



SRIKAKULAM DISTRICT : WORKSHOP – III

CHAIRPERSON

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI GARU

**JUDGE, HON'BLE HIGH COURT OF ANDHRA PRADESH,
AND ADMINISTRATIVE JUDGE, SRIKAKULAM**

NODAL OFFICER

SMT. SUNITHA KONDABOLU

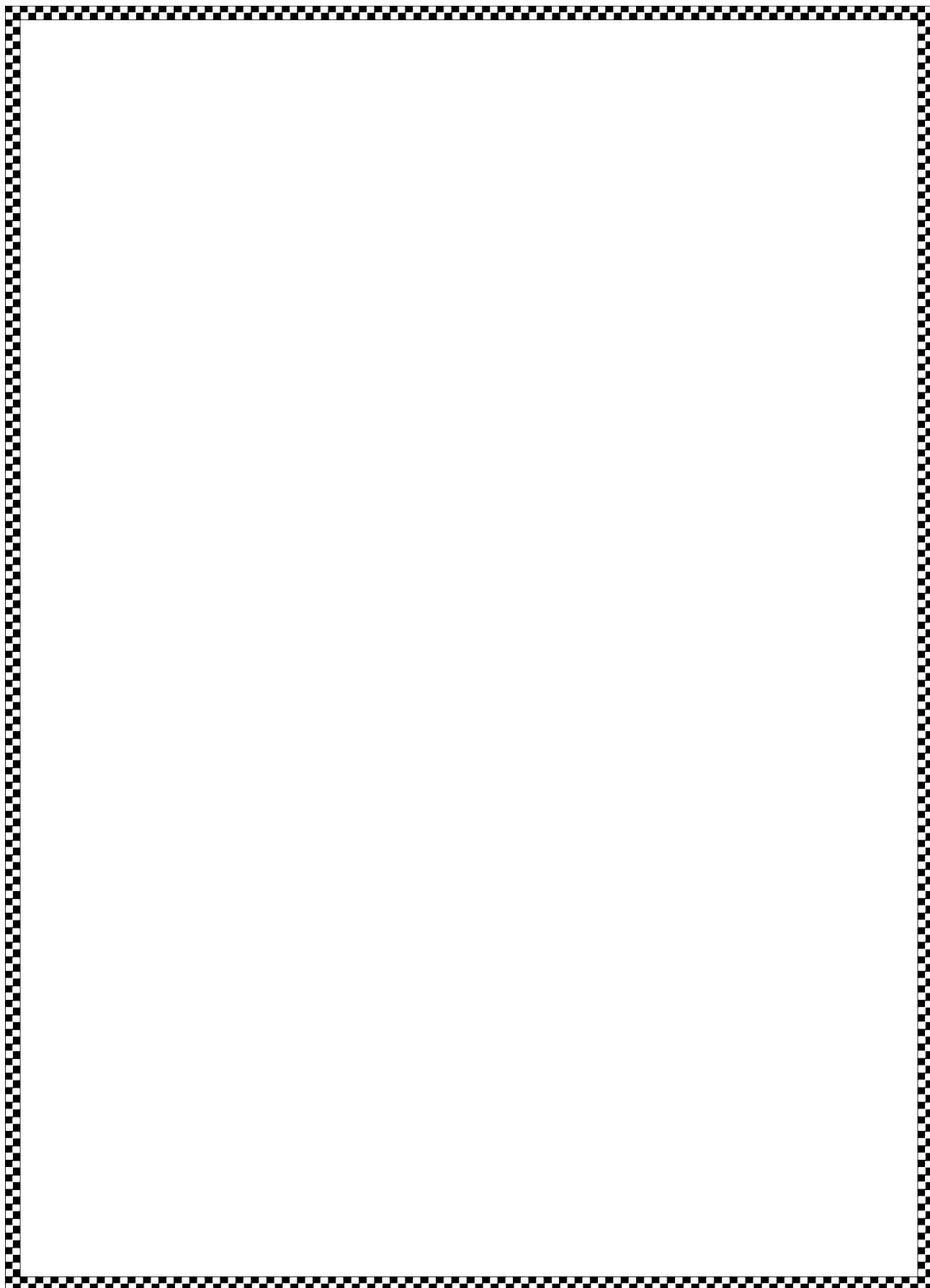
**PRINCIPAL DISTRICT JUDGE,
SRIKAKULAM**

DATE : 26.09.2026

VENUE : DISTRICT COURT CONFERENCE HALL

TOPICS :

- I).** Interim Orders – importance, basis for granting or rejecting interim orders and importance of reasoned order.
- II).** Timeline for disposal of Execution Petitions – practical challenges.
- III).** Execution Proceedings in respect of :
 - a) Money decree
 - b) Injunction decree.
 - c) Decree for possession.
 - d) Decree for restitution of conjugal rights.
 - e) Decree for specific performance.



SESSION NO.I & II

TOPICS:

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

Paper Presentation by-

Smt. K.Saradamba,
Civil Judge (Senior Division),
Rajam.

&

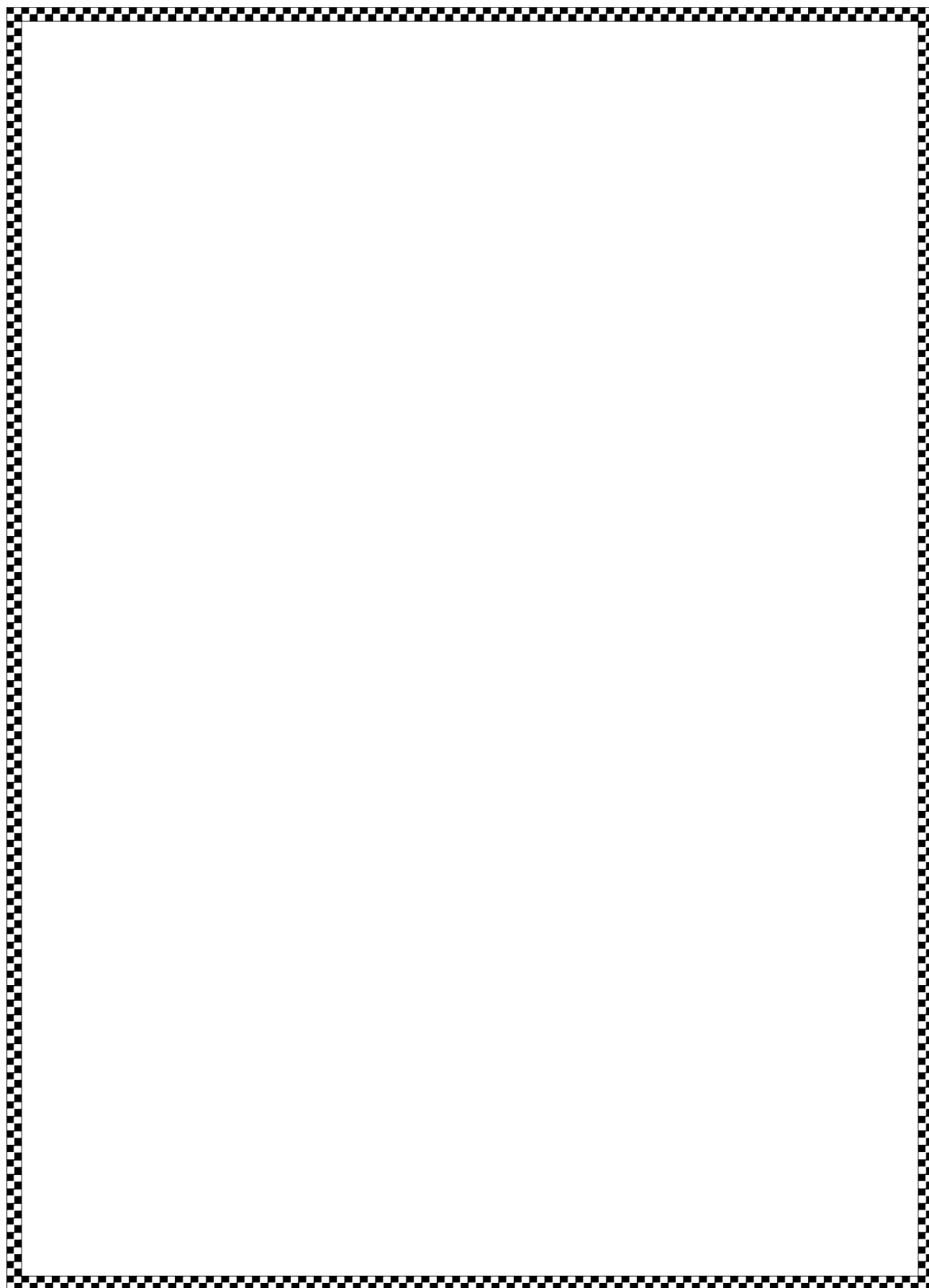
Ms. S.Vani,
Civil Judge (Junior Division),
Narasannapeta.

SESSION NO.III

- II)** Timeline for disposal of Execution Petitions – practical challenges.

Paper Presentation by-

Sri. Ch.Vivek Anand Srinivas,
III Additional District Judge,
Srikakulam.



SESSION NO. IV

Execution Proceedings in respect of

Topics

- a). Money Decree.
- b). Injunction decree.
- c). Decree for possession.

Paper Presentation by-

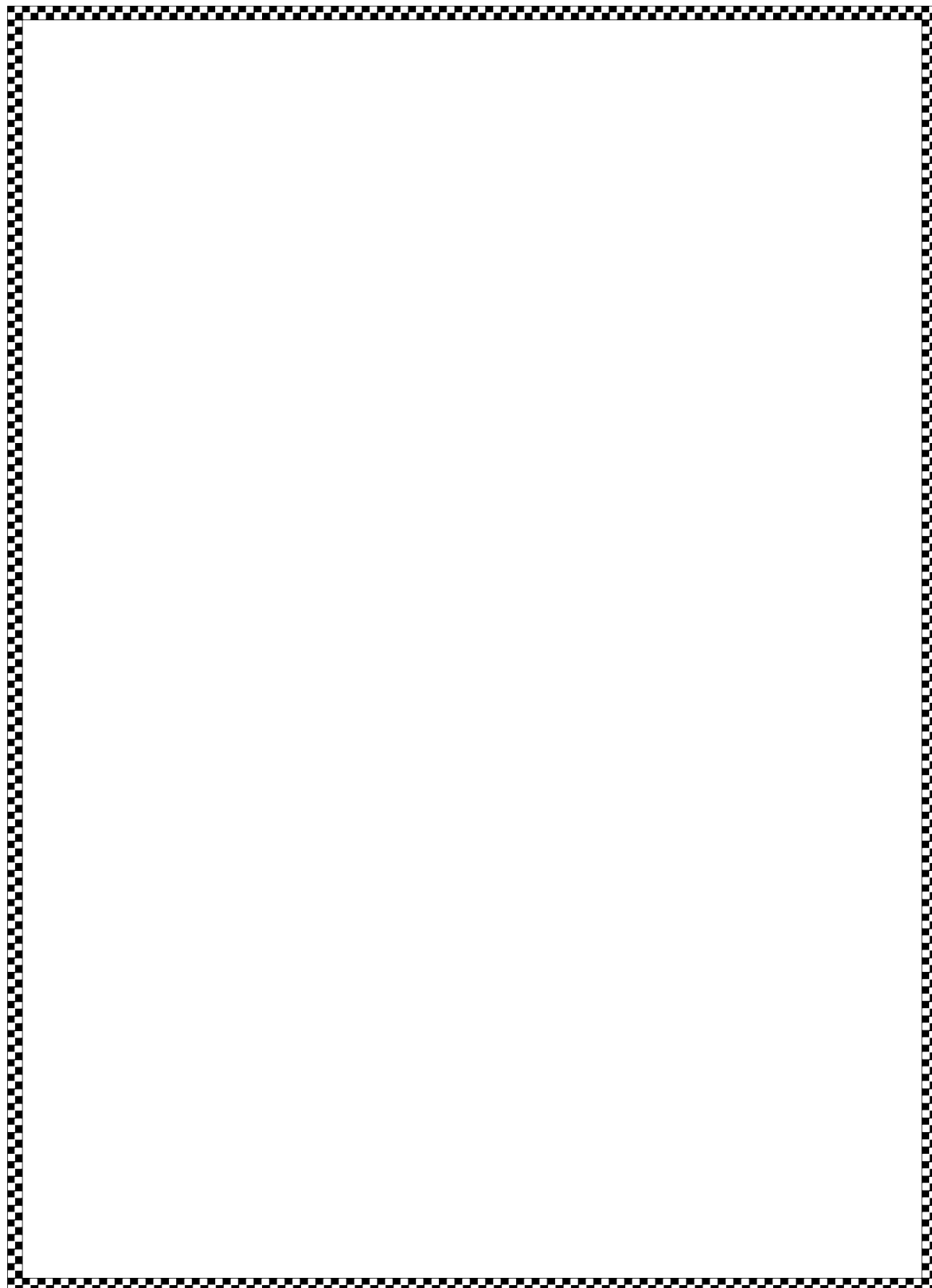
Sri. K.Anurag,
Principal Civil Judge(Junior Division),
Srikakulam.

Topics

- d). Decree for restitution of conjugal rights.
- e). Decree for specific performance.

Paper Presentation by-

Ms. V.Sahithi,
Judicial Magistrate of I Class
Special Mobile Court, Srikakulam.



SESSION- I & II

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

Paper Presentation

By

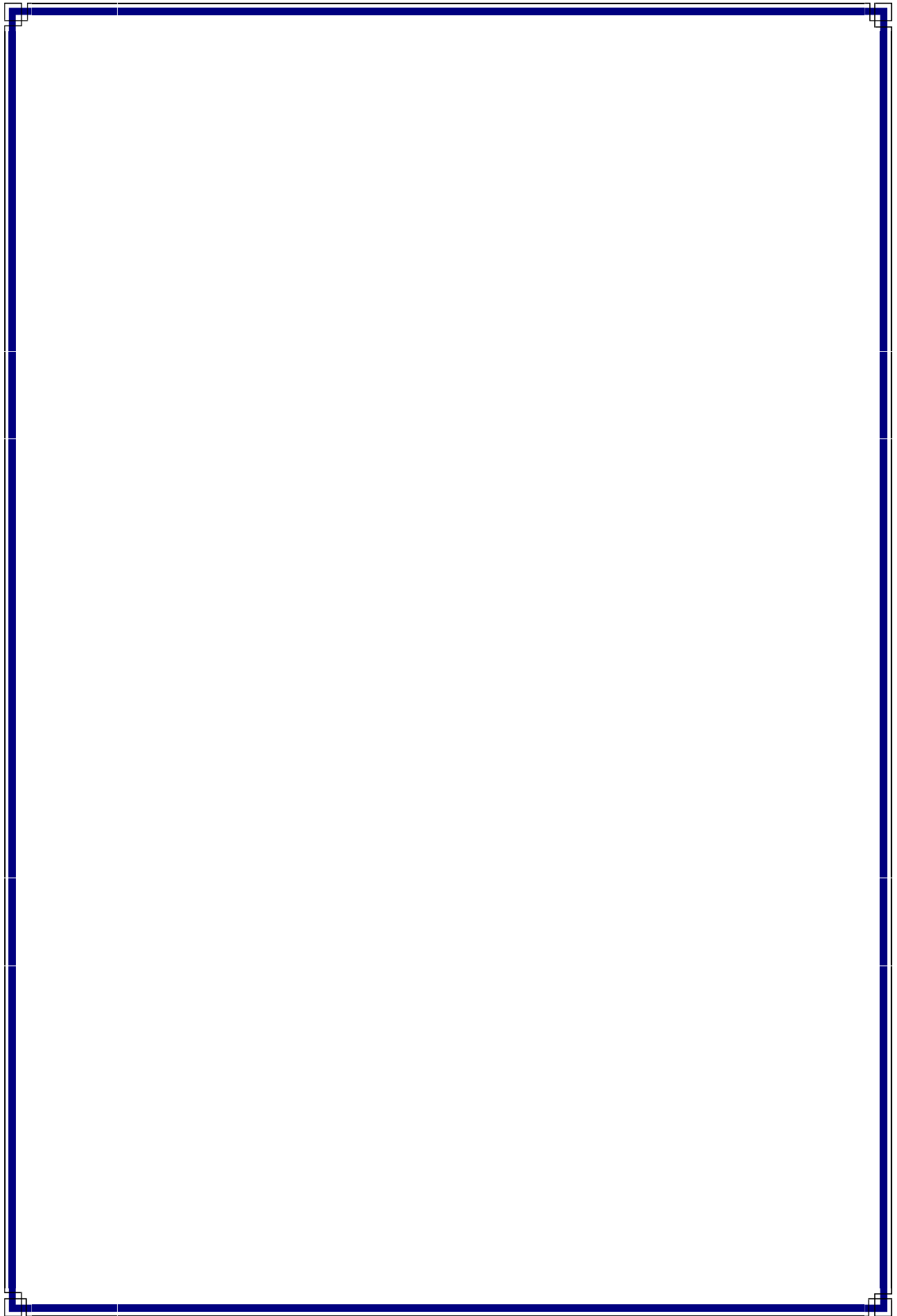
Smt. K.SARADAMBA,

Civil Judge (Senior Division), Rajam

&

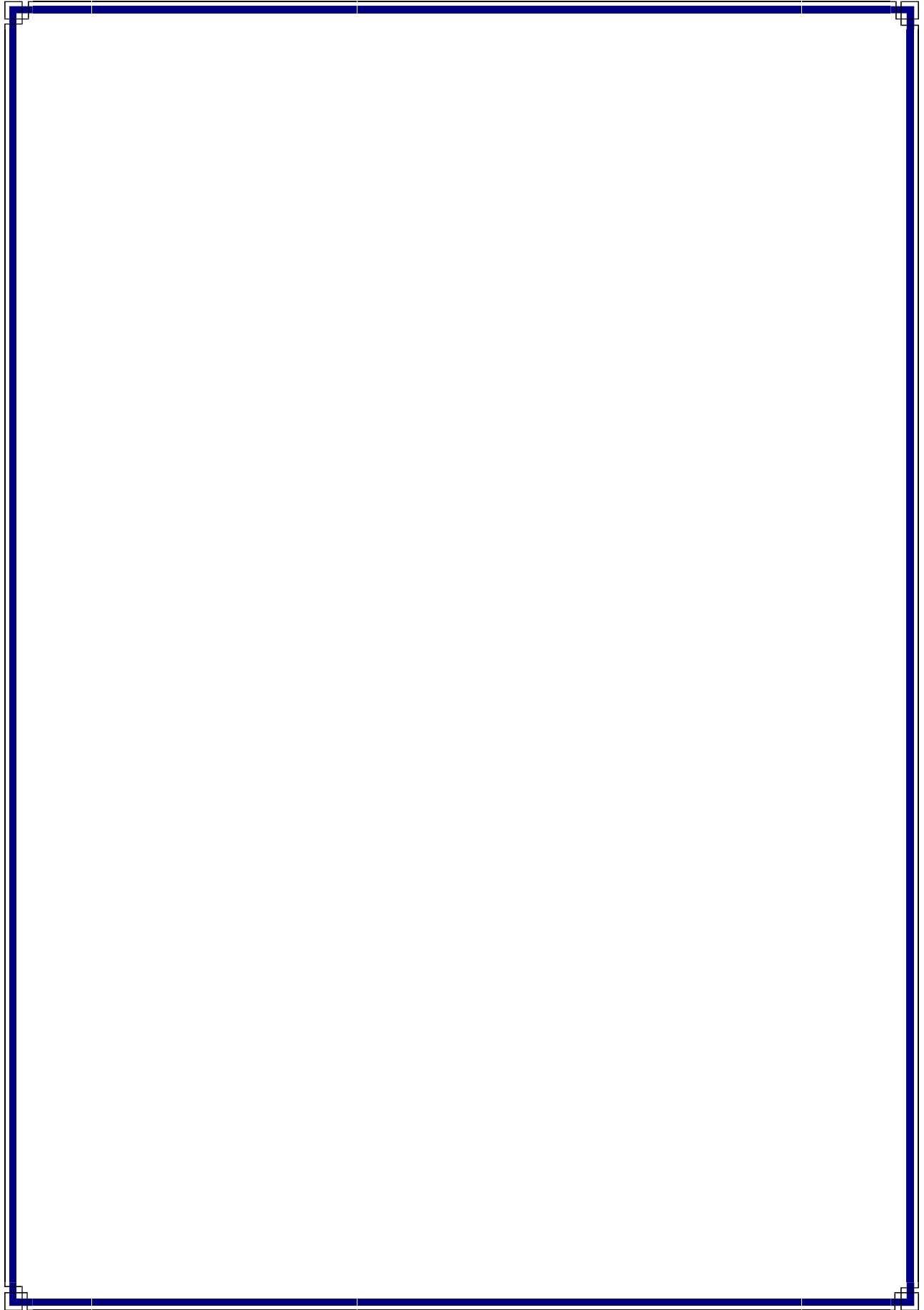
Ms. S.VANI,

Civil Judge (Junior Division),
Narasannapeta.



