made under Rule 89 (for setting aside the sale on deposit of payment),
- Rule 90 (for setting aside the sale on the ground of irregularity or fraud), or
- Rule 91 (by the purchaser for setting aside the sale on the ground that the judgment-debtor had no saleable interest) or
- where such application is made disallowed.

In Thankam Vs. Remani, (2023) , the Hon'ble Kerala High court held that an objection cannot be filed after the sale of attached property has been confirmed, as per the bar under proviso (a) to Order 21 Rule 58(1) of CPC.

2. Issuance of Sale Certificate: Following the confirmation, the court issues a sale certificate to the purchaser, formally documenting the transfer of ownership. The issuance of this certificate is further evidence that the sale has been confirmed and finalized. The issuance of a sale certificate by the court is often considered conclusive evidence of the completion of sale confirmation. ***In "E.Aruna W/O.Kondala vs Vemala Sreenu S/O.Venkaiah, Civil Revision Petition No. 1291 of 2015 (APHC)***, the claims under Order XXI, Rule 58, which precludes entertaining a claim or objection where the property has already been sold. The judgment serves to clarify and reinforce the legal procedures surrounding auction sales and property rights in execution proceedings, ensuring that once a property is sold and the sale formalized through a certificate, further claims are generally barred.

Therefore, the sale is confirmed based on a court order. This occurs after ensuring no successful objections or applications to set aside the sale under Order 21, Rule 92 of the Civil Procedure Code. Once confirmed, the sale becomes final and the court issues a sale certificate to document the transfer of ownership.

c) If claim petition is filed belatedly, the Court may refuse it.

The Court has undoubted power under Rule 58(1)(b) of Order 21 *that no such claim or objection shall be entertained-* if the Court considers that the claim or objection was designedly or unnecessarily delayed.

The Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 21 CPC for the purpose. But this power cannot be exercised arbitrarily. Mere delay is not sufficient, but a designed delay shall be apparent on the face of the record to exercise such power. The Court proposes to refuse to entertain the application on the ground of such designed or unnecessary delay, the Court is bound to give an opportunity to the claimant to satisfy that the delay was unavoidable or was on account of ignorance of the proceedings pending.

In M. Ramachandra Rao vs A. Papayya Sastry and Anr, AIR 1974 AP 28, the petitioner's application was initially rejected by the lower court as belated without giving him an opportunity to explain the delay, The High Court criticized the lower court for not providing an opportunity to the petitioner to substantiate his claim and for not sufficiently considering whether the delay was intentional or unnecessary. Therefore, the court must be convinced of the delay's intentional or unnecessary nature based on evidence or proper examination, rather than summarily dismissing the claim due to delay. *A. Eswarappa Vs M. Krishna Reddy reported in AIR 1964 AP 99* that “the failure to raise an objection to an attachment before judgment is no bar to claim at the time of execution. The claim may not be rejected on the sole ground that the claimant has an opportunity to prefer a claim or objection at an earlier stage of the proceeding. The court has to look into the circumstances of the case and come to a conclusion about whether the present claim is aimed at unnecessarily delaying the proceedings”.

d) No separate suit is required to file

In execution proceedings, to decide all questions relating to right, title or interest in the property, no separate suit is required to be filed by the parties. It is an opportunity to the 3rd party to suit or decree to ventilate his grievance before the Court executing the decree without the necessity of filing a regular civil suit. *In Gurram Sitharamireddy Vs Gundi Yasodhamma AIR 2005 AP 95*, the Hon'ble High Court of Andhra Pradesh held that Order XXI Rule 58 of code of Civil Procedure disclose as that all questions including those relating to right, title or interest in the attached property are required to be decided **by the same court and not by a separate suit**.

The claim or objection to the attachment property shall be filed in executing court , no separate suit is required to be filed

Order 21 Rule 58(2) CPC provides for all questions relating to right, tile or interest in the property attached shall be determined by the Court dealing with the claim or objection and not by a separate suit. However, **Order 21, Rule 58(5)** provides that if the Court refuses to entertain the claim or objection, than the claimant or objector may institute a suit to establish his right, and that, subject to result of that suit the order passed by the Court refusing to entertain the claim or objection, shall be conclusive.