TOPICS

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



INTERIM ORDERS:

The word 'Interim' means not final or lasting or temporary until something more permanent is found.

An interim order is a temporary order passed by a court, tribunal or competent authority during the pendency of a case.

The CPC is the Primary Law Governing interim orders in civil cases.

- Order 39: Injunction
- Order 38: Attachment before judgment
- Order 40: Appointment of Receiver
- Section 151: Inherent powers of court

Hindu Marriage Act, 1955:

- Section 24: Maintenance pendente lite and expenses of proceedings
- Section 26: Interim custody, maintenance, and education of children

Arbitration & Conciliation Act, 1996:

- Section 9: Interim measures by the court
- Section 17: Interim measures ordered by Arbitral Tribunal

DVC Act, 2005:

- Section 23: Power to grant interim and ex-parte orders
Magistrate may pass urgent protection, residence, or monetary relief orders pending final disposal of the complaint.

BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS):

- Section 144: Order for maintenance of wives, children and parents
- Section 146: Alteration in allowance
- Section 147: Enforcement of order of maintenance

ACTUS CURIAE NEMINEM GRAVABIT:

The term interim order refers to an order issued by a court during the pendency of the litigation. It is generally issued by the court to ensure status-quo. The rationale for such orders to be issued by the courts is best explained by the Latin Legal Maxim.

Actus curiae neminem gravabit means “An act of the court shall prejudice no one”

Therefore, to ensure that none of the interests of the parties to the litigation are harmed, the court may issue an interim order.

Interim orders issued by the court may be of various kinds. The nature of the order eventually depends on the direction issued by the court. Some examples of court orders classified as interim orders include restrain order, civil action, and measure of protection etc.

In India, interim order may be passed by civil courts in matters before them. Such order can be under Specific Relief Act, Section 151 CPC, 1908.

An interim order may be passed by the court only if the following conditions are satisfied:

- 1) Where there is a prima facie case in favour of the party seeking the order;

- 2) Irreparable damage may be caused to the party if the order is not passed and such damage may not be ascertained in terms of money and payable as damages; and
- 3) Where the balance of convenience lies with the party requesting for the order.

EXERCISE OF JUDICIAL DISCRETION:

Interim matters require vigilance and alertness from Judges to ensure findings at the stage are satisfied at the final stage.

Interim relief can only be granted in aid of final relief.

Interim relief cannot be granted if it would have the effect of granting the final relief.

Exceptions exist where withholding such relief would render the petition.

If no relief is granted at the final stage of the litigant seeks to withdraw the petition after the grant of interim relief, the court should pass orders neutralizing the effect of any interim order passed at the interlocutory stage.

If the petition is withdrawn, the court should not continue the interim order. However, if the matter has been heard out and is then withdrawn, the high court may continue the interim order for a limited period.

A court would not pass an order that would make one party to the lis violate a lawful order passed by another court.

The court must not give any concrete findings in the merits of the matter at the interim stage.

Burden of proof lies with the party seeking for the interim relief to prove the case for an interim relief.

According to Rule 2(J) of A.P. Civil Rules of Practice, interlocutory application is an application to the court in any suit, appeal, or proceeding already instituted in such court, other than a proceeding for execution of a decree or order.

The important Rules relating to the procedure is prescribed under Rule 53 to 60 of Civil Rules of Practice.

According to Rule 53, every interlocutory application shall be filed in the form of a petition accompanied by affidavit.

According to Rule 54, an interlocutory application shall state the provision of law under which it is made and the relief prayed for shall be stated precisely and clearly, it shall be signed by the applicant or his Advocate.

According to Rule 55, where the applicant seeks several reliefs combined in one application, the court may direct the applicant to confine the application only to one of such reliefs and to file a separate application in respect of each of the others, court shall not dismiss the application if one relief is ancillary to main relief or interconnected to main relief, two prayers can be asked for in one petition.

In the ends of justice, the court may grant the following order:-

Arrest before judgment	:	Section 94(a) & Order 38 Rule 1 to 4
Attachment before judgment	:	Section 94(b) & Order 38 Rule 5 to 13
Grant of temporary injunction	:	Section 94(c) & Order 39 Rule 1 to 5
Interlocutory orders	:	Section 94(e) & Order 39 Rule 6 to 10
Appointment of Receiver	:	Section 94(d) & Order 40.

SUPPLEMENTAL PROCEEDINGS (Sections 94, 95 & Orders 38 to 40 & Rules 53 to 60 of Civil Rules of Practice):

During the pendency of a suit, if the conduct of the defendant is such that where the main relief in the suit is likely to be defeated – to preserve or to protect such main relief, the court may grant certain interim reliefs, these proceedings are resulting into supplemental proceedings.

An interlocutory application can be filed during pendency of suit till the disposal of the suit. Any number of interlocutory applications can be filed by the parties to the suit. It prevents any damage to the property or safeguards the property till final adjudication of the matter in dispute.

While deciding the interlocutory application, court will not go into the merits of the suit but it will look into merits of the application. The interim orders passed under the proceedings regulate the conduct of the defendant and enable the plaintiff to get the suit relief.

According to R.2(j) of AP Civil Rules of Practice, interlocutory application is an application to the court in any suit, appeal or proceeding already instituted in such court, other than a proceeding for execution of a decree or order. The important rules relating to the procedure is prescribed under R.53 to 60 of Civil Rules of Practice.

According to Rule 53 every interlocutory application (I.A.) shall be filed in the form of a petition accompanied by affidavit.

According to Rule 54, an I.A. shall state the provision of law under which it is made and the relief prayed for shall be stated precisely and clearly. It shall be signed by the applicant or his advocate.

According to Rule 55, where the applicant seeks several reliefs combined in one application, the court may direct the applicant to confine the application only to one of such reliefs and to file a separate application in respect of each of the others. Court shall not dismiss the application. If one relief is ancillary to main relief or interconnected to main relief, two prayers can be asked for in one petition.

In the ends of justice, the court may grant the following orders:-

- i. Arrest before judgment (S.94(a) & Order 38 R.1 to 4)
- ii. Attachment before judgment (S.94(b) & Order 38 R.5 to 13)
- iii. Grant of temporary injunction (S.94(c) & Order 39 R.1 to 5)
- iv. Interlocutory Orders (S.94(e) & Order 39 R.6 to 10)
- v. Appointment of Receiver (S.94(d) & Order 40)

GRANT OF TEMPORARY INJUNCTIONS:

An injunction is a Quia-timet relief (it is granted where there is an apprehension of injury). It is an order of the court directing a person to do an act or to refrain from doing an act.

An injunction is a judicial process whereby a party is required to do an act or to refrain from doing any particular act. It is a remedy in the form of an order of the court addressed to a particular person either prohibits him from doing or continuing to do a particular act (prohibitory) or orders him to carry out a certain act (mandatory).

According to Sec.39 of Specific Relief Act, an injunction may be either mandatory or prohibitory.

According to Sec.36 of Specific Relief Act, an injunction may be temporary or perpetual.

According to Sec.37(1) of Specific Relief Act, a temporary injunction is granted by a court at any stage of a suit. It is granted by way of an order and operates for a specific period or till further orders or till the disposal of the suit.

According to Sec.94(c) of CPC, court may grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold.

A temporary injunction (interim injunction) is granted on hearing of the parties.

Where there is urgency, the court may grant an an-interim injunction (ex-parte temporary injunction).

CASES WHERE TEMPORARY INJUNCTION IS GRANTED:

I. According to Order 39 Rule 1, court may grant a temporary injunction in the following cases:-

i. Where a suit property is in danger of being wasted, damaged or alienated by any party to the suit – to prevent such wastage, damage or alienation or when suit property is wrongfully likely to be sold out in execution of a decree – to prevent such sale; or

ii. Where the defendant (debtor) tries to remove or dispose of his property with a view to defraud the creditors – to prevent such removal or disposal; or

iii. Where the defendant threatens to cause injury to the property of plaintiff or to dispossess the plaintiff from the property – to prevent such injury or dispossession, the court may grant a temporary injunction or make any other appropriate order.

II. According to Order 39 Rule 2, an injunction may be granted in favour of the plaintiff to prevent continuous breach of the contract or to prevent a commission of continuous tort.

PROCEDURE FOR GRANT OF INJUNCTION ORDER:

- a) Where an application is made under Order 39, the court shall give a notice to the respondent as prescribed by law and after hearing the parties the court may make order on the merits of the case.
- b) Where there is a need of urgent relief, the applicant may request the court to grant an injunction immediately.
- c) If the court is satisfied it may grant an ad-interim injunction and thereafter a notice is served to the respondent (R.3).
- d) According to R.3A, the court shall make an endeavor to hear the parties and dispose of the application within 30 days from the date of order ex-parte. The period of 30 days may further be extended in exceptional cases after recording the reasons.

When the court grants ad-interim injunction, it should be finally decided within 30 days. However, if that application is not decided within 30 days then also order of ad-interim remain in force. The court should pass an order in writing as to cause of delay failing which it becomes appealable. Then appellate court can change that order with further direction to take appropriate action against the presiding officer of trial court.

Venkata Subbaiah Naidu Vs. Chellappan ¹– AIR 2000 SC 3032

- e) Any order granted by the court under R.1 or 2 is appealable.

¹ AIR 2000 SC 3032

CONSEQUENCES OF DISOBEDIENCE OF AN INJUNCTION ORDER (R.2A):

When an injunction order is disobeyed by the defendant, on application of the plaintiff, the court may make an order for attachment of property of the defendant and also order civil detention for a term not exceeding 3 months.

An attachment made under this rule continues for a period of one year. If the disobedience is continued, the court may direct sale of attached property and payment of compensation to the injured party. If any amount remains after payment of such compensation the amount shall be paid to the owner of the property i.e., defendant.

In **UC Surendra Nath Vs. Mambally's Bakery**², the Honourable Supreme Court held that for finding a person guilty under Order 39 Rule 2A, the disobedience is not mere disobedience, but it must be willful disobedience.

However, in **Amazon.com Vs. Future Retail Ltd**³, the Honourable Supreme Court opined that the decision in Surendra Nath's case requires review by a longer bench.

WHETHER AN INJUNCTION CAN BE SET-ASIDE:

Acc. to R.4, the court has the power to set aside or modify or amend an injunction order granted by it.

Injunction may be set aside in the following circumstances:-

- i. Where there is a change in circumstances
- ii. Where the injunction is obtained by a false or misleading statement in relation to a material fact

² 2019 SC

³ 2021 SC

- iii. Where it causes undue hardship to the party
- iv. In the ends of justice, if the court opines so

According to Sec.95 CPC, where a temporary injunction has been obtained on insufficient grounds or fraud and the court after setting it aside may award compensation not exceeding Rs.50,000/- to the aggrieved party.

CARDINAL PRINCIPLES FOR GRANT OF TEMPORARY INJUNCTION:

At the time of granting an injunction order the court shall consider certain important points which are known as cardinal principles.

1) PRIMA FACIE CASE:

- i. Prima facie means on the face of it or on the first perusal of it or the plain reading of affidavit, the court shall arrive at conclusion that there is a genuine plea of the applicant for its consideration.
- ii. Prima facie means there is a bonafide contention between the parties or a serious question to be derived (decided).

The court arrives at such conclusion based on the affidavits of the parties, third party affidavits, documents submitted before the court and the averments of the parties in the plaint and written statement.

- iii. Prima facie case does not mean that the suit will be decided in favour of the applicant. It only means that there is a genuine plea of making such application and it should be limited only to that interlocutory application.

Case Law:

Kashi Math Sansthan Vs. Shri Mad Sudhindra Thirtha Swamy⁴,

The court held that unless the prima facie is established – a party is not entitled for temporary injunction.

2) **BALANCE OF CONVENIENCE:**

When an interlocutory application is filed under Order 39, the applicant must establish that the balance of convenience is in his favour. He must satisfy the court that granting of an injunction will not cause hardship to the defendant but non-granting of an injunction will result into hardship to the plaintiff.

The amount of mischief or injury which is likely to be caused if injunction is refused shall be compared to with that which is likely to be caused to other side if the injunction is granted. It is resulting into balance of convenience.

The balance of convenience between the parties can be maintained by regulating the conduct of the defendant through the means of injunction.

3) **IRREPARABLE LOSS OR INJURY:**

The petitioner must satisfy the court that if injunction is not granted it would result into irreparable injury that cannot be compensated in terms of money.

If the court is satisfied that incurable damage will be caused by the conduct of the defendant it may grant an injunction in favour of the plaintiff.

The petitioner must also satisfy the court that he has no adequate alternative relief than grant of injunction.

⁴ AIR 2010 SC 296

4) While granting ad-interim injunction, the court must look into conduct of the applicant.

5) In case of public interest or public utility, an-interim orders cannot be granted.

Judicial Principles:

1. While granting a temporary injunction, the court must be satisfied that all the three cardinal principles are present.

Martin Burn Ltd., Vs. R N Banarjee⁵,

Dalapat Kumar Vs. Prahalad Singh⁶,

2. While granting an ad-interim injunction (ex-parte temporary injunction), the court must look at the conduct of the applicant.

Shiva Kumar Chadda Vs. Municipal Corporation, Delhi⁷,

Morgan Stanley Mutual Funds Vs. Karthik Das⁸,

3. While granting an ad-interim injunction, public interest should be considered and as a general rule it shall not be granted against Government.

Shiva Kumar Chadda Vs. Municipal Corporation, Delhi⁷,

M.S. Shelke Vs. Municipal Corporation, Pune⁹,

4. No ex-parte relief by way of an injunction or stay with respect to public project and schemes or economic policies against corporation or authorities.

Balco Employees Union Vs. Union of India¹⁰,

Municipal Corporation of Hyderabad Vs. Philomena Education Foundation of India¹¹

⁵ AIR 1958 SC 79

⁶ AIR 1992 (1) SCC 719

⁷ 1993(3) SCC 161

⁸ 1994(4) SCC 225

⁹ 1995(3) SCC 33

¹⁰ 2002 (2) SCC 333

¹¹ 2008(1) ALT 670

5. For setting aside of an injunction under Order 39 R.4, the court must consider the three cardinal principles.
Gujarat Bottling Corporation Ltd., Vs. Coco Cola Company Ltd.¹².
6. An injunction can be granted in favour of the defendant and against the plaintiff under O.XXXIX R.1(a).
Samba Murthy Vs. Srinivasa Rao¹³,
7. An injunction can be granted by the court by exercising its inherent powers under Sec.151 of CPC.
Manoharlal Vs. Heeralal¹⁴,
8. An interim mandatory injunction can be granted in exceptional circumstances.
D C Wardan Vs. C S Wardan¹⁵,
9. A stay is a direction to a court and an injunction is addressed to a person. A stay is always prohibitory, but an injunction is either prohibitory or mandatory.
United Commercial Bank Vs. Bank of India¹⁶,
10. Civil courts have jurisdiction to give directions to the police for enforcement of an injunction order.
Shaik Yousuf Vs. Shaik Shahur¹⁷.
11. A person who is in unlawful possession of the property cannot seek an injunction against the true owner.
Ankayya & Ors Vs. TTD¹⁸.
A. Sudhakar Vs. P. Bucchi Reddy¹⁹,

¹² 1995(5) SCC 545

¹³ 1987(2) ALT 630

¹⁴ AIR 1962 SC 527

¹⁵ AIR 1990 SC 867

¹⁶ AIR 1981 SC 1426

¹⁷ AIR 2003 AP

¹⁸ 2002 (4) ALD 223

¹⁹ AIR 2008 SC 2033

12. When a suit in which temporary injunction is granted is dismissed for default and restored – the temporary injunction is automatically restored and no separate application is required.

N Rama Reddy Vs. N Padma Reddy²⁰,

Ganesh Prasad Vs. Lakshmi Narayan²¹,

13. In case of a suit in which an attachment before judgment is granted – it is not automatically restored but a separate application shall be made under Order 38 R.11A(2).

Govinda Rao Mohadik Vs. Devi Sahai²²,

Varied Jacob Vs. Sosamma Geevaghees & Ors²³,

14. An injunction restraining the true owners from taking possession should not be granted.

Faridabad Complex Administration Vs. Yadu²⁴,

15. In the ends of justice, a receiver can be appointed where an interlocutory application is filed under O.XXXIX R.1.

D K Raja Vs. P S Kumara Swamy Raja²⁵,

16. Courts cannot grant an injunction restraining encashment of unconditional bank guarantee unless such guarantee is obtained by fraud or where there is irretrievable damage.

Binni Ltd., Vs. Nizam Sugars Ltd²⁶.,

Federal Bank Ltd., Vs. V M Jog Engineering Ltd²⁷.,

²⁰ AIR 1978 AP 30

²¹ AIR 1985 SC 964

²² AIR 1982SC 989

²³ AIR 2004 SC 3992

²⁴ AIR 1997 Sc 1985

²⁵ AIR 1955 Madras 360

²⁶ 1996(4) ALT 100

²⁷ 2001 (1) SCC 6630

ARREST & ATTACHMENT BEFORE JUDGMENT**Arrest before judgment (Order 38, R.1 to 4, Sec.94(a):**

During the pendency of a suit, the defendant may be subjected to arrest on the grounds specified under Order 38 R.1.

Where the defendant has left or is about to leave from the local limits of the court or has disposed of the property or remove the property from the local limits of the court – with an intention to delay or to avoid any court process or to obstruct or to delay the execution of a decree that may be passed against him, the court may direct the arrest of the defendant.

According to R.2, when the defendant is produced before the court, if he shows a sufficient cause to the satisfaction of the court or furnishes any surety or any security as directed by the court, the defendant will not be detained. If the defendant fails to comply with, the court may subject him to civil prison not exceeding six weeks where the suit amount is up to Rs.50/-. If the suit amount exceeds Rs.50/- the detention shall not exceed 6 months.

Where the defendant furnishes surety and fails to appear before the court, the court may make surety liable to the extent of the suit amount.

An order under Order 38 R.1 shall not be issued where the suit is relating to immovable property.

Attachment before judgment (Sec.94(b), Order 38, R.5 to 13):

Attachment means a judicial declaration by the court that certain property has been subjected to its custody and no person shall deal with such property in any manner in violation of direction of the court.

According to Sec.64 of CPC, private alienation of the property which is attached is void. Attachment may be in execution proceedings or even before judgment.

According to Order 38 R.5, during the pendency of a suit, if the defendant is about to dispose off his property or remove the property from the local limits of the court – with an intention to delay or obstruct the execution of a decree that may be passed against him, the court may order attachment before judgment.

On the application of the plaintiff, the court may direct the defendant to appear before it and show a sufficient cause to furnish any security to satisfy the decree. If the defendant fails to appear before the court or fails to show a sufficient cause or fails to furnish the security, the court may order attachment before judgment under Order 38 R.6.

For granting a relief under Order 38 R.5, the plaintiff must show prima facie case that his claim is bonafide and valid. He must satisfy the court that the defendant is about to remove or dispose off the whole or part of his property with an intention to obstruct or delay the execution.

If the averments in the plaint and the documents produced in support of it do not satisfy about the existence of a prima facie case, the court will not grant such relief.

Under this rule, the court may attach movable or immovable property and the benefits or profits out of such property.

A person may seek arrest before judgment and attachment before judgment of the defendant. He should present two different applications as per R.55 of Civil Rules of Practice.

In Prabha Surana Vs. Jaideep (2021), the Calcutta High Court expressed that a temporary injunction is granted at the early stage of the suit and attachment before judgment is applicable in a later stage in the suit to execute the decree, it is made when the interim stage is completed.

OTHER CONNECTED RULES:

According to Order 38 R.5, based on the facts of the case, the court may make an order of conditional attachment. Thereafter if the defendant fails to comply with R.6, the conditional attachment becomes absolute (similar to ex-parte order).

An order of attachment without complying with the prescribed provision, the attachment shall be void (Order 38 R.5(3)).

At the time of making an application, the plaintiff shall specify what property is to be attached and the approximate value of such property. The property must be one which is attachable as per Sec.60 of CPC.

According to R.7, the procedure of attachment shall be the procedure in execution of a decree.

According to R.13, a court of small causes cannot order attachment of immovable property.

According to R.12, agriculture produce shall not be attached under this order.

According to R.11, where any property is attached before judgment such property need not be reattached in execution proceedings and directly a sale application can be filed.

According to R.10, an order of attachment shall not defeat a right of a decree holder who had already proceeded against the same property in execution of a decree.

According to R.8, a claim petition can also be filed in attachment before judgment proceedings.

According to R.9, when the attachment order is in existence, if the defendant furnishes any security to the extent of decretal amount and the costs, then order of attachment may be removed. The attachment order is also removed where the suit is dismissed.

In case of a dismissal of suit in which an attachment before judgment is granted it is not automatically restored but a separate application shall be made under Order 38 R.11A(2).

Vareed Jacob Vs. Sosamma Geevaghees & Ors²⁸,

Judicial Principles:

1. The power to attach before judgment cannot be exercised in a routine manner. If the court is satisfied in R.5, those reasons should be mentioned in the order.

Mentioning the reasons is imperative because the order passed under Order 38 R.6 is an appealable order. Unless reasons are furnished, the appellate court would not be in a position to review the order of the trial court.

M. Surya Narayan Vs. B. Baburao²⁹,

2. The third party affidavit supporting the plea of the plaintiff that the defendant is making attempts to alienate the property plays an important role for the court to arrive at prima facie conclusion as to the conduct of the defendant.

²⁸ AIR 2004 SC 3992

²⁹ 2010(2) ALT 839 DB

Third party affidavit filed in one suit or proceeding cannot be considered by the court on its own in another suit or proceeding.

Balaji Vs. Subramanyam³⁰,

3. An order dismissing an application under R.5 is not appealable.

An order of interim attachment is appealable.

An order allowing the application under R.5 or an order withdrawing the attachment made under R.5(3) is appealable.

New India Assurance Company Vs. Bhagyanagar Ventures Ltd.³¹,

4. A careful reading of Order 38 R.5 would go to show that the said provision is equally applicable to suits filed under summary procedure (Order 37).

Someshwar Reddy Vs. Ajay Bhanu Vanamali³²,

5. When the court has jurisdiction to try the suit, the court can attach the property which is situated beyond the jurisdiction of the court.

N. Srinivasa Rao Vs. S. Lokeshwara Rao³³,

APPOINTMENT OF RECEIVER (Section 94(d), Order 40, R.286 to
293 of Civil Rules of Practice):

Introduction and Object:

- a) There are two types of receivers that can be appointed by the courts.

³⁰ 2009 (2) ALD 440

³¹ 2010(3) ALT 70 DB

³² 2004(2) ALD 741

³³ 2006(4) ALD 672

- i. One kind is receivers that can be appointed are under Special Acts – Provincial Insolvency Act, Presidency Towns Insolvency Act, Indian Companies Act, The Transfer of Property Act etc. Under these Acts, receivers are appointed in particular circumstances specified therein.
- ii. The second case is the receivers appointed under CPC – To preserve the property pending litigation to decide the rights of the parties. Receivers are appointed in execution proceedings (Sec.51) and during the pendency of the suit (Sec.94 and Order 40).
- b) One of the duties of the court is to protect the suit properties and for that purpose the court may take the property into custody. As the court cannot do it physically, it may appoint an independent person to receive such property and keep it in his custody. Such person is known as Receiver.
- c) The main object of appointment of receiver is – protection and preservation of the property for enabling the plaintiff to get the relief for his suit.
- d) A receiver is a “Custodia Legis” which means legal custodian of the property entrusted to him by the court.

Appointment of Receiver:

Any advocate who is a panel advocate for appointment of receiver can be appointed as receiver. He may be appointed either before or after decree.

Sometimes, a party to the suit may be appointed as a receiver. In a partnership business, this is applied.

Acc. to Order 40 R.1, a receiver can take possession or custody of the property and manage or administer such property.

He can collect and receive the rents, benefits and profits of the land or personal estate.

He is conferred the powers to execute document in relation to the property on which he is appointed as a receiver. He can file a suit and defend in relation to that property.

Acc. to R.2, the court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

It depends on the nature of the duties he has to perform, the time to be devoted and the value of the property etc.

Generally in practice, the remuneration is paid on the percentage basis. It may be 1%, 2%, 3% of the value of the suit property.

Duties and Liabilities:

According to R.3 –

- a) When a person is appointed as a receiver, he shall furnish security as the court directs. Such security may be furnished in the form of immovable property, cash, Government securities, fixed deposits etc.
- b) Submit his accounts to the court from time to time. Generally for every 3 months he has to file the accounts.
- c) Pays the amount due from him as the court directs.
- d) He is responsible for any loss caused to the property by his willful default or gross negligence.

According to R.4 – when the receiver fails to comply with the duties mentioned under R.3 or if causes any damage to the property, he is personally liable and the court may attach his property and sell the same. Court applies the sale proceeds to indemnify such loss and any remainder will be given to receiver.

According to R.5, a collector may be appointed with his consent as a receiver when the suit property owes certain land arrears to the Government.

Cordinal Principles for appointment of Receiver:

There are five basic principles which the court must consider at the time of appointment of receiver and they are popularly known as “Panch Sadhachar”.

Case law:

Krishna Swamy Chetty Vs. Thangavelu Chetty³⁴,

The court held –

1. Appointment of receiver is a matter resting at the discretion of the court for the purpose of protecting the rights of all parties and subject matter. Such discretion cannot be exercised in an arbitrary and unreasonable manner. It has to be exercised cautiously, judiciously and according to well established legal principles.
2. The plaintiff must establish that prima facie he has an excellent chance of succeeding the suit.
3. Plaintiff must show urgency or danger or loss demanding immediate action of the court and he must be clear about his rights and free from doubt.
4. The court shall not appoint receiver in a casual manner as it deprives the defendant, the de-facto possession and enjoyment of the property and at a later stage if the suit is otherwise decided, the court may be blamed for his sufferance or inconvenience of the defendant.

³⁴ AIR 1955 Madras 430

5. The court must look at the conduct of the applicant and he must come to the court with clean hands. (That are washed with the fragrances brought from Arabia)

ISSUE OF COMMISSIONS:

Incidental Proceedings (or) Issue of Commissions (Sections 75 to 78, Order 26 of CPC, R.134 to 141 of Civil Rules of Practice):

In the process of administration of justice, the court has to discharge various functions. Some of them are primary functions which are to be carried out exclusively by the Judge and some other functions are incidental which may be carried out by entrusting them to others.

The primacy function of a Judge is conducting the trial, adjudicating the dispute and finally determining the rights of the parties and directing the relief as claimed by the parties. The incidental duties can be carried out with the assistance of some people. As it is not practically possible to the Judge to discharge all such incidental duties, the court issues commissions and thus it results into incidental duties/proceedings.

The court may appoint an advocate commission or an expert commission or a Judge commission depending on the facts of the case.

Court may appoint a commissioner either on an application by any party to the proceedings or on its own. The remuneration to the commissioner is decided by the court and it becomes the cost in the suit.

Power of the Court to issue commissions:

According to Section 75, a court may issue commission –

- a) To examine any person (R.4, R.4A)

- b) To conduct local investigation (R.9)
- c) To make a report on metes and bounds in a partition suit (R.13 & R.14)
- d) To examine or adjust accounts in relation to partnership business (R.11)
- e) To conduct sale proceedings at the order of the court (R.10C)
- f) To hold scientific, technical or expert investigation (R.10A).
- g) To perform any ministerial act (R.10B)

Issue of a commission to examine witness:

According to R.4, a court may issue a commission to examine the witnesses in the following cases –

- a) Who is unable to attend before the court on account of old age, sickness or infirmity
- b) Who is exempted under the court from personal appearance on account of customary law or privileges as provided under Section 132 & Section 133. (A Judge of Supreme Court or High Court, MPs or MLAs or a woman from royal family or a religious saint)
- c) Who reside beyond the local limits of the court
- d) Any person who is about to leave the local limits of the court or the territory of India
- e) Any person residing out of India
- f) Who is in the service of government and whose appearance in the court is detrimental to public duties

According to R.4A court may issue a commission for examination of any person who is a resident within the local limits of the court but who does not fall under any of the above mentioned categories. This provision was inserted by the amendment Act 2002, for the quick disposal of the case and in the ends of justice.

Correspondingly, Order 18 R.4 is amended and according to sub-rule (2), court may issue a commission for holding cross-examination and re-examination procedure.

The powers of commissioners (R.16, R.17, R.18):

- i. A commissioner may examine the parties and witnesses produced before him by any of such parties. He can also call upon any other person whom he thinks proper to give evidence in the matter referred to him. (similar to court witnesses)
- ii. To call for an examine documents and other things relevant to the subject of inquiry.
- iii. For the purpose of discharging his duties a commissioner can enter upon or into any land or building at any reasonable time as mentioned in the order.
- iv. For the purpose of summoning, attendance and examination of witnesses, according to R.17, a commissioner is deemed to be a civil court.
- v. A commissioner is a public servant as per Sec.21 of IPC.
- vi. Where an order of an advocate commissioner is disobeyed, he cannot impose a penalty but on his report the court may impose a penalty as per R.12. However, if he is a Judge Commissioner, he can impose penalty not exceeding Rs.500/-.
- vii. During the examination of witnesses, when a question put to a witness is objected to by a party or his pleader – the commissioner shall take down the question, the answer, the objections and the name of the party or the pleader as the case may be.

The commissioner shall not take down the answer to a question which is objected to on the grounds of privilege and he may continue with the examination of witnesses.

Now the matter is referred to the court by which he is issued as a commissioner and where the court decides that there is no question of privilege, the witness may be recalled and examined by the commissioner. If that question is a question of privilege, now the witness may be examined by the court.

- viii. According to Order 26 R.18A, a commission may also be issued in execution proceedings.
- ix. According to Rule 18-B, the court shall fix a date on or before which the commission shall be returned to it after execution. The court after recording the reasons may extend the date of the commission.
- x. According to Rule 15, the court may direct a party to deposit reasonable expenses in the court.
- xi. When a suit for a perpetual injunction is filed, in the ends of justice, court may issue a commission under Order 26, Rule 9 for recording physical features of the property.

Case law: G. Surender Reddy Vs. M. Laxmi and others,
2024 Telangana High Court

Section 41 of The Specific Relief Act, 1963:

Injunction when refused –

An injunction cannot be granted –

- a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

- b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- c) to restrain any person from applying to any legislative body;
- d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- g) to prevent a continuing breach in which the plaintiff has acquiesced;
- h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- j) when the plaintiff has no personal interest in the matter.

Court refuses attachment before judgment (Order 38 Rule 5) or arrest before judgment (Order 38 Rule 1) under the Code of Civil Procedure when the plaintiff fails to prove clear intent or urgent necessity, treating these measures as extraordinary and drastic remedies.

Grounds for refusal:

No fraudulent intent: The plaintiff cannot show that the defendant is actively trying to hide, destroy, or dispose of property or leave local limits to avoid a future decree.

Exemption from attachment (Rule 12): Agricultural produce in possession of an agriculturist cannot be attached by the court.

Rights of third parties (Rule 10): Attachment before judgment does not affect the rights of individuals who had rights to the property prior to the attachment, provided they are not parties to the suit.

Withdrawal of attachment (Rule 9): If the defendant furnishes security, the court must withdraw the attachment.

Removal of attachment (Rule 9): The court will withdraw the attachment if the defendant furnishes security or if the suit is dismissed.

Determination of attachment: Attachment is determined in various circumstances, including when the defendant furnishes security, when the attaching creditor withdraws the attachment, when the suit is dismissed.

Arrest on insufficient grounds:

Section 95 stipulates that in any suit where the plaintiff secures an order of arrest against the defendant based on insufficient grounds, or if the plaintiff's suit ultimately fails and the court determines that there was no reasonable or probable cause for initiating the suit, the defendant may apply to the court for compensation.

Upon such application, the court has the authority to order the plaintiff to pay compensation to the defendant. The amount of compensation awarded should be reasonable and may not exceed fifty thousand rupees.

This compensation aims to cover any expenses incurred by the defendant or any harm, including damage to reputation, suffered as a result of the unjustified legal action taken by the plaintiff.

Importance of reasoned decision:

Party cannot be granted interim relief merely because officiating counsel failed to answer court's query.

Andhra Pradesh High Court held on 23.07.2026 in Writ Appeal No. 483/2026 filed by Smt. Akula Gowrisudha's and Smt. Sabhavat Usha Kalyani and another.

SC in decision in Asma Lateef Vs. Shabbir Ahmad.

The court noted that the value and persuasive force of a judgment depend upon the reasons supporting it and that reasons are the soul and spirit of a good judgment. It further observed that a judicial order determining the rights and liabilities of parties must explain not only the outcome but also the reasons for arriving at that conclusion. Recording reasons demonstrates due application of mind and enables the unsuccessful party to effectively challenge the decision before a higher forum.

A.P. High Court in dispute involves the Visakhapatnam Port Authority and two private companies i.e., Vishwanadha Avenues (India) Private Ltd., and Vishwanadh Sports and Convention Private Ltd.,

The port authority had granted them a ten year lease to operate the Kalyani AC Auditorium at the Nehru Sports and Cultural Complex in Visakhapatnam.

Alleging violations of lease conditions, the port authority issued show cause notices invoked the bank guarantees, terminated the lease and took back possession of the premises.

The two companies then approached the Commercial Court at Visakhapatnam under Section 9 of the Arbitration and Conciliation Act seeking interim protection.

While the petitions were pending, the Commercial Court directed the parties to maintain status-quo. Then, port authority moved to High Court of A.P.

High Court of A.P. Bench found that the Commercial Court had recorded no reasons for granting such coercive interim relief. There was also no prima facie finding explaining why restoration was warranted?

A Rajasekhar Gowda Vs. UOI and others ³⁵ in Writ Petition No. 12292/2026, date of decision July, 2026.

AP High Court has delivered a sharp remainder to subordinate courts and specialized tribunals regarding the indispensable nature of reasoned judicial orders.

The Division Bench comprising Justice Ravi Nath Tilhari and Justice Subhendu Samanta quashed an order passed by the CAT, Hyderabad.

Division Bench opined that “Reasons are the back bone of every order”.