By conscious and close reading of the above said two provisions, it can be clearly found that, a separate suit can be filed only if the court ‘rejects or refuses’ to entertain the claim petition on any of the grounds envisaged under the proviso (a) or (b) of Or 21 R 58(1) CPC and not if it passes an order under Order 21 rule 58 (3), i.e., after determination of the questions referred to under sub Rule (2) after conducting a full-fledged enquiry.

If the court refuses the claim petition holding that the property attached is already sold in court auction or that the claim petition is unnecessarily or designedly belated, a separate suit to establish his right could be filed by a person against whom an order is passed under the proviso of Order 21 Rule 58(1) CPC. *In K.Venkarayappa vs Ellen Industries, Coimbatore And Ors. on 25 January, 1985*, Order 21, R.58, C.P.C. gives a statutory and substantial right to a person to object to the attachment of any property in execution of a decree. When an application, in exercise thereof, has been filed, the Court has power to dismiss such an application clauses (a) and (b) of proviso to sub-rule (1) of Rule.58 CPC. If the Court exercises that power, the applicant is relegated to vindicate this rights by ways of a regular suit as contemplated under sub-rule (5) of Rule 58 of Order 21 thereof.

Thus, the condition precedent for filing a separate suit for the determination of rights is that, a petition under Order 21, Rule 58 of CPC must have been filed and it must have been rejected or refused for any of the reasons laid down under the proviso (a) or (b) of Ordert 21 Rule 58(1). But, an order so refusing to entertain the claim or objection shall be conclusive and no suit to set aside attachment of property in execution of a decree is maintainable

e) The adjudication of claim petition is same effect as a decree

Order 21, Rule 58(4) of CPC, Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

As per Sub Rule (4), a right of appeal is provided against :

- The order of adjudication made in accordance with the provisions of **Order 21, Rule (3)** after determination of the questions referred to under sub Rule (2) after conducting a full-fledged enquiry. A legal fiction is created under the Sub Rule (4) so as to maintain the appeal that the order of adjudication made in accordance with the provisions of Sub Rule (3) shall be deemed as if it were a decree.

- the court examined the implications of a claim petition under Order 21, Rule 58 and that was dismissed. The dismissal of the claim petition would carry the same weight as a decree, subject to similar conditions for appeal as contemplated under **Order 21, Rule 58 (4)** of CPC.

In the case "*K.B.V. Nagabhushana Gupta vs Ramadugu Venkateswara Rao And Ors. 1996 (3) ALT 100*", The Hon'ble AP High court noted that once a claim petition under this rule is adjudicated and dismissed, the decision has the same effect as a decree and could bar further claims on the same matter due to principles like resjudicata.

f) **Order against claim petition as a 'Miscellaneous Appeal' or 'Regular Appeal'**

An order adjudicating a claim petition instituted under Order 21 Rule 58 CPC, as per the provisions in Order 21 Rule 58(4) CPC, is to be treated as a regular decree.

The Hon'ble High court of Andhra Pradesh *In Nookaraju vs. M.S.N.Charities and others*, has taken distinction view and concluded that an order made under Order 21, Rule 58 of the Civil Procedure Code, should not be treated as an original decree but rather as an appealable order, the appeal against such an order must be filed as a 'Miscellaneous Appeal' rather than a 'Regular Appeal'.

However, a Division Bench of the Hon'ble High Court Andhra Pradesh in *Mr. Gurram Seetharam Reddy vs Gunti Yashoda And Anr, AIR 2005 AP 95*, expressed the view that the judgment in *B. Nookaraju v. M.S.N. Charities*, needs reconsideration. It related to the interpretation of Clause (4) of Rule 58 of Order 21 C.P.C. When Section 96 of C.P.C. specifically provides for appeals against decrees, and sub-rule (4) of Rule 58 of Order 21 directs that the order passed under sub-rule (3) thereof shall have the force of a decree, there hardly exists any basis to deny such characteristics to such an order and the judgment of this *Nookaraju's* case does not lay the correct proposition of law. Against the orders passed under Rule 58(3) of Order 21 C.P.C. regular appeals under Section 96 and not miscellaneous appeals under Section 104 read with Order 43 Rule 1 of C.P.C.