The court articulated 3 primary functions secured by reasoned judicial order.

- 1) Transparency for litigants
- 2) Preventing Arbitrariness
- 3) Facilitating appellate review

³⁵ Writ Petition No. 12292 /2026 July, 2026

and held that providing reasons is essential to preserve the aggrieved party's right to seek effective appellate review.

Conclusion:

Interim orders are an important component of judicial administration because they preserve the subject matter of litigation, protect the rights of parties during the pendency of proceedings, and prevent the final relief from being rendered ineffective. However, an interim order is not intended to confer a final adjudication of rights. It is a temporary measure founded upon the circumstances existing at the relevant stage of the proceedings.

While considering an application for interim relief, the court must carefully examine the prima facie case, balance of convenience and the likelihood of irreparable injury, along with the conduct of the parties, urgency of the matter, statutory requirements and the overall interests of justice. The court should neither grant interim relief mechanically nor reject it merely on technical considerations. The discretion must be exercised judicially, fairly and on sound legal principles.

Equally important is the requirement of a reasoned and speaking order. Reasons are the foundation of judicial discretion. A reasoned order demonstrates that the court has considered the pleadings, material placed before it and the applicable legal principles. It enables the parties to understand why relief has been granted or refused, facilitates effective appellate or revisional scrutiny, and strengthens confidence in the judicial process.

Therefore, an effective approach to interim applications may be summed up as: identify the nature of the relief, apply the governing legal principles, assess the competing interests, record clear reasons, and grant only such protection as is necessary to secure the ends of justice. A well-reasoned interim order is not merely an interlocutory procedural step; it is an important expression of judicial responsibility and fairness.

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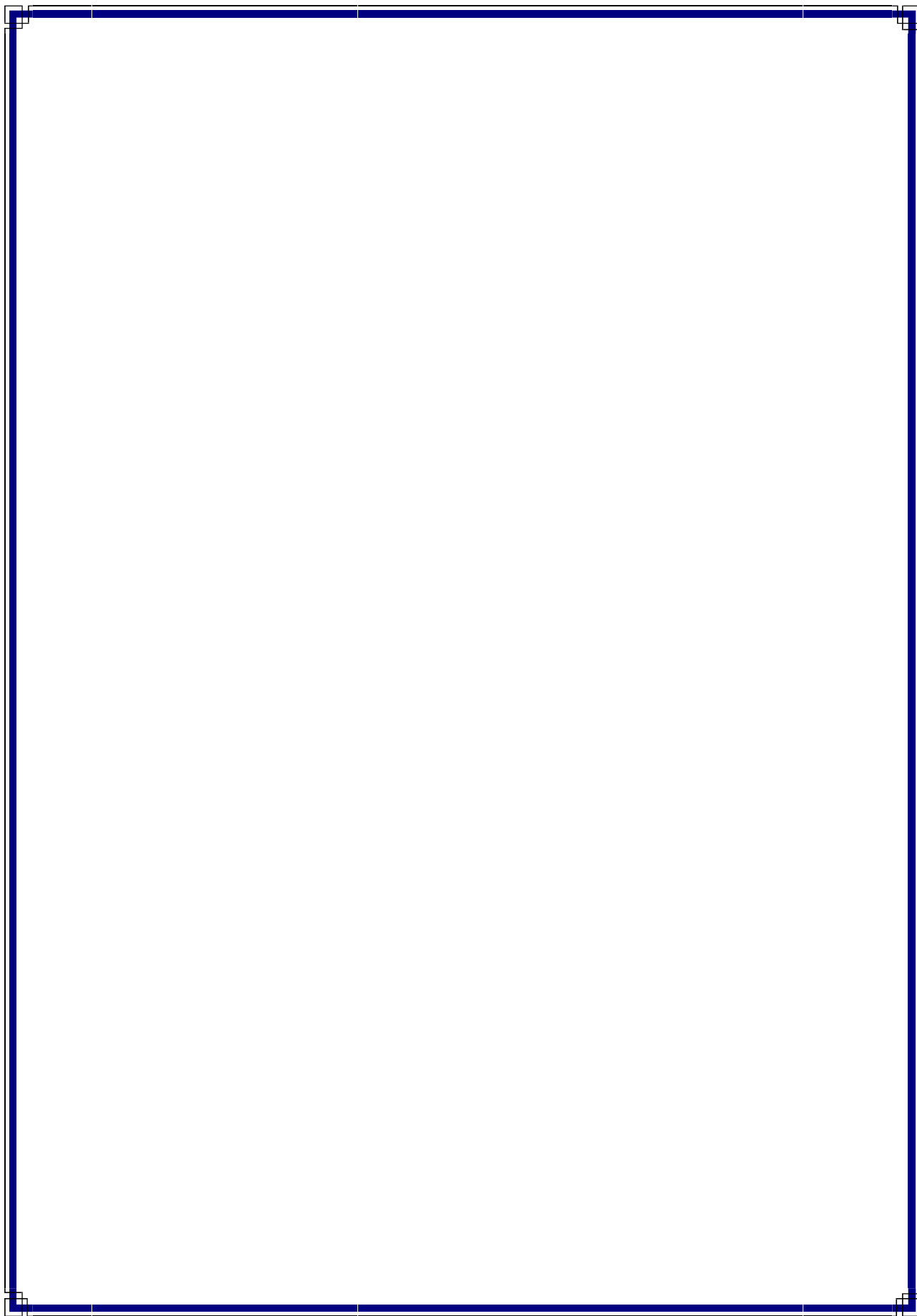
SESSION- III

TIMELINE FOR DISPOSAL OF EXECUTION PETITIONS – PRACTICAL CHALLENGES.

Paper Presentation

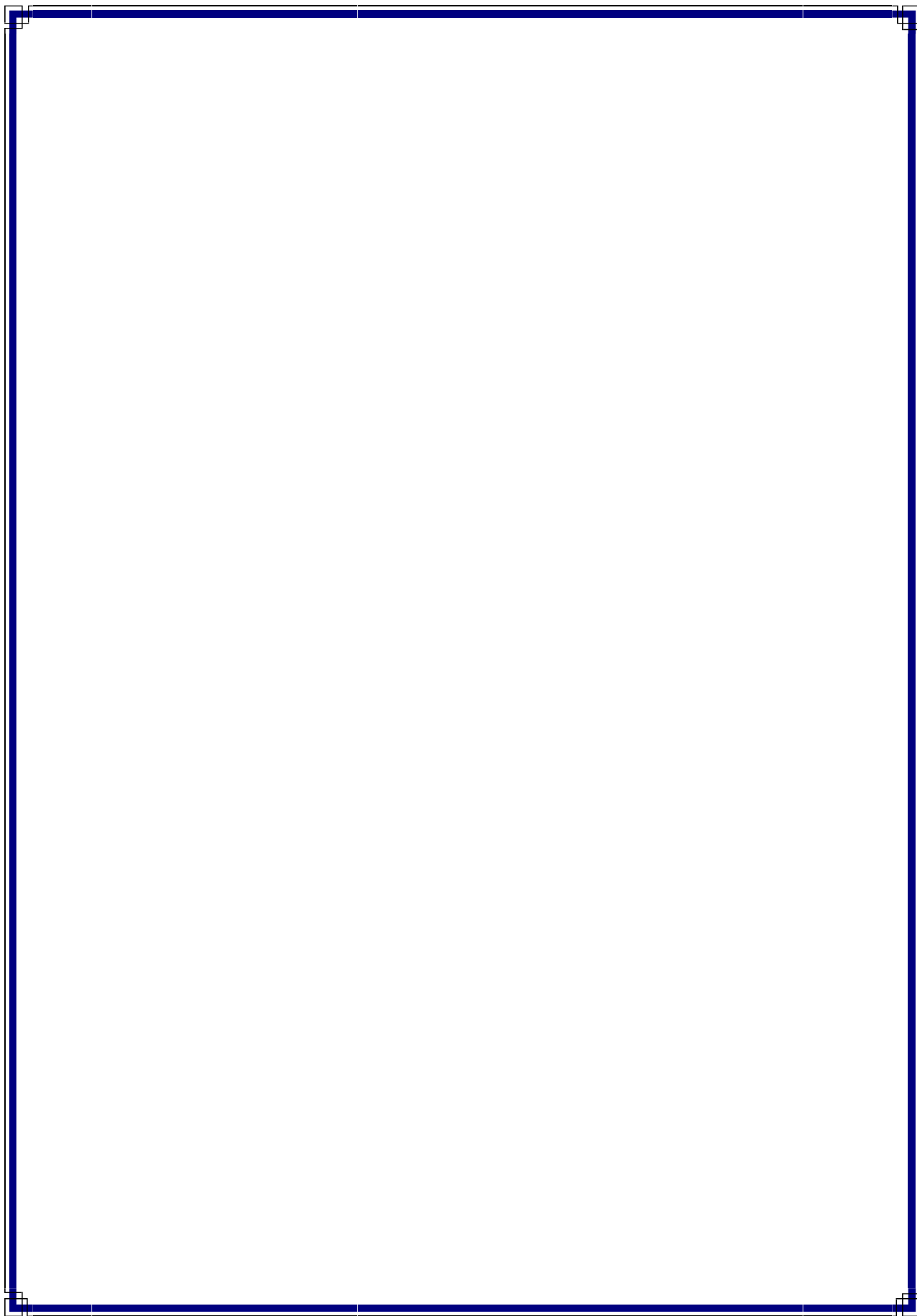
by

Sri. CH. VIVEK ANAND SRINIVAS,
III Additional District Judge,
Srikakulam



TOPICS

**TIMELINE FOR DISPOSAL OF
EXECUTION PETITIONS –
PRACTICAL CHALLENGES.**



TIMELINE FOR DISPOSAL OF EXECUTION PETITIONS- PRACTICAL CHALLENGES:

1. **“Execution”** in itself is not defined under the Code of Civil Procedure, 1908. In simple words it means a process for enforcing a decree that is passed in favour of the decree-holder by a competent court.
2. The Sections 37 to 74 of the Code of Civil Procedure, 1908 are related to the courts competent enough to execute a decree and Execution. The Order 21 rule 1 to 106 of Civil Procedure Code, deal with execution and its procedure.
3. It is an old saying that the struggle of the Decree Holder starts after he obtains a decree. Obtaining a decree by a party is one thing and executing the decree is another thing. The reasons may be many, for the delay caused in execution of the decree. But, it is the duty of the court, to see that the decree passed by it, is executed and that the decree holder, enjoys the fruits of the decree. If that is achieved, it creates confidence in the minds of the public on the judicial institution.
4. But, the fact remains that it is easier said than done. There are several challenges in execution of a decree by the court. The Ground Reality is that that, the Data from the National Judicial Data Grid (NJDG) shows that execution petitions take an average of **3.97 years** to conclude after the main civil suit. That may be true, but the pendency pressure on the courts is also more.

Hundreds of thousands of execution petitions remain pending nationwide, with many cases stalled for years despite strict administrative warnings to presiding officers, from the Honourable High Courts and the Apex Court. The data as per Honorable Apex Court, is that there are still **8,80,000 odd execution petitions** pending in the country. Noticing, the alarming situation, the Supreme Court of India, gave mandate that executing courts must dispose of execution petitions within six months from the date of filing, extending this time frame only by recording written reasons, vide its judgment, in **Rahul. S. Shah Vs Jinendra Kumar Gandhi**. Subsequently, in the **Periyammal Vs Rajamani** case, monitoring has gone further. It has moved through three phases: data collection (March to October 2025), accountability through reporting (April 2026) and now institutional design (May 2026). If adopted, the District Execution Cell would be the first standing body in India's civil justice system dedicated to shepherding decrees from paper to performance. Three deadlines now govern the matter. By 7 October, each High Court must report on the mechanism it has evolved for speedy disposal. By 19 August, the Union government must explain the status of the draft Commercial Courts Rules and the reasons for the five-year delay in notification. And every High Court has been asked its views on constituting District Execution Cells, if the Centre decline to act.

5. So, in view of the strict approach to be adopted by the courts in disposing the execution petitions, all the courts are expediting in disposal of the execution petitions. But, in view of the mandate of the Honorable Supreme Court directions, the courts have to dispose of the execution petitions, within six months from the date of filing the petition, failing which the court has to record its reasons.

But, still there are several Practical Challenges in disposing off the Execution petitions as follows:

- Stay Orders: Superior courts frequently grant stay orders on execution proceedings, accounting for a significant portion of long-term delays.
- Judgment-Debtor Obstruction: Judgment Debtors routinely file frivolous, vexatious objections or sequential appeals under the guise of review, effectively frustrating the decree-holder.
- Third Party objections by filing claim petitions.
- Procedural Bottle necks: Delays stem from unyielding service of notice, difficulty in locating movable or immovable assets, unavailability of legal counsel, and waiting for critical documentation. The arrest warrants are remaining unexecuted due to various reasons, even are finally disposing off the execution petitions.

- Default Filings & Settlements: Many parties use execution petitions as a routine pressure tactic, leading to high rates of withdrawal or prolonged out-of-court settlements rather than direct enforcement.
- The judgment debtors do not disclose their assets.

These are only a few reasons for the delay, but several challenges are faced by the court from the litigating parties, while disposing off the execution petitions.

6. Again considering all the difficulties and hurdles in disposing the execution petitions, the Apex Court in Periyammal case reiterated that:

- 1.** The Executing Court must examine the parties to the suit in relation to 3rd party interest and further direct the parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
- 2.** After examination of parties, or production of documents, or receipt of commission report, the Executing Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
- 3.** A Court Receiver can be also appointed to monitor the status of the property in question as “custodia legis” (in the custody of the law.) for proper adjudication of the matter.

4. The Court must, before passing the decree, pertaining to delivery of possession of a property ensures that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
5. The Court must ensure immediate execution of decree for payment of money on oral application.
6. Before settlement of issues, the Defendant may be required to disclose its assets on oath, to the extent that it is being made liable in a suit. The Court may further, at any stage demand security to ensure satisfaction of any decree
7. The Court must not issue notice on an application of third-party claiming rights.

Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the Applicant.

8. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with Affidavits.

9. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
10. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

While observing the aforesaid directions, the Apex Court was of the view that it is the duty of the Execution Court to dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.

7. The Honourable High court of Andhra Pradesh issued Circular 08/2026 dt.20.08.2026 giving Guidelines/ suggestions framed for early disposal of execution petitions, as directed by the Honourable Apex Court in Periyammal's Case. **(copy of the circular is enclosed.)**

8. To, conclude, the reasons may be many for the delay, in disposing the execution petitions, but it is the duty of the courts to execute the decrees passed by the courts and to see that the decree holder enjoys the fruits of the decree at the earliest. So, I end this notes, with an appeal to all the judges to strictly follow the directions of the Honourable Supreme Court and the guidelines issued by our Honourable High Court and make every endeavor to dispose of the execution petitions within the timeline fixed by the Honourable Supreme Court.

HIGH COURT OF ANDHRA PRADESH:: AMARAVATI

ROC.No.208/SO/2025

Date: 20.08.2026

CIRCULAR NO. 08 /2026

Sub: High Court of Andhra Pradesh – Order dt.16.10.2025 in Miscellaneous Application No. 1889-1891 of 2025 in Civil Appeal NOs. 3640-3642 of 2025 of Hon’ble Supreme Court of India – Directed all the High Court to evolve procedure and guide their respective District Judiciary for effective and expeditious disposal of the Execution Petitions which are pending as on date – Guidelines/suggestions framed by the High Court of Andhra Pradesh for early disposal of Execution Petitions – Communicated for strict compliance – Reg.

- Ref: 1. Judgment dated 06.03.2025 of Hon’ble Supreme Court in Civil Appeal Nos. 3640-3642 of 2025 –Disposal of execution petitions by the Executing Courts within six months – Certain instructions – Issued –Reg.
2. Order dt.16.10.2025 in Miscellaneous Application No. 1889-1891 of 2025 in Civil Appeal NOs. 3640-3642 of 2025 of Hon’ble Supreme Court of India.

* * *

The attention of all the Unit Heads of District Judiciary in Andhra Pradesh is invited to the Order dt.16.10.2025 in Miscellaneous Application No. 1889-1891 of 2025 in Civil Appeal NOs. 3640-3642 of 2025 of Hon’ble Supreme Court of India, wherein all the High Courts were directed to evolve requisite procedure and guide their respective District Judiciary for effective and expeditious disposal of the Execution Petitions which are pending as on date.

The Committee of Hon’ble Judges for “Ensuring the Implementation of the Decisions of the Apex Court” in the meeting held on 29.04.2026 approved the following guidelines/suggestions for early disposal of execution petitions.

**GUIDELINES/SUGGESTIONS FRAMED FOR EARLY DISPOSAL OF
EXECUTION PETITIONS**

I

1. As per Rule 212 of Civil Rules of Practice (CRP) and Circular Orders, if the Execution Petition is admitted, the applicant shall, within two (2) days or within such other period as may be fixed by the Judge, pay Court fee to issue process.
2. To dispose of the Execution Petitions within six months and to avoid delay, the Executing Court shall insist the applicant of the Execution Petition to pay the process and subsistence allowance along with Execution Petition and thereafter fix a date for appearance of J.Dr not exceeding 30 days.
3. If the process fee is not paid along with Execution Petition, the Execution Petition shall be adjourned for payment of process for three (3) days.
4. Even after lapse of time, if the process fee is not paid, the Execution Petition shall be dismissed for default. In case of arrest, process fee and subsistence allowance must be paid as contemplated in Rule 212 of CRP.

II

1. The Presiding Officer shall decide whether a notice under Order XXI Rule 22 is required.
2. The Court/Presiding Officer has the discretion to dispense with Order XXI Rule 22 (1) & (2) notices, as per the A.P state amendment.
3. Instead of mechanically sending notices/ process repeatedly to the same old address of the J.Dr., when the notice/process returned with endorsement that "address not correct" or "addressee left", the Court shall insist the D.Hr to furnish the correct address as required under Order VI Rule 14-A.
4. The Court can order the summons "to hand over" to the D.Hr. for personal service on J.Dr. under Order V Rule 9-A in the presence of a respectable person or a Gazetted Officer.

5. If it is found that the respondent has been avoiding to receive notices or getting them returned, the Court shall resort to substitute service as contemplated under Order V Rule 20 CPC and can take presumption as to the service of notice.
6. At the time of registering the Execution Petitions, the Court shall insist the D.Hr to pay the process and subsistence allowance along with Execution Petition or direct him to pay such process within three days from the date of registration of Execution Petition [as contemplated under Order 21 Rule 39 (1) of CPC].
7. The Executing Court shall specifically mention in the process a specific date on or before which the notice is to be served on the J.Dr and return to the Court in terms of Order XXI Rule 24(3) CPC.
 - 7.1 The Court shall insist the draft document, to be executed by the Court, filed along with Execution Application and send such copy to the J.Dr along with notice as per Or.21 Rule 34(1) CPC and Rule 220 CRP, so that delay can be avoided.
 - 7.2 Once draft document is sent to Registrar's office for registration, the Court shall fix a date for return of registered document to the Court. If the Registering authority raises any objection, the Executing Court shall insist the D.Hr to comply such objections by giving short time i.e., not more than seven (7) days.
8. The Executing Courts shall pass orders under Order XXI Rule 54 and 66 simultaneously, so that the immovable property, shown in the Execution Petition, would be attached and on the date shown in the notice, for appearance of J.Dr, the terms would be settled and proclamation would be prepared for sale of the attached property.
9. In Execution Petitions, for attachment of salary of J.Dr, after service of notice, if the garnishee fails to deduct and send amount from the salary of J.Dr, instead of adjourning the petition with an observation "await amount/information from the garnishee", shall order garnishee notice as contemplated under Order XXI Rule 46-A and 46-B of CPC.
10. If the Court, in EP proceedings, finds that the objection, resistance or claim, is frivolous or mala fide, may grant compensatory costs in accordance with Section 35A CPC and Order XXI Rule 98 (2) CPC.

11. Under Section 60 CPC, the terms "In the name of judgment-debtor or of any other person in-trust for him or on his behalf" should be read liberally to incorporate any other person.

SUGGESTIONS

1. The execution petitions shall be disposed of within six (06) months from the date of filing (Periyammal's case). However, by recording reasons, the time may be extended.
2. The Executing Court, on being satisfied that the decree cannot be executed without police assistance, shall direct the concerned police to provide assistance to the Court officials for execution of decree on the application being made by the concerned.
3. The execution proceedings should not be treated as fresh litigation.
4. The Executing Court shall give short dates for service of notices on the basis of distance of the address of the respondent/J.Dr.

GUIDELINES FOR EARLY DISPOSAL OF CLAIM PETITIONS

1. Order X of CPC authorizes the Court to examine both parties at the time of first hearing in original proceedings. The same procedure can be adopted at the first hearing of Execution Petitions as well, particularly when claim petitions are filed.
2. Many claim petitions are being filed in relation to immovable properties and are kept pending in Execution Petitions. According to Section 64(1) of CPC, private alienation of property, after attachment, is void. However, Section 64 (2) of CPC prescribes certain exceptions. The Presiding Officer has to examine whether the interest claimed by the claimant is based on registered document or whether such alleged rights were created prior to attachment.
3. If the Court comes to conclusion that J.Dr, with a view to protract the proceedings and to prevent the D.Hr or the auction purchaser from taking possession of the property, has got filed such claim petition through third parties, the Executing Court shall resort to Section 74 (Order XXI Rule 98(2)) of CPC and send J.Dr to civil prison, thereby unwarranted claim petitions can be curbed.

4. Order XXI Rule 58 contemplates adjudication upon claim petitions/objections, but such petitions shall not be entertained in respect of property attached and has already been sold, inasmuch as such claim petitions are designedly or unnecessarily filed to delay the EP proceedings.
5. When the Court refuses to entertain objections/claim petitions, the party against whom the order of refusal passed, is entitled to institute a suit. However, the EP proceedings need not be stayed on the ground that suit is pending (Or.21 Rule 29 CPC).
6. Order XXI Rule 59(b) specifically provides that the immovable property, pending adjudication of any claim petitions, may be sold at an auction in EP proceedings, however, such sales shall not be confirmed. However, such sales are subject to result of the claim petition.
7. Once objections under Section 47 of CPC or Order XXI Rule 58 of CPC filed and registered, the Court shall examine whether recording of evidence in such petitions is necessary or not or can they be disposed of on affidavits or on the basis of admitted documents.
8. The Executing Courts shall make an endeavor to decide such petitions without recording evidence. When the Court feels that recording of evidence is necessary to dispose of the above stated objection petitions, only then the Executing Courts shall proceed to record evidence.
9. The Presiding Officers shall not adjourn the Execution Petitions to longer dates. However, due to any technical hurdles or pendency of various other proceedings (stay from the appellate courts), need may arise to adjourn the proceedings. In such an event, the Presiding Officer shall mention the same in the docket and shall grant short adjournments only.
10. The Principal District Judges shall enquire whether the Presiding Officers are paying attention/taking care at the time of numbering the claim petitions. The Principal District Judges shall also monitor disposal of such claim petitions.

SUGGESTIONS

1. The Presiding Officers of Executing Courts shall take steps to settle the Execution Petitions by way of mediation or through Lok Adalats, particularly the Execution Petitions relating to money decrees or awards. If the parties seek time on the ground of compromise, the Executing Courts should give only short dates.

2. It is the duty of D.Hr to secure particulars of the legal representatives (LRs) of the deceased J.Dr. If the D.Hr is not prompt in taking steps, the Court shall close the Execution Petition instead of giving liberal adjournments.
3. The Principal District Judges, as the members of District Arrears Committee/ District Court Management System Committee (DCMSC), shall monitor the disposal of Execution Petitions every month and shall advise the Presiding Officers, who are not able to attend to the disposal of the Execution Petitions effectively, to improve the disposal.
4. The staff members who are attending to the Execution Petitions shall be thorough with the provisions and procedural aspects, thereby unnecessary and frivolous objections can be prevented. For this, to happen, the staff members shall be trained once in three months by the District Courts with the assistance of Senior Judicial Officers and senior retired staff members.

The above guidelines/suggestions are not exhaustive, framed for disposal of the Execution Petitions within six (6) months period as directed in Periyammal's case.

Therefore, all the Unit Heads of District Judiciary in Andhra Pradesh are hereby directed to instruct all the Judicial Officers dealing with the Execution Petitions in their respective units to ensure that the Execution Petitions pending shall be decided and disposed of within a period of six months without fail.

As stated earlier, it is made clear in terms of directions of the Hon'ble Supreme Court that in the event of failure to comply above directions, the concerned Presiding Officer is responsible to the High court on administrative side.


REGISTRAR (JUDICIAL)
20/8/26.

To

1. All the Registrars in the High Court of Andhra Pradesh.
2. All the Unit Heads in the State of Andhra Pradesh (with a request to circulate the same to all the Judicial Officers in their respective units).
3. All the Presiding Officers of Labour Courts/Tribunals in Andhra Pradesh.
4. The Registrar (IT cum CPC), High Court of Andhra Pradesh (with a request to upload the circular on the official website of the High Court).

SESSION- IV

EXECUTION PROCEEDINGS IN RESPECT OF

- a). Money decree
- b). Injunction decree.
- c). Decree for possession.
- d). Decree for restitution of conjugal rights.
- e). Decree for specific performance.

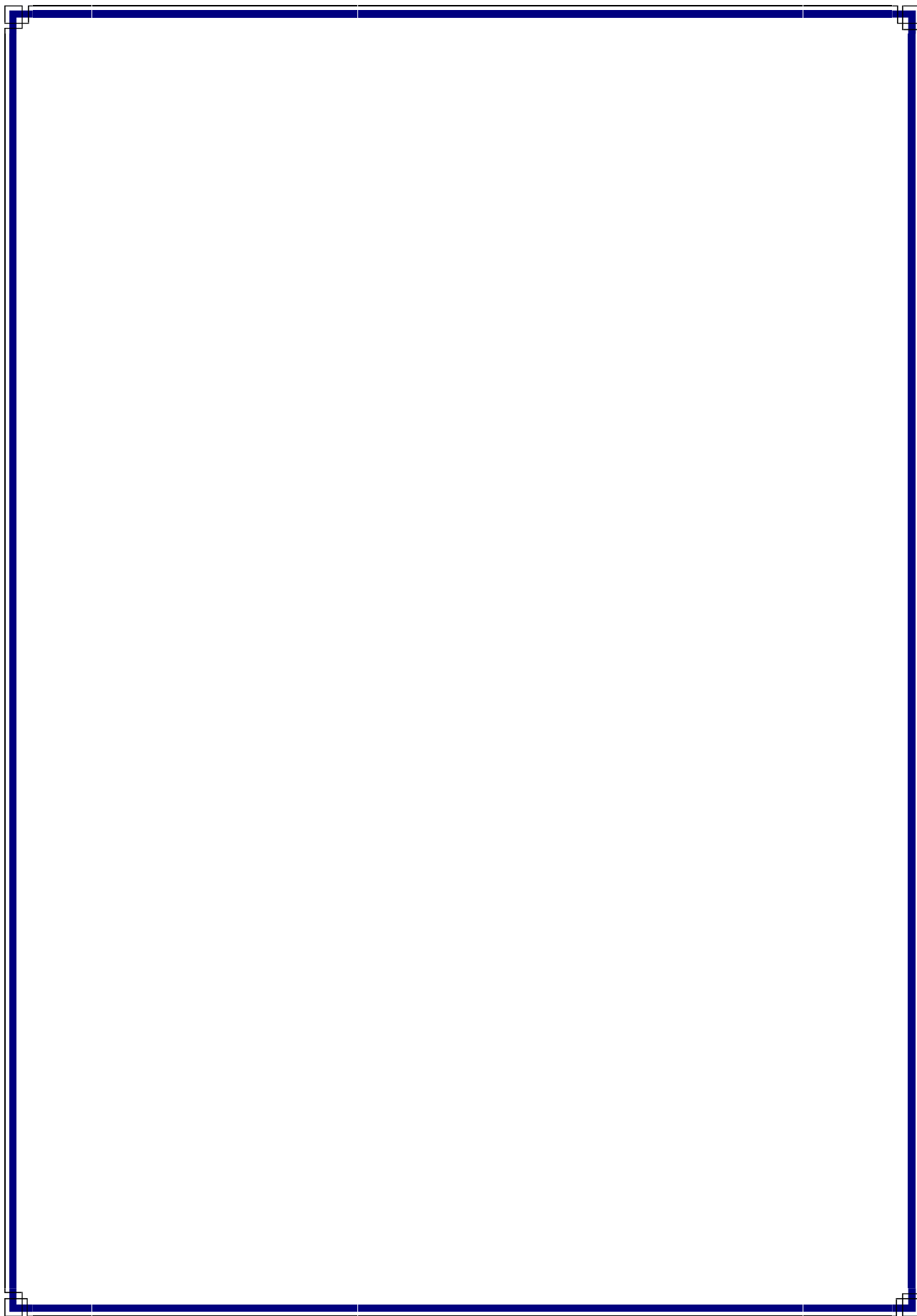
Paper Presentation

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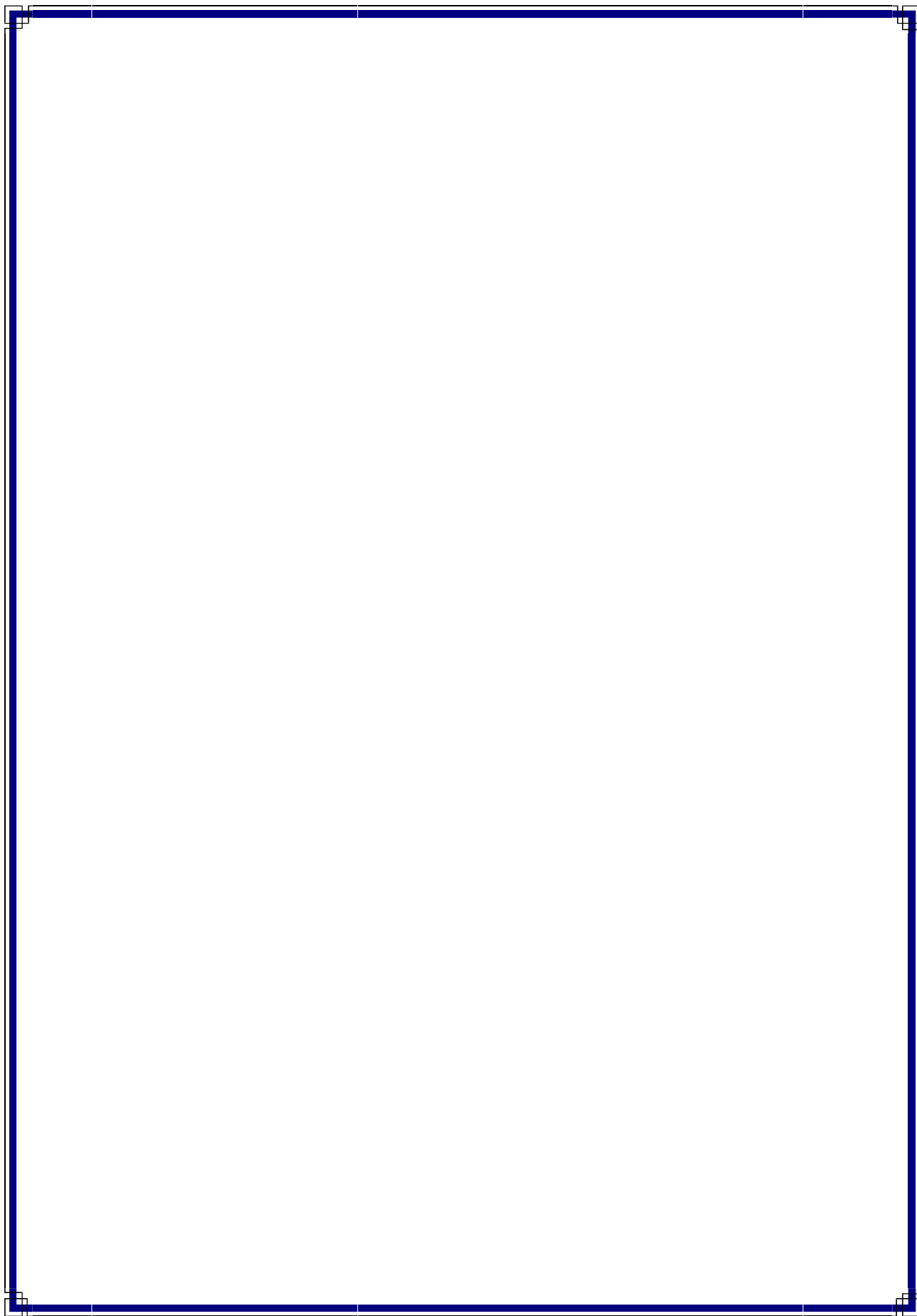
TOPICS

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EXECUTION PROCEEDINGS IN RESPECT OF MONEY DECREES, INJUNCTION DECREES AND DECREES FOR POSSESSION

1. INTRODUCTION

Execution is not a postscript to a civil proceeding. It is the stage at which the adjudication embodied in a decree is translated into effective relief. A decree-holder, having pursued the suit through its various stages and obtained a decree in his or her favour, approaches the executing Court for the realization of the relief that has been judicially determined. The importance of execution lies in the fact that it is only through its effective enforcement that the decree-holder can actually enjoy the fruits of the decree. A decree which remains unrealised for years may secure a right in law, but leave the successful litigant without its corresponding benefit in reality.

The Hon'ble Supreme Court has repeatedly expressed concern that a decree should not become the starting point of another prolonged round of litigation. In *Rahul S. Shah v. Jinendra Kumar Gandhi and others* ¹, the Court issued detailed directions intended to make execution effective and time-bound and directed that, ordinarily, execution proceedings should be disposed of within six months from the date of filing, with reasons recorded where an extension becomes necessary.

The concern was reiterated in *Periyammal (Dead) Through LRs and others v. V. Rajamani and another* ². The Hon'ble Supreme Court, gave fixed timeline for the disposal of the execution petitions within 6 months so as to prevent delay from defeating the decree.

¹ (2021) 6 SCC 418

² 2025 INSC 329; (2025) 3 SCR 540

EXECUTION PROCEEDINGS IN RESPECT OF A MONEY DECREE

Modes of Execution in a Money Decree :

A decree for payment of money is executable under Order XXI Rule 30 through the modes recognised by the Code, including arrest and detention of the judgment-debtor in appropriate cases and attachment and sale of property. The decree-holder is ordinarily entitled to choose the legally permissible mode, subject always to the conditions imposed by the Code. The question before the executing Court is therefore not merely whether an execution petition is maintainable, but whether the particular mode sought is available on the facts and whether the statutory safeguards governing that mode have been satisfied. Various modes of Execution of a Money Decree :

- Arrest and Detention of the Judgment-Debtor in Civil Prison
- Attachment of Salary of the Judgment-Debtor
- Attachment and Sale of Movable Property
- Attachment and Sale of Immovable Property

The Decree-Holder's Choice of the Mode of Execution :

The Code does not ordinarily compel a decree-holder to pursue one mode of execution before another merely because another remedy is theoretically available. The choice, however, is not unregulated. Each mode carries its own statutory threshold. Arrest involves personal liberty and therefore attracts the special safeguards of Section 51 and Rules 37 to 40. Attachment and sale requires the Court

to identify property which is legally attachable and saleable and, in the case of immovable property, to supervise the sale process with particular care.

Dharma Veenamma v. Sri Subramaniam Mandadi ³ :

Gist of the Case: The decree-holder sought to proceed against the judgment-debtor by one of the modes of execution available under the Code.

Held: The **Hon'ble High Court** held that the decree-holder is entitled to choose any mode of execution lawfully available under the Code, subject to the statutory conditions and safeguards governing that mode.

Principle: Ordinarily, the choice of the mode of execution rests with the decree-holder. The executing Court cannot compel the decree-holder to adopt an alternative mode merely because another mode is available. The mode chosen, however, must satisfy the statutory requirements applicable to it

Execution Against the Guarantor Without Prior Exhaustion of the Mortgaged Security :

State Bank of India v. Indexport Registered and others ⁴

Brief Facts of the Case :

The decree was a composite decree comprising a personal money liability as well as a mortgage security. During execution, the guarantor contended that the decree-holder was required to first proceed against and exhaust the mortgaged property before enforcing the personal liability against the guarantor.

³ (2009 (5) ALD 487)

⁴ (1992) 3 SCC 159

The Hon'ble Supreme Court rejected the contention. Referring to Section 128 of the Indian Contract Act, 1872, the Court held that the liability of a surety is co-extensive with that of the principal debtor, unless otherwise provided by the contract. Consequently, the decree-holder is not required, as a condition precedent, to exhaust the mortgaged security before proceeding against the guarantor.