➤ **Can an aggrieved party file a suit to set aside an order passed in Claim Petition?**

An order passed in claim petition is deemed decree. The claim or objection made under Rule-58 of Order-21 is almost a suit and it has to be decided as of a suit. Therefore, no petition has to be filed to set aside such order.

- If the Court conducts an enquiry and dismisses the petition filed under Order 21 Rule 58 CPC, such order would be appealable.
- If the petition is summarily rejected under proviso to sub-rule(1) of Rule 58, separate suit under sub-rule(5) is the remedy.

- if the court is allowed the claim petition filed under Order 21, Rule 58 of CPC and set aside the sale, then the decree holder may initiate a fresh execution proceeding to recover the decretal amount. In ***Desh Bandu Gupta v. N.L. Anand & Rajinder Singh [(1994) 1 SCC 131]*** in paragraph 5 which are to the following effect:

"The auction-purchaser gets a right only on confirmation of sale and till then his right is nebulous and has only right to consideration for confirmation of sale. If the sale is set aside, part from the auction-purchaser, the decree holder is affected since the realisation of his decree debt is put off and he would be obligated to initiate execution proceedings afresh to recover the decree debt."

- **Can a previously dismissed claim under Order 21 Rule 58 CPC be re-agitate the same claim under Order 21 Rule 97 CPC?**

In earlier EP, the applicant filed a claim application under Rule 58 of Order 21, claiming a right in the possession of the house and that was dismissed. Again at the time of delivery of possession to the D.Hr, he raised the same claim and raised objection to the delivery by making an application under Rule 97 of Order 21 CPC. It is held that the 2nd petition is barred by principles of res judicata, it was held in ***M.Padma vs. M.Seshagiri Rao, 2003(5) ALD 3.***

6. Stay of sale:

Order 21, Rule 59 of the Civil Procedure Code

The provision of Rule 59 of Order 21. It provides two kinds of orders:

- (a) if the property is movable, postponing the sale pending the adjudication of the claim and
- (b) in case of immovable property, the property shall not be sold or it may be sold making the sale subject to confirmation, till the adjudication into the claim is made.

The provision did not postulate filing of any separate petition to order stay, along with the application of claim under Rule 58. It appears from the language of the provision, whenever a claim application is filed, the Court on its own order postponement of sale pending such adjudication or that to sell but shall not confirm it. Much case law is not developed in this area. But in practice, in the Courts, separate applications under Rule 59 of Order 21 are being filed.

7. Procedure under AP Civil Rules of Practice:

Procedure under Rules 246 to 248 of Andhra Pradesh Civil Rules of Practice

In execution proceedings, when a property is attached or sought to be sold to satisfy a decree or order, any person other than the judgment debtor claiming an interest in the property may file a claim petition. The claim petition should be filed before the court conducting the execution proceedings, and it should state the grounds of objection or the claim made to the property.

1. Claim to attach property: (Rule 246 of A.P.Civil Rules of Practice)

An application by a claimant or objector under Rule 58 of Rule 21 of the Code shall be made by a verified application entitled in execution petition under which the property in question has been attached and shall set forth the particulars of the claim in the manner prescribed for the plaint in a suit as form No. 66. In ***G.Vijayalakshmi Vs. Progressive Finance Corporation, 2004 (6) ALT 811***, the Hon'ble AP High court was held that, if the application presented by the petitioner was defective, or did not conform to the form prescribed under Rule 246 of Civil Rules of Practice, the executing Court ought, simply, to have returned, or if the situation warranted, rejected it, as is done in respect of a plaint, under Order 7 of CPC.

2. Procedure When Application is Admitted (Rule 247 of the Civil Rules of Practice):

Once the application is accepted, the claimant or objector must pay the required court fees within seven days, or within a time frame allowed by the judge. This fee covers the cost of notifying the creditor who attached the property. The notification must be delivered in the same way that a lawsuit summons is served.

3. Notice to Parties:

Upon the filing of a claim petition, the court will issue notice to all parties involved, including the judgment creditor, the judgment debtor and any other interested parties. The court may conduct hearings to determine the validity of the claim and allow all parties to present their arguments and evidence.