A Charge Over Specific Property Does Not Necessarily Restrict Execution to the Charged Property:

V. Ramaswami Naidu and others v. Syndicate Bank⁵

Brief Facts of the Case: In this case, a personal money decree carried a charge over specified shares, while the decree-holder sought to proceed against other properties of the judgment-debtors.

Held: The Hon'ble High Court held that the existence of the charge did not, in the circumstances of the case, require the decree-holder to first exhaust the charged property before proceeding against the other assets of the judgment-debtors.

Principle: The existence of a charge over particular property does not, by itself, create a mandatory order of priority requiring the decree-holder to proceed against the charged property first, where the decree also creates a personal liability for payment of money.

The principle emerging from the above decision, read with the decision in *State Bank of India v. Indexport Registered*, is that a judgment-debtor cannot, at the stage of execution, insist upon an order of priority which is neither contained in the decree

⁵ (AIR 1978 Mad 238)

nor imposed by the governing law. At the same time, the executing Court must ensure that the person or property against whom or against which execution is sought falls within the legal scope of the decree.

I. Arrest and Detention of the Judgment-Debtor in Civil Prison :

Arrest and detention is a coercive mode of execution, but it is not a punishment for non-payment of a civil debt. The Code distinguishes between arrest for the purpose of securing the presence of the judgment-debtor before the executing Court and detention in civil prison after the statutory inquiry has been undertaken.

The Exceptional Nature of Detention and the Protection of Personal Liberty :

The proviso to Section 51 makes the power to commit a judgment-debtor to civil prison conditional upon the Court reaching the statutory satisfaction on the circumstances specified therein. This requirement assumes particular importance because detention directly affects personal liberty. The executing Court must therefore distinguish genuine inability from wilful refusal or neglect and should not treat default in payment, by itself, as equivalent to the statutory ground for detention.

Mere Non-Payment Does Not, by Itself, Justify Detention in Civil Prison :

Jolly George Varghese and another v. The Bank of Cochin ⁶

Gist of the Case: The judgment-debtors were sought to be arrested and detained for non-payment of a money decree, notwithstanding the circumstances relating to their financial position.

⁶ (1980) 2 SCC 360; AIR 1980 SC 470

Held: The Hon'ble Supreme Court held that mere default in payment of the decretal amount does not, by itself, justify detention in civil prison. Before resorting to such detention, the executing Court must examine whether the judgment-debtor has the means to pay the decree and, despite having such means, has refused or neglected to satisfy it in the manner contemplated by Section 51 of the Code of Civil Procedure.

Principle: The statutory power of detention is not attracted merely because the decree remains unpaid. The executing Court must examine the **means of the judgment-debtor and the circumstances evidencing refusal or neglect to pay.** The question is therefore not one of mere non-payment, but whether the statutory conditions for detention have been established.

The Notice under Rule 37 and the Limited Exception :

Order XXI Rule 37 ordinarily requires the Court, instead of immediately issuing a warrant, to issue notice calling upon the judgment-debtor to appear and show cause why he should not be committed to civil prison. The proviso permits the Court to dispense with such notice where, on affidavit or otherwise, it is satisfied that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction with the object or effect of delaying execution.

Arrest for Securing the Presence of the Judgment-Debtor Is Distinct from Detention in Civil Prison :

K. Manokaran v. A.U. Subbannan⁷

Gist of the Case: A money decree was sought to be executed by arrest. The judgment-debtor challenged the order of arrest on the ground that he had not been afforded an opportunity to show cause.

⁷ Madras High Court, 4 March 2002

Held: The Hon'ble Madras High Court distinguished between an order of arrest issued for securing the presence of the judgment-debtor before the executing Court and an order of detention in civil prison under Rule 40. The Court observed that the inquiry into the judgment-debtor's means and the circumstances justifying detention becomes material at the stage of deciding whether he should actually be committed to civil prison.

Principle: The issuance of a warrant of arrest for securing the presence of the judgment-debtor should not be equated with an order of detention. Once the judgment-debtor is brought before the executing Court, the Court must follow the procedure under **Order XXI Rule 40**, hear the decree-holder, afford the judgment-debtor an opportunity to show cause, and determine whether the statutory requirements for detention have been satisfied.

The Rule 40 Inquiry — Presence of the Judgment-Debtor and Proof of the Decree-Holder's Case :

The enquiry is not converted into a criminal trial, nor is the executing Court expected to conduct an exhaustive determination of every aspect of the judgment-debtor's wealth. The Court should obtain a sufficiently clear and judicially defensible picture of the financial capacity which bears upon the decree and of the conduct relied upon to justify detention.

Chella Siva Kumar Reddy v. Kudumula Surendra⁸

Gist of the Case: The decree-holder relied upon documentary material, including property records, to show that the judgment-debtor had sufficient means to satisfy the decree, despite his plea that he was unable to pay.

⁸ 2008 (2) ALD 638; 2008 (1) ALT 335

Held: The Hon'ble High Court of Andhra Pradesh treated the documentary material placed by the decree-holder as prima facie evidence relevant to the judgment-debtor's means. The Court observed that the decree-holder is not required to establish the judgment-debtor's financial position with the same degree of precision as would be required in a proceeding directly concerning title to the property. At the same time, the statutory requirements governing arrest and detention must be independently satisfied before the judgment-debtor can be committed to civil prison.

Principle: The material placed by the decree-holder to establish the judgment-debtor's means must be considered by the executing Court as part of the overall inquiry under Section 51 and Order XXI Rule 40. Prima facie evidence of property or other resources may justify the Court in calling upon the judgment-debtor to explain his financial position; however, the existence of property by itself does not conclude the inquiry. The Court must consider the nature of the property, its availability to the judgment-debtor, any statutory exemption or legal impediment, and the circumstances bearing upon his ability to satisfy the decree.

Present Means, Past Means and Wilful Refusal :

The question is not simply whether the judgment-debtor once possessed property. The inquiry must remain connected with the ability to satisfy the decree and the conduct of the judgment-debtor. Past ownership may be relevant evidence, particularly where the judgment-debtor has recently transferred property or has concealed his resources, but a historical ability to pay does not dispense with the Court's duty to examine the present position.

Equally, a bare plea of present inability cannot be accepted mechanically where the material indicates deliberate dissipation, concealment or a refusal to employ available resources. The Court must examine whether the inability is genuine or is the result of conduct designed to defeat execution.

Exempt Property Cannot Be Treated as Means for the Purposes of Detention :

The Explanation to Section 51 is material while considering the means of the judgment-debtor. Property which the Code expressly protects from attachment cannot simply be counted as though it were readily available for satisfying the decree. This prevents the inquiry into means from defeating the very exemptions which the legislature has created in Section 60.

The Statutory Protections Relating to Arrest :

Section 55 regulates the manner of arrest and contains safeguards concerning entry into premises. Section 56 bars arrest and detention of a woman in execution of a decree for payment of money. The Code also contains protections relating to attendance before Courts and to specified classes of persons under Sections 135 and 135A. The executing Court should identify whether any statutory protection applies before a warrant is issued or executed.

Pending Insolvency Proceedings Do Not, by Themselves, Bar Execution by Arrest :

Section 55(3) of the Code requires the Court, after arrest and production of a judgment-debtor in execution of a money decree, to inform him of the facility available under the law of insolvency to seek adjudication as an insolvent. The pendency of an insolvency proceeding does not, by itself, bring the execution proceeding to an end or

render an order of arrest impermissible. The effect of the insolvency proceeding, and any protection available to the judgment-debtor, has to be examined in accordance with the applicable insolvency law.

K. Panduranga Reddy v. K. Ravichandra Reddy⁹ :

Gist of the Case: The decree-holder obtained a money decree for recovery of ₹5,95,000/-. During execution, the judgment-debtor was arrested on 17 December 2024. Prior to the arrest, he had already instituted an insolvency proceeding. The executing Court released him on a personal bond and directed him to produce a protection order from the insolvency Court. On his failure to produce such an order, the executing Court subsequently issued a fresh warrant of arrest with police aid under Order XXI Rule 38 CPC.

Contentions: The judgment-debtor contended that the pendency of the insolvency proceeding itself operated as a bar to execution, that a protection order could be granted only after adjudication in the insolvency proceeding, and that the subsequent warrant of arrest with police aid was therefore illegal.

Held: The **Hon'ble High Court of Andhra Pradesh** dismissed the revision petition. The Court distinguished the statutory functions of Sections 23 and 31 of the Provincial Insolvency Act, 1920, and observed that the insolvency Court could, in an appropriate case, consider interim protection in exercise of the powers available under Section 5 of the Act read with Section 151 CPC. The judgment-debtor had neither obtained such interim protection nor demonstrated that he had taken the necessary steps before the insolvency Court. In those circumstances, the direction of the executing

⁹ Civil Revision Petition No. 474 of 2025, order dated 9 September 2025 (Hon'ble High Court of Andhra Pradesh at Amaravati)

Court requiring production of a protection order was held to be a reasonable measure balancing the interests of the parties. On the judgment-debtor's failure to comply with that direction, the subsequent warrant of arrest with police aid was held to be justified.

Principle: The mere pendency of an insolvency proceeding does not automatically suspend or defeat execution of a money decree. Where the judgment-debtor seeks protection from arrest on the ground of pending insolvency proceedings, the existence and scope of such protection must be demonstrated before the executing Court. In the absence of an operative protection order or other legal bar to execution, the executing Court is not precluded from proceeding in accordance with the CPC.

Release, Subsistence and the Period of Detention :

Sections 57 to 59 provide for subsistence and release in the circumstances prescribed by law. The period of detention is also subject to the statutory ceiling. Detention does not extinguish the decree; it remains an execution measure and not a substitute for satisfaction of the civil liability.

The judgment-debtor may also be entitled to release in circumstances such as serious illness or where the statutory conditions for release otherwise arise. An order of detention should therefore be passed only after the Court has reached the stage contemplated by Rule 40 and has considered the applicable statutory limitations.

Simultaneous Execution Against the Person and Property :

Order XXI Rule 30 permits execution by arrest and detention, by attachment and sale, or by both. The availability of both modes does not remove the safeguards governing either. Where arrest is sought alongside attachment, the Court must

separately satisfy the conditions which govern detention. The judgment-debtor cannot object merely because another remedy exists, but the Court must ensure that the coercive measure is not employed mechanically.

Payment, Satisfaction and the Continuing Execution :

Order XXI Rule 2 remains important throughout execution. A payment or adjustment made outside Court should be brought on record in the manner prescribed by the rule. The execution file should be kept current regarding the decretal balance, because the amount due changes as payments are made, sales are conducted and interest is credited.

The executing Court should distinguish a genuine claim of satisfaction from an attempt to use an unrecorded payment as a device to postpone execution. Where the statutory requirements for recording satisfaction are met, the execution should be closed to the extent of the satisfaction and continue for the remaining balance where necessary.

Attachment and Sale of Property in Execution of a Money Decree :

A decree for payment of money may, at the instance of the decree-holder, be executed by **attachment and sale of the property of the judgment-debtor or, where legally permissible, by sale without prior attachment**. The Code of Civil Procedure, 1908 recognises the right of the decree-holder to proceed against the property of the judgment-debtor and lays down the manner in which such attachment is to be effected.

The provisions contained in **Sections 60 to 64 and Order XXI Rules 41 to 57 CPC** govern the attachment of property in execution. The statutory scheme identifies the classes of property which are liable to attachment and sale and, at the same time, expressly protects certain properties from attachment or sale. It also provides the procedure to be followed where the **same property is attached in execution of decrees of more than one Court**. Further, upon attachment, the Code places restrictions upon private alienation of the attached property and renders such alienation ineffective against claims enforceable under the attachment, subject to the statutory exceptions.

II. Attachment of Salary of the Judgment-Debtor :

Salary attachment is a specialised mode of execution because the Code protects a part of the salary and prescribes a special channel through which the Court communicates with the disbursing authority. The first task is therefore to identify the category of employment and the applicable rule, followed by a proper computation under Section 60.

The Protected Portion of Salary Under Section 60 :

Section 60 prescribes the portion of salary which may be attached and the portion which is protected. The statutory computation must be carried out before the order is framed. The Court should not direct the employer to withhold a fixed fraction without reference to the actual attachable portion and the statutory exemptions.

Government Servants, Railway Employees and Local Authorities — Attachment**Beyond Territorial Limits :**

Order XXI Rule 48 contains a special mechanism. The salary or allowances of a Government employee, railway employee or employee within the rule can be attached by the executing Court even though the judgment-debtor or the disbursing officer is outside the territorial limits of that Court, subject to Section 60 and the conditions of Rule 48.

The rule operates through the appropriate disbursing officer. Where the salary is disbursed within the local limits, the officer responsible for disbursement withholds and remits the attachable amount. Where payment is made beyond the local limits, the rule provides for communication and remittance through the officer within jurisdiction who instructs the disbursing authority.

Attachment of Government Salary Beyond the Territorial Limits of the Executing Court :***Salem Advocate Bar Association, Tamil Nadu v. Union of India*¹⁰ :**

Gist of the Case: The judgment considered, inter alia, the relationship between Section 39(4) of the Code of Civil Procedure and provisions of Order XXI which permit execution in specified circumstances beyond the ordinary territorial limits of the executing Court. In particular, the Court considered the operation of Order XXI Rule 48 in relation to attachment of the salary of a Government servant, Railway servant or employee of a local authority.

¹⁰ (2005) 5 ALD 1 (SC); AIR 2005 SC 3353

Held: The **Hon'ble Supreme Court** held that Section 39(4) does not take away the special power conferred by Order XXI Rule 48. Salary or allowances falling within Rule 48 may, subject to the requirements of that rule, be attached even where the judgment-debtor or the disbursing officer is outside the local limits of the executing Court.

Principle: Section 39(4) cannot be construed so as to nullify a specific mode of execution expressly provided by Order XXI. Where Rule 48 creates a special mechanism for attachment of salary and allowances of Government servants, Railway servants and employees of local authorities, the executing Court may invoke that mechanism notwithstanding the ordinary territorial limitation, provided the conditions prescribed by the rule are complied with.

Previous Attachment of Salary and the Statutory Period of Exemption :

Raghavarapu Nageswara Rao v. Tenneti Venkata Lakshmi Narayana ¹¹ :

Gist of the Case: The decree-holder had previously instituted several execution petitions and had realised part of the decretal amount. The judgment-debtor, an employee of Andhra Sugars Limited, contended that his salary had already remained under attachment for a continuous period of 24 months in an earlier execution petition and, therefore, could not again be attached in the subsequent execution proceeding.

Held: The **Hon'ble High Court of Andhra Pradesh** examined the proviso to Section 60(1)(i) CPC and held that where the portion of salary liable to attachment has been under attachment, continuously or intermittently, for a total period of twenty-four months, that portion becomes exempt from attachment for the further period specified

¹¹ (1997) 6 ALT 762; (1999) 4 CivCC 478

in the provision. Where the attachment has continued for twenty-four months in execution of one and the same decree, that portion becomes finally exempt from further attachment in execution of that decree.

Principle: Section 60 does more than merely prescribe the quantum of salary which may be attached. It also places a **statutory ceiling on the duration of attachment**. Consequently, the executing Court must examine the history of earlier salary attachments before issuing a fresh attachment order. A subsequent execution petition cannot be used to circumvent the exemption which arises under the proviso to Section 60(1)(i).

Territorial Requirement for Attachment of Salary of a Private Employee :

Nanduri Vijaya Bhaskar v. Satyamsetti Veeravenkata Appa Rao ¹² :

Gist of the Case: The judgment-debtor was a private employee working as a Staff Correspondent of *The Indian Express* at Madurai, while his disbursing officer was situated at Vijayawada. The decree-holder sought attachment of his salary before the District Munsif's Court at Kakinada under Order XXI Rule 48A CPC.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the requirement under Order XXI Rule 48A(1) that the **disbursing officer must be within the local limits of the executing Court's jurisdiction is mandatory**. Since the disbursing officer was at Vijayawada and was outside the territorial jurisdiction of the Kakinada Court, the order attaching the salary was held to be without jurisdiction. The Court further clarified that Rule 48A(3), which deals with the binding effect of an attachment order

¹² C.R.P. No. 2279 of 1985, decided on 27 February 1987

upon the employer, does not enlarge the territorial jurisdiction of the executing Court under Rule 48A(1).

Principle: Unlike **Order XXI Rule 48**, which expressly permits attachment of the salary of the specified Government servants even where the judgment-debtor or the disbursing officer is outside the local limits of the executing Court, **Rule 48A contains no such territorial relaxation**. For attachment of the salary of a private employee, the disbursing officer must be within the local limits of the executing Court's jurisdiction. The Court also observed that the decree-holder could have the decree transferred to a Court having territorial jurisdiction over the disbursing officer for the purpose of proceeding under Rule 48A.

Running Allowance of Railway Employees as Salary Liable to Attachment :

Suryanarayana Rao and others v. Paidi Thoyajakshamma and another ¹³ :

Gist of the Case: The decree-holder filed an execution petition under Order XXI Rule 48 CPC seeking attachment of the salaries of non-gazetted railway employees. The judgment-debtors contended that the **running allowance** paid to them, calculated on the basis of mileage for travel in moving trains, was in the nature of travelling allowance and was therefore exempt from attachment. The Courts below rejected the objection and held that the running allowance fell within the meaning of salary under Section 60(1), Explanation II, CPC.

Held: The **Hon'ble High Court of Andhra Pradesh** examined Section 60(1), including Explanation II, and Rules 902 and 912 of Chapter IX of the Indian Railway Establishment Manual. Rule 902 defined "running allowance" as the allowance

¹³ AIR 1977 AP 359

ordinarily granted to non-gazetted railway servants for duties directly connected with the movement of trains, including mileage allowance or allowance in lieu of mileage. Rule 912 treated running allowance as **pay** for the purposes specified therein. The Court further found that there was no provision in the Railway Establishment Manual and no Gazette notification exempting running allowance from attachment.

The contention that running allowance should be treated on the same footing as travelling allowance was therefore rejected. The Court held that, in the absence of a notification under Section 60(1) declaring the allowance exempt from attachment, the running allowance was liable to attachment under Section 60 read with Order XXI Rule 48 CPC.

Principle: For the purpose of Section 60 CPC, the attachability of an allowance depends upon its **statutory character and the existence or otherwise of a specific exemption**, and not merely upon the nomenclature by which the allowance is described. Where an allowance forms part of the emoluments falling within Section 60 and has not been exempted in the manner contemplated by the provision, it remains liable to attachment.