4. Hearing of application:- (Rule 248 of the Civil Rules of Practice)

During the hearing, the court will record all the evidence presented and note all exhibits admitted into evidence. After this, the court will make a formal decision based on the gathered information. The court will examine the evidence presented by all parties involved in the execution proceedings, including the claimant and any opposing parties and determine the validity of the claim petition. In ***M/s. Shilpi Constructions v. M/s. East Coast Energy Pvt. Ltd. (2022)***: the Hon'ble Supreme Court held that a claimant in

execution proceedings must establish a prima facie case for their claim, and mere assertion without evidence is insufficient.

The court may also conduct inquiries or seek additional evidence as necessary to determine the validity of the claim. In *Surbhi Singh Vs. Siddarth Gupta (2019) 5 SCC 710*, the Hon'ble Supreme Court highlighted the right of a bonafide purchaser and scope of inquiry under Order 21, Rule 58 of CPC. The judgment outlighted the necessity for the executing court to meticulously examine the claims of the third parties to ensure that properties are not wrongfully attached or sold. In *Jagdish Singh Vs. Heralal and others., (2014) 1SCC 467*, The Hon'ble Supreme Court held that the executing court must objectively determine the veracity of such claims and ensure that no property is wrongfully attached or sold.

5. Decision by the Court:

Based on the evidence and arguments presented, the court will make a decision on the claim petition. If the court finds merit in the claim, it may set aside the attachment or sale of the property in favor of the claimant, subject to any prior rights or interests.

8. Cause of Action:

Cause of action for preferring the claim under Order 21 Rule 58 arises for a claimant to submit an application only if an item of **property is attached in course of execution** and not otherwise. Rule 58 can be invoked not only in cases of attachment of immovable property but also for movable properties and Rule 58 of Order 21 does not make any such difference in the nature of property that was attached, it was held in *Gopana Subba Rayudu vs. Pasupuleti Venkata Ramana, 2009(6) ALD 544*, the Hon'ble AP High court determined that the claim petition filed under Order 21 Rule 58 was not maintainable since the property had not been **attached as part of the decree enforcement**.

9. Burden of proof:

The claim petition is to be tried like a suit and the burden of proof lies on the parties to lead evidence. In *Kailash Nath Associates v. Delhi Development Authority (2023)*: The Hon'ble Delhi High Court clarified that the burden of proof lies on the claimant to establish their right or interest in the property beyond doubt.

10. Limitation and Court Fees:

Limitation:

It is suffice to say that no period to limitation is envisaged under the provisions of limitation act and the amended provisions of Rule 58 of Order 21 of the Code, may either expressly or by necessary implication clearly exclude any period of limitation and a third party claimant can maintain a claim at any stage before the property is brought to sale.

Court Fees:

It was clarified in *Gurram Seetharam Reddy Vs. Gunti Yashoda AIR 2005 AP 95*, that “the applications filed under Order XXI Rule 58 are to be tried like suits, but they cannot be said to be suit in reality. The Court fee payable on such an application is as per Article 11 (1) of Court Fees Act. The Court fee payable on appeal is same Court fee as payable on an application under Order XXI Rule 58 as per Section 49 of the A.P. Court Fees Act. When the application under Rule 58 is rejected, filing of suit is provided and the Court fee payable thereon is under Section 38 of Court Fees Act.”

11. Conclusion:

The execution proceedings are a critical facet of the judicial system, primarily designed to enforce court decrees and ensure justice through the practical implementation of judgments. Order 21, Rules 58 and 59 of the Civil Procedure Code, 1908, serve as the cornerstone for handling claim petitions within these proceedings. These rules provide a robust framework for third parties to assert their rights and contest the attachment and sale of properties, emphasizing the careful balancing of interests among various stakeholders in significance of these rules, underscoring the necessity for a precise and equitable adjudication process that respects the rights of all parties. This not only safeguards the interests of the claimants but also upholds the integrity of judicial enforcement processes, ensuring that execution is carried out justly and in accordance with the law. Ultimately, the provisions allow for a comprehensive judicial review that can prevent wrongful executions and ensure that justice prevails, maintaining the decree's integrity while respecting legitimate third-party claims.