Attachment of Property in the Custody of a Court or Public Officer :

Order XXI Rule 52 CPC specifically provides that where the property sought to be attached is in the custody of a Court or public officer, the attachment is to be effected by a notice to that Court or officer, requiring the property, and any interest or dividend becoming payable thereon, to be held subject to the further orders of the Court from which the notice issues.

The Property Must Actually Be in the Custody of the Court or Public Officer :

*Hyderabad Co-operative Commercial Corporation Ltd. v. Syed Mohiuddin Khadri and others*¹⁴

Gist of the Case: The decree-holder sought attachment under Rule 52 of an amount said to be available with a Government officer under a budget provision. The question was whether the amount could be treated as property of the judgment-debtor actually in the custody of the public officer.

Held: The **Hon'ble High Court of Andhra Pradesh** held that two conditions must be satisfied before Rule 52 can be invoked: first, the property sought to be attached must belong to the judgment-debtor; and secondly, it must actually be in the custody of the Court or public officer. A mere budget provision or an amount which was not actually in the custody of the officer could not be attached under Rule 52.

Principle: Rule 52 is attracted only when the property of the judgment-debtor is **actually in the custody of the Court or public officer**. The provision cannot be used to make an anticipatory attachment of an amount which may become payable to the judgment-debtor in future but is not presently in the custody of the concerned officer.

This is particularly useful alongside your discussion on **present debt versus contingent debt**, because the same underlying principle runs through both: the executing Court must identify an **existing attachable interest**, rather than attach a mere expectation of future payment.

¹⁴ AIR1970AP162

Pension Amount After Crediting to the Savings Account — Whether Liable to Attachment :

S. Nagappa v. K.P. Hanumappa ¹⁵ :

Gist of the Case: The question before the **Hon'ble High Court of Andhra Pradesh** was whether a pension amount, after being credited by the Government to the pensioner's savings bank account, continued to enjoy the protection applicable to pension under Section 60 CPC and was therefore exempt from attachment in execution of a decree.

Held: The **Hon'ble High Court of Andhra Pradesh** held that once the pension amount had been deposited by the Government into the employee's savings bank account, it ceased to retain the characteristics of pension for the purpose of the statutory protection under Section 60 CPC. The amount lying in the savings account was therefore liable to attachment in execution of a decree.

Principle: The protection available to pension under Section 60 CPC attaches to the **pension in its statutory character**. Once the pension amount has been credited to the pensioner's bank account and assumes the character of money lying to his credit, the protection available to pension as such does not automatically continue, and the amount may be liable to attachment in execution, subject to the other provisions of law.

Attachment Where a Receiver Is in Custody of the Property :

Adapa Vittal v. Govula Ramakistiah and others ¹⁶ :

¹⁵ 2004 (2) Civil Court Cases 634 (A.P.)

¹⁶ AIR1969AP169

The **Hon'ble High Court of Andhra Pradesh** considered whether property managed by a Court-appointed Receiver could be treated as property in the custody of the Court for purposes of Rule 52. The Court referred to the settled principle that where property is in the possession and management of a Receiver appointed by a Court, proceedings affecting that property without the leave of the Court which appointed the Receiver are not permissible in the ordinary manner.

The decision is particularly useful for explaining that **Rule 52 is connected with the control which the Court or public officer exercises over the property**; it is not simply a provision for attaching any amount which happens to be associated with a Government or Court proceeding.

Attachment of a Decree Held by the Judgment-Debtor :

Order XXI Rule 53 deals with attachment of a decree itself. The special nature of this form of attachment must be recognised; it is not simply another garnishee order. The decree-holder is reaching a right embodied in another decree, and the prescribed notice and communication mechanism therefore has to be followed.

Amount Payable Under a Life Insurance Policy — Protection from Attachment under Section 60(1) CPC :

Regional Manager, LIC of India v. John Bosco ¹⁷ :

Gist of the Case: The question concerned the amount payable under a life insurance policy to the father of the judgment-debtor and whether such amount could be attached in execution of a decree against the judgment-debtor.

¹⁷ AIR 2002 Mad 348

Held: The **Hon'ble High Court of Madras** held that the amount payable under the life insurance policy to the father of the judgment-debtor was not liable to attachment in execution, having regard to the statutory protection under **Section 60(1) CPC**.

Principle: The benefit payable under a life insurance policy, where it falls within the protected category contemplated by Section 60(1), cannot be subjected to attachment merely because the judgment-debtor is entitled to receive or claim the amount. The executing Court must first examine whether the particular insurance benefit falls within the statutory exemption before directing its attachment.

Provident Fund Amount — Protection from Attachment Until It Becomes Payable :

Union of India v. Jyoti Chit Fund and Finance and others¹⁸ :

Gist of the Case: The question before the **Hon'ble Supreme Court** was whether amounts standing to the credit of an employee towards Provident Fund could be attached in execution of a decree before those amounts had actually become payable to the employee.

Held: The **Hon'ble Supreme Court** held that so long as the amount continued to retain the character of **Provident Fund dues** and had not actually been paid to the employee, it remained protected from attachment under Section 60(1)(g) and (k) CPC. The nature of the amount did not change merely because the employee had become entitled to receive it on retirement or upon the occurrence of another event. The Court further recognised the Government's position as a trustee of such amounts

¹⁸ AIR 1976 SC 1163; (1976) 3 SCC 607; (1976) 3 SCR 763

and observed that it had a legitimate interest in resisting an attachment which was contrary to the statutory protection.

Principle: The exemption under Section 60(1)(g) and (k) attaches to the amount **so long as it retains the character of Provident Fund dues and remains in the hands of the Government or other statutory custodian.** The amount becomes liable to attachment only after it has actually been paid to the employee and has ceased to retain its statutory character as Provident Fund dues.

Attachment of Debts and the Limits of Garnishee Proceedings :

The attachment of a debt due to the judgment-debtor is fundamentally different from the seizure of a physical movable. The decree-holder reaches the debt only to the extent of the judgment-debtor's enforceable interest in it. The garnishee cannot be made liable for an amount which the judgment-debtor himself could not have recovered.

Attachment of a Debt Cannot Confer a Better Right on the Decree-Holder Than That Possessed by the Judgment-Debtor :

Raghavaiah v. C.T. Distributors ¹⁹ :

Gist of the Case: The decision concerns the extent to which a decree-holder, by attaching a debt due to the judgment-debtor from a third party, can enforce the judgment-debtor's right against that third party.

Held: The **Hon'ble High Court of Andhra Pradesh** held that an attachment does not enlarge the substantive right of the judgment-debtor. The decree-holder can reach

¹⁹ AIR 1958 AP 31

only such right or interest as the judgment-debtor himself could have enforced against the third party.

Principle: In garnishee proceedings, the decree-holder cannot acquire a better right against the garnishee than that possessed by the judgment-debtor. The executing Court must therefore first ascertain the nature and extent of the judgment-debtor's enforceable interest in the debt or amount sought to be attached.

Present Debts and Contingent Debts — The Distinction in Garnishee Proceedings :

C. Chati Prasad v. Director of Enforcement ²⁰ :

Gist of the Case: The decision concerns the distinction between a debt which is presently due, though its payment may be deferred to a future date, and a contingent debt which becomes enforceable only upon the happening or non-happening of a specified future event.

Held: The Court recognised that a contingent debt stands on a different footing from a debt which is already due and enforceable, though payable at a future time. A right which has not yet matured into an enforceable debt cannot ordinarily be reached through attachment under Order XXI Rule 46 merely on the assumption that it may become payable in future.

Principle: For the purposes of garnishee attachment, the executing Court must distinguish between a **presently enforceable debt payable in future** and a **contingent debt dependent upon a future contingency**. Attachment under Rule 46

²⁰ (1963) 2 SCR 297

can operate only upon a debt or right which has sufficiently accrued and is legally enforceable in favour of the judgment-debtor.**Khazim**

An Amount Not Presently Payable to the Judgment-Debtor Is Not an Immediately Attachable Debt :

Khazim Jawaz Jung v. Mir Mohammad Ali Jafri and another ²¹ :

Gist of the Case: The issue concerned an amount which was not presently payable to the judgment-debtor and which would become payable only upon the happening of a future event or upon completion of the requisite process.

Held: The **Hon'ble High Court of Andhra Pradesh** held that an amount which is not presently payable to the judgment-debtor cannot be treated as an immediately attachable debt merely because it may become payable at a later stage. Where the judgment-debtor's right to receive the amount has not yet accrued or become enforceable, the same cannot ordinarily be attached as a present debt under Order XXI Rule 46.

Principle: For the purposes of attachment under Rule 46, there must be a **present and enforceable debt or right in favour of the judgment-debtor**. A mere possibility of a future payment does not constitute a debt presently capable of attachment.

Timely Objection by the Garnishee to an Order of Attachment :

Kuchimanchi Nagamani v. Mantri Prasada Agnihotri ²² :

Gist of the Case: The garnishee did not challenge the order of attachment either when the attachment was made or when the attached amount was deposited. The

²¹ AIR 1972 AP 70

²² 2001 (1) ALD 105

objection was raised for the first time only when the decree-holder sought permission to withdraw the amount.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the garnishee ought to raise any objection to the attachment at the stage when the order is made or, at the latest, when the amount is deposited pursuant to the attachment. Having allowed the garnishee proceedings to conclude without challenge, the garnishee could not ordinarily raise the objection for the first time at the stage of withdrawal by the decree-holder.

Principle: An objection to a garnishee attachment must be raised **at the appropriate stage of the proceedings**. A garnishee who fails to challenge the attachment when called upon to do so cannot ordinarily reserve the objection and raise it for the first time after the attachment proceedings have attained finality and the decree-holder seeks withdrawal of the deposited amount.

Attachment of the Judgment-Debtor's Interest in a Joint Bank Account :

Balaraman v. Varadammal ²³ :

Gist of the Case: A decree-holder sought attachment of a joint bank account standing in the names of the deceased judgment-debtor and his son, with an “either or survivor” arrangement. The son resisted the attachment contending, inter alia, that the entire amount had devolved upon him by virtue of the survivorship clause and was therefore not available for execution of the decree.

Held: The Court held that the interest of the judgment-debtor in the joint bank account was attachable under **Order XXI Rule 46 CPC**. The mere existence of an “either or

²³ (1986) 1 MLJ 23

survivor” clause did not, by itself, exclude the judgment-debtor's interest from the operation of the law of attachment. The Court was required to determine the judgment-debtor's actual interest in the deposit, and attachment could operate only to that extent.

Principle: A joint bank account is not immune from attachment merely because it contains an “either or survivor” mandate. The executing Court must determine the **judgment-debtor's subsisting interest in the deposit**, and the attachment can extend only to that interest. The contractual arrangement between the account holders and the bank cannot, by itself, defeat the rights of a decree-holder under Order XXI Rule 46 CPC.

III. Attachment and Sale of Movable Property :

Movable-property execution contains several distinct procedures. The method depends upon whether the property is in the possession of the judgment-debtor, is agricultural produce, is a debt due from a third person, is in the custody of another Court or public authority, or is itself a decree. The executing Court should therefore identify the nature of the asset before selecting the rule under which attachment is to be made.

Sale of Movables — The Court Must First Decide What Property Is Necessary :

Order XXI Rule 64 contains the underlying principle applicable to sales in execution: the Court should sell only so much of the attached property as appears necessary to satisfy the decree. This principle is not confined to immovable property.

Where sale of fewer articles will satisfy the decree, the Court should not unnecessarily expose further property to sale.

Section 60 — Property Liable to Attachment and Statutory Exemptions :

Section 60 CPC serves as the starting point for determining the extent to which the property of the judgment-debtor can be reached in execution. The following aspects are particularly relevant:

1. **Property liable to attachment:** Section 60 identifies the classes of property which may be attached and sold in execution of a decree.
2. **Statutory exemptions:** The provision expressly excludes certain classes of property from attachment, thereby protecting the basic necessities and means of livelihood of the judgment-debtor and his family.
3. **Important exemptions relevant to execution:** The protected categories include, subject to the conditions contained in the provision:
 - necessary wearing apparel;
 - cooking vessels;
 - beds and bedding;
 - certain personal ornaments used in accordance with religious usage;
 - tools of artisans; and
 - in the case of an agriculturist, such implements of husbandry, cattle, seed-grain and agricultural produce as are protected by the provision.

Order XXI Rule 43 contemplates actual seizure. The attachment list and the process-server's or Bailiff's report therefore assume importance because the subsequent sale depends upon the identity and condition of the goods. Where

resistance or obstruction occurs, the Court may have to consider appropriate assistance to make the attachment effective, but the assistance should remain ancillary to the execution process.

Custody and Sale of Attached Movable Property :

After seizure, the attached movable property must be kept in safe custody until sale. The **Andhra Pradesh Civil Rules of Practice** provide for custody with the Nazir, Curator or surety and regulate the circumstances in which the property may be sold, the liability for custody expenses and the procedure where a surety seeks discharge. **Rules 263, 268 and 269** are relevant in this regard.

Sale of Movable Property by Public Auction :

Where the property is to be sold in execution, the sale is ordinarily conducted by **public auction** in accordance with **Order XXI and the A.P. Civil Rules of Practice**. **Rule 264** deals with immediate sale in appropriate cases, while **Rule 265** makes the general rules governing Court sales applicable to execution sales. The prescribed **Form No. 69 under Rule 196** provides the model proclamation for sale of movable property, containing the material particulars of the property, the decretal amount and the terms of sale.

Movable Property in the Hands of a Third Person :

Where the movable property is not in the possession of the judgment-debtor, **Order XXI Rule 46** applies instead of the procedure of physical seizure under Rule 43. The subsequent garnishee provisions govern the enforcement of the debt or other

movable property in the hands of the third person. The A.P. Civil Rules expressly recognise this distinction in the prescribed execution-petition form.

Machinery Embedded in Earth and Fastened to the Ground — Whether It Retains the Character of Movable Property :

Shree Arcee Steel Private Limited, Bangalore v. Bharat Overseas Bank Limited, Bangalore ²⁴ :

Gist of the Case: The execution proceedings concerned machinery which had been installed on the property and fastened to the earth with bolts. The issue was whether such machinery should be treated as immovable property merely because it was attached to the earth, thereby requiring the procedure applicable to the sale of immovable property.

Held: The **Hon'ble High Court of Karnataka** held that the machinery continued to be **movable property**, notwithstanding the fact that it had been embedded in the earth and fastened with bolts. Consequently, the sale was not invalid merely because the procedure applicable to the sale of immovable property had not been followed.

Principle: The mere fact that machinery is embedded in the earth or secured by bolts does not, by itself, convert it into immovable property for the purposes of execution. The Court must have regard to the **nature and purpose of the attachment** and determine whether the machinery retains its character as movable property. Where it remains movable property, the procedure applicable to attachment and sale of movables under the Code governs the execution sale.

²⁴ 2005 (2) Civil Court Cases 238 (Karnataka)

IV. Attachment and Sale of Immovable Property :

Attachment and Sale of Immovable Property :

A decree for payment of money may be executed by attachment and sale of the property of the judgment-debtor or, where permissible, by sale without prior attachment. The provisions contained in **Sections 60 to 73 of the Code of Civil Procedure, 1908, read with Order XXI Rules 64 to 94**, govern the execution sale of property. The statutory scheme lays down the manner in which the property is to be brought to sale, the safeguards to be observed before and during the sale, the rights of the decree-holder and judgment-debtor, and the procedure to be followed after the sale.

The Sale Must Be Confined to the Property Necessary for Satisfaction of the Decree :

Before directing the sale of attached property, the executing Court is required to consider whether the **entire property or only such portion thereof as may be necessary** should be brought to sale. This obligation flows from **Order XXI Rule 64 CPC**, which requires the Court to determine what part of the attached property is necessary to satisfy the decree.

The Executing Court's Duty under Rule 64 Is Mandatory :

***Bhikchand (Deceased) through L.Rs. v. Shamabai Dhanraj Gugale (Deceased) through L.Rs.*²⁵ :**

Gist of the Case: The judgment-debtor had several properties attached in execution. The attachment Panchanama itself disclosed the valuation of the three properties. The executing Court nevertheless proceeded to auction the entire attached property. The decree-holder himself became the auction purchaser and purchased the

²⁵ 2024 (4) ALT 1 (SC)

properties for ₹34,000/-, although the valuation of the attached properties was stated to be ₹1,05,700/-.

Held: The **Hon'ble Supreme Court** held that the power of the executing Court under Order XXI Rule 64 is not merely discretionary but imposes a **mandatory obligation** to determine whether the entire property or only a portion thereof is required to satisfy the decree. The executing Court had failed to discharge that obligation by not examining whether sale of only a part of the attached properties would have been sufficient to satisfy the decree. The Court observed that failure to undertake this exercise caused serious prejudice to the judgment-debtor and conferred an undue advantage upon the auction purchaser.

Principle: The executing Court must, before ordering the sale of attached property, consciously determine **what extent of the property is necessary to satisfy the decree**. Where a smaller portion would be sufficient, the Court is required to confine the sale to that extent. An execution sale conducted without complying with this mandatory requirement under Rule 64 is vulnerable in law.

This principle assumes particular significance where the value of the property substantially exceeds the decretal amount. The Court should therefore not proceed mechanically from attachment to sale; it must first satisfy itself that the proposed sale is proportionate to the amount required for satisfaction of the decree.

The Sale Must Be Confined to What Is Necessary for Satisfaction of the Decree :

Order XXI Rule 64 CPC embodies an important restriction on the power of the executing Court. The Court is required to determine whether the entire attached

property is necessary for satisfaction of the decree or whether sale of only a portion would be sufficient. Where the value of the property substantially exceeds the decretal amount, the Court must consider whether the decree can be satisfied by sale of a lesser portion. The object is to ensure that the judgment-debtor is not deprived of property beyond what is necessary for satisfaction of the decree.

Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma ²⁶ :

Gist of the Case: The execution proceedings involved sale of property attached for satisfaction of a money decree, and the question was whether the entire property was required to be brought to sale.

Held: The **Hon'ble Supreme Court** held that Order XXI Rule 64 imposes a substantive restriction upon the executing Court. The Court must apply its mind to whether the entire property or only such portion thereof as may be necessary for satisfaction of the decree should be sold.

Principle: The power to sell attached property is controlled by the requirement of necessity under Rule 64. The executing Court must ensure that the sale is confined to the property, or portion thereof, which is necessary to satisfy the decree.

The same principle was reiterated by the **Hon'ble Supreme Court** in the following case:

Ambati Narasayya v. M. Subba Rao ²⁷ :

²⁶ (1977) 3 SCC 337

²⁷ 1990 Supp (2) SCC 693

Gist of the Case: The entire property of the judgment-debtor had been brought to sale for satisfaction of a comparatively small decretal claim.

Held: The **Hon'ble Supreme Court** reiterated that the executing Court must examine whether the whole property is required to satisfy the decree and, where a separable portion would be sufficient, the Court should not bring the entire property to sale.

Principle: Before ordering sale, the executing Court is under a duty to determine the extent of property actually required for satisfaction of the decree. The sale of the entire property, when a lesser portion would suffice, is contrary to the mandate of Rule 64.

The Requirement Under Rule 64 Is a Judicial Duty and Not a Mere Matter of Discretion :

This principle has been reiterated in recent times by the **Hon'ble Supreme Court in Bhikchand (Deceased) through L.Rs. v. Shamabai Dhanraj Gugale (Deceased) through L.Rs** ²⁸. The Court treated the obligation under Rule 64 as a mandatory duty cast upon the executing Court and held that failure to examine whether a part of the attached property would have been sufficient to satisfy the decree can cause serious prejudice to the judgment-debtor.

Where the attachment proceedings themselves disclose the valuation of different items of property, the executing Court cannot mechanically proceed to sell all of them. It must consider whether the sale of a lesser extent of property would be sufficient to satisfy the decretal claim. The fact that a decree-holder himself purchases

²⁸ 2024 (4) ALT 1 (SC)

the property at a price substantially below the stated valuation makes such scrutiny still more important.

Principle: The requirement under Rule 64 is not satisfied by a formal reference to the attached property. The executing Court must **actively determine the extent of property necessary for satisfaction of the decree before directing its sale.**

Settlement of the Sale Proclamation — The Substance and Purpose of Rule 66 :

After determining the property or portion thereof to be sold, the next important stage is the settlement of the sale proclamation under **Order XXI Rule 66 CPC**. The proclamation is intended to place before prospective purchasers the material particulars necessary to understand the property offered for sale and to form an informed assessment before bidding.

The Court should therefore ensure that the proclamation contains the material particulars concerning the property, including its description, extent, location and other matters relevant to its identification and valuation. The decree-holder's valuation, the valuation furnished by the Amin or other officer and the judgment-debtor's valuation, where furnished, should be appropriately brought into the record. Any material mortgage, charge or other encumbrance which may affect the interest of a prospective purchaser should also be disclosed.

The Sale Proclamation Is Not a Mere Formality :

Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh ²⁹ :

²⁹ (1994) 1 SCC 131

Gist of the Case: The validity of the execution sale was challenged on the ground of non-compliance with the requirements governing the settlement and publication of the sale proclamation.

Held: The **Hon'ble Supreme Court** emphasised that the requirements of Order XXI Rule 66 are not empty formalities. Notice to the judgment-debtor and proper settlement of the terms of the proclamation are material safeguards intended to ensure a fair and informed sale. The executing Court is required to apply its mind to the matters which are required to be incorporated in the proclamation.

Principle: The sale proclamation must contain the material particulars necessary to enable intending purchasers to assess the property and participate meaningfully in the auction. The executing Court cannot treat settlement of the proclamation as a mechanical or ministerial exercise.

The Executing Court Must Ensure Meaningful Compliance with Rule 66 :

Shalimar Cinema v. Bhasin Film Corporation³⁰ :

Gist of the Case: The validity of the execution sale was examined in the context of the statutory requirements relating to the sale proclamation and the conduct of the sale.

Held: The **Hon'ble Supreme Court** stressed the necessity of proper compliance with Order XXI Rule 66 and the duty of the executing Court to ensure that the proclamation contains the material particulars relevant to the sale.

Principle: A sale proclamation is intended to facilitate a fair sale and meaningful participation by prospective purchasers. The executing Court must therefore exercise judicial care while settling the proclamation and cannot merely approve the draft placed before it without appropriate scrutiny.

³⁰ (1987) 4 SCC 717

Valuation, Encumbrances and Accurate Description of the Property :

The particulars incorporated in the sale proclamation are intended to enable an intending purchaser to make an informed decision. The description of the property must therefore correspond with the property actually attached. Survey number, extent, door number, boundaries, location and the nature of the property should be verified with the execution schedule and the relevant records.

Where the property is subject to a mortgage, charge or other encumbrance, the same should be disclosed in the proclamation. An inaccurate description or failure to disclose a material encumbrance may affect not merely the form of the proclamation but the quality and fairness of the sale itself.

The decree-holder's valuation and the valuation furnished by the Amin or other competent officer, as well as the judgment-debtor's valuation where available, are relevant in enabling the Court to assess whether the proposed sale is appropriate and whether the description and particulars placed before prospective purchasers are sufficient.

Publication of the Sale and the Requirement of Genuine Publicity :

The purpose of publication is to secure genuine participation in the auction and thereby facilitate a fair realisation of the property's value. The sale should accordingly be publicised in the manner prescribed by the Code and the applicable rules or practice, and the prescribed interval between proclamation and sale must be observed.

The Court should also ensure that the description appearing in the publication corresponds with the property described in the execution petition, attachment proceedings and sale proclamation. A discrepancy at this stage may affect the very identity of the property offered for sale.

Proper Notice and Publication as a Safeguard to the Validity of the Sale :

Lal Chand v. VIII Additional District Judge and others ³¹ :

Gist of the Case: The validity of the execution sale was questioned on the ground that the requirements relating to notice and publication of the sale had not been properly complied with.

Held: The **Hon'ble Supreme Court** emphasised the importance of compliance with the requirements governing notice and publication of an execution sale. The Court recognised that these requirements are intended to ensure adequate publicity and a fair opportunity for prospective purchasers to participate in the sale.

Principle: Notice and publication of the sale are substantive safeguards in the execution process. The executing Court must ensure that the sale is preceded by the notice and publicity required by law.

Settlement and Publication of the Sale Proclamation :

After the Court determines what property is required to be sold, **Order XXI Rule 66 CPC** governs the proclamation of the intended sale. Notice is required to be given to the judgment-debtor and the terms of the proclamation are to be settled by the Court.

The proclamation should contain the material particulars which would enable an intending purchaser to understand the property offered for sale and form a reasonable assessment of its value. The description of the property, its extent and other relevant particulars must therefore be carefully verified before the sale is ordered.

The proclamation is thereafter required to be published in the manner prescribed by the Code and the applicable rules and practice.

³¹ AIR 1997 SC 2106; (1997) 4 SCC 356

Postponement of Sale at the Instance of the Judgment-Debtor :

Order XXI Rule 83 CPC provides a distinct opportunity to the judgment-debtor in a case where he is able to satisfy the Court that there is reason to believe that the decretal amount can be raised by **mortgage, lease or private sale of the property brought to sale, or of any other immovable property belonging to him.**

Under **Rule 83(1)**, the Court may postpone the sale on such terms and for such period as it considers appropriate to enable the judgment-debtor to raise the amount required for satisfaction of the decree.

Where such postponement is granted, **Rule 83(2)** contemplates the grant of a certificate authorising the judgment-debtor to effect the proposed mortgage, lease or private sale, notwithstanding the general prohibition contained in Section 64 CPC. The amounts realised through such transaction are required to be paid into Court, except to the extent that the decree-holder is entitled to a set-off under Rule 72. The mortgage, lease or sale does not become absolute until it is confirmed by the Court.

The safeguard provided by Rule 83 is, however, subject to an express limitation: under **Rule 83(3)**, the provision does not apply to decrees for payment of money secured by a mortgage or charge.

Participation of the Decree-Holder in the Auction :

The decree-holder is not entitled, merely by virtue of being the decree-holder, to participate in the auction without the leave of the Court. **Order XXI Rule 72 CPC**

requires the decree-holder to obtain the express permission of the Court before bidding at the sale.

The requirement is important because the decree-holder is both the person seeking satisfaction of the decree and a potential purchaser of the property. The Court must therefore ensure compliance with the statutory conditions before permitting such participation.

Sale by a Small Causes Court :

Order XXI Rule 82 CPC provides that sale of immovable property in execution of a decree is to be held by a Court other than a Court of Small Causes. Consequently, a Small Causes Court does not itself have jurisdiction to attach or sell immovable property in execution.

Where a decree passed on the Small Causes side is sought to be executed against the immovable property of the judgment-debtor, the decree has first to be transferred to a Court competent to execute it against such property, in accordance with the provisions governing transfer of decrees. Only thereafter can execution against the immovable property proceed.

The Sale Process Is a Judicially Supervised Process :

The provisions governing sale of immovable property demonstrate that execution is not completed merely by issuing a sale warrant. Between attachment and confirmation, the executing Court is required to supervise several stages: determining the extent of property necessary to satisfy the decree, settlement of the proclamation, notice to the judgment-debtor, publication, conduct of the auction, compliance with the

requirements relating to the purchaser's deposit, consideration of applications affecting the sale, and confirmation.

Postponement of Sale under Rule 83 Is Not Available in Execution of a Mortgage Decree :

Hebbar Venkata Subha Rao v. Veeramma (died) per L.Rs.³² :

Gist of the Case: The judgment-debtor sought postponement of the sale of the property brought to sale in execution of a mortgage decree, invoking Order XXI Rule 83 CPC, on the ground that an opportunity should be given to raise the decretal amount by mortgage, lease or private sale of the property.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the benefit of Rule 83 is expressly excluded in respect of a decree for payment of money secured by a mortgage or charge. Consequently, the judgment-debtor cannot invoke Rule 83 to seek postponement of the sale in execution of a mortgage decree.

Principle: Order XXI Rule 83 is not available for postponement of a sale in execution of a mortgage or charge decree. The statutory exception contained in Rule 83(3) operates irrespective of the judgment-debtor's claim that the decretal amount could otherwise be raised by mortgage, lease or private sale. Therefore, the executing Court cannot exercise the power of postponement under Rule 83 in respect of a mortgage decree.

³² 2006 (1) ALT 270

The Object of Postponement under Rule 83 :

The purpose of postponement of sale under **Order XXI Rule 83 CPC** is to afford an opportunity for the decree-holder to obtain satisfaction of the decree without an immediate sale of the property. The provision cannot, however, be invoked by the judgment-debtor merely to obtain permission to privately dispose of the property for the purpose of discharging debts other than the decretal debt.

Ravi Nagabhushanam v. Neti Gopala Krishna Murthy ³³ :

Gist of the Case: The judgment-debtor sought to invoke Rule 83 for permission to deal with the property privately, contending that such course would enable him to meet his financial liabilities.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the power of postponement under Rule 83 is intended to facilitate satisfaction of the **decree in execution** and cannot be utilised to permit the judgment-debtor to sell the property privately for the purpose of discharging other debts.

Principle: Rule 83 is a provision incidental to satisfaction of the **decretal claim**. It does not confer upon the judgment-debtor an unrestricted right to obtain leave to privately alienate the property for purposes unconnected with satisfaction of the decree under execution.

Deposit of One-Fourth of the Purchase Money at the Time of Sale :

Order XXI Rule 84 CPC :

³³ AIR 1969 AP 184

Under **Order XXI Rule 84(1)**, on every sale of immovable property, the purchaser is required to deposit **one-fourth of the purchase money immediately after the sale** with the officer conducting the sale. Failure to make the required deposit results in the property being liable to immediate re-sale.

Rule 84(2) makes an exception in favour of a decree-holder who is the auction purchaser and is entitled to a set-off under **Rule 72**. In such a case, the Court may dispense with the requirement of depositing the one-fourth amount to the extent of the permissible set-off.

The requirement is mandatory in character and is intended to demonstrate the purchaser's capacity and commitment to complete the transaction.

Payment of the Balance Purchase Money Within the Statutory Period :

Order XXI Rule 85 CPC :

After the deposit contemplated by Rule 84, the purchaser is required under **Order XXI Rule 85** to pay the balance purchase money into Court **before the close of the fifteenth day from the date of sale**.

Where the purchaser is the decree-holder, the benefit of any set-off permissible under Rule 72 may be availed of, and the decree-holder is required to deposit only the balance, if any, remaining after giving effect to the set-off.

The requirement under Rule 85 is equally important because completion of the sale depends upon compliance with the statutory payment schedule.

Default in Payment of the Balance Purchase Money and Re-sale :

Order XXI Rule 86 CPC :

Where the purchaser fails to deposit the balance purchase money within the period prescribed by Rule 85, **Rule 86** empowers the Court, if it thinks fit, to forfeit the deposit already made, after defraying the expenses of the sale, and to order a re-sale of the property.

The defaulting purchaser loses his claim to the property and cannot claim any portion of the amount for which the property may subsequently be sold.

Re-sale Must Follow the Procedure Prescribed for Sale :

Order XXI Rule 87 CPC :

A re-sale consequent upon default under Rule 85 is not an informal re-auction. Rule 87 requires the procedure relating to proclamation and sale to be followed for the re-sale as well. Thus, the failure of the original purchaser to complete the purchase does not dispense with the statutory safeguards applicable to a fresh sale.

Preference to a Co-Sharer at an Equal Bid :

Order XXI Rule 88 CPC :

Rule 88 confers a limited preference upon a co-sharer. Where a co-sharer and another bidder offer the **same price**, the bid of the co-sharer is to be preferred.

A Statutory Opportunity to Save the Property After Sale — Rule 89 :

Challamane Huchha Gowda v. M.R. Tirumala ³⁴ :

³⁴ (2004) 1 SCC 453

Gist of the Case: The case concerned an application to set aside an execution sale under Order XXI Rule 89 CPC. The provision enables a person claiming an interest in the property sold, or a person acting for or in the interest of such person, to seek setting aside of the sale by making the deposits prescribed by the Rule.

Held: The **Hon'ble Supreme Court** recognised Rule 89 as a statutory opportunity available to the person interested in the property to have the sale set aside upon compliance with the conditions prescribed therein. The provision requires deposit of the amount payable under Rule 89, including the amount required for payment to the decree-holder and the prescribed amount payable to the auction purchaser.

Principle: Rule 89 provides a **statutory means of redeeming the property from the consequences of an execution sale** by satisfying the requirements prescribed by the Rule. It represents an opportunity, before the sale attains finality, to bring the execution sale to an end and protect the property from the consequences of confirmation and subsequent dispossession.

Proper Notice and Publication of the Auction Sale as a Condition of a Valid Execution Sale :

Lal Chand v. VIII Additional District Judge and others ³⁵ :

Gist of the Case: The validity of an execution sale was challenged on the ground that the sale had been conducted without compliance with the requirements relating to notice and publication of the sale.

Held: The **Hon'ble Supreme Court** held that the requirements governing notice and publication of an execution sale under **Order XXI Rule 67 CPC** are intended to

³⁵ AIR 1997 SC 2106; (1997) 4 SCC 356

ensure that the proposed sale receives adequate publicity and that the judgment-debtor and prospective purchasers are afforded the opportunity contemplated by law. A sale conducted without compliance with the mandatory requirements of notice and publication cannot be sustained merely as an irregularity of procedure.

Principle: Proper notice and publication of an execution sale are fundamental safeguards governing the validity of the sale. The executing Court must ensure compliance with the requirements of Order XXI Rule 67 before the sale is conducted. A sale held without the notice and publication required by law is liable to be treated as illegal.

A Purchaser Alone Can Challenge the Sale on the Ground that the Judgment-Debtor Had No Saleable Interest :

Skypak Couriers Ltd. v. Tata Chemicals Ltd. ³⁶ :

Gist of the Case: The question concerned the scope of an application for setting aside an execution sale on the ground that the judgment-debtor had no saleable interest in the property sold.

Held: The **Hon'ble Supreme Court** held that **Order XXI Rule 91 CPC** enables a purchaser at an execution sale to apply for setting aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold. A judgment-debtor cannot invoke Rule 91 for that purpose. The grounds of material irregularity or fraud in publishing or conducting the sale fall within **Rule 90**, whereas the absence of saleable interest is specifically dealt with by Rule 91.

³⁶ AIR 2000 SC 2008; (2000) 5 SCC 294

Principle: The right to invoke a particular provision for setting aside an execution sale depends upon the **ground on which the sale is challenged and the capacity of the person making the application**. A judgment-debtor cannot invoke Rule 91 on the ground that he had no saleable interest; that provision is available to the purchaser. A challenge by the judgment-debtor on the ground of material irregularity or fraud must satisfy the requirements of Rule 90.

Material Irregularity or Fraud Does Not, by Itself, Invalidate an Execution Sale :

H.H. Mahanth Chethandosi Varu v. T.T. Devasthanams ³⁷ :

Gist of the Case: The validity of an execution sale was questioned on the ground of material irregularities in the conduct of the sale and the price realised at the auction.

Held: The **Hon'ble High Court** held that the mere establishment of a material irregularity in publishing or conducting the sale does not, by itself, warrant setting aside the sale. There must be a **causal connection between the irregularity complained of and the inadequacy of the price realised**, resulting in substantial injury to the applicant.

Principle: For an application under **Order XXI Rule 90 CPC** to succeed, the applicant must establish not merely a material irregularity or fraud, but also the resulting **substantial injury**. Mere inadequacy of the sale price, without establishing that it was caused by the material irregularity or fraud complained of, is insufficient to invalidate the sale.

³⁷ (1965) 1 ALT 175; (1965) 1 AnWR 194 (DB)

Mere Inadequacy of Sale Price Is Not Sufficient to Set Aside the Sale :

A. Parvatham v. Bank of Baroda ³⁸ :

Gist of the Case: The execution sale was challenged on the ground that the property had been sold for an inadequate price.

Held: The **Hon'ble High Court of Madras** held that mere inadequacy of the sale price does not, by itself, constitute material irregularity so as to attract Order XXI Rule 90 CPC.

Principle: Inadequacy of price, by itself, is not a ground for setting aside an execution sale. The applicant must establish the statutory ingredients under Rule 90, including material irregularity or fraud in publishing or conducting the sale and substantial injury resulting therefrom.

When Does an Execution Sale Become Absolute?

Order XXI Rule 92 CPC :

Order XXI Rule 92 deals with the circumstances in which an execution sale becomes absolute and the circumstances in which it is liable to be set aside.

Under **Rule 92(1)**, where no application to set aside the sale is made under Rule 89, Rule 90 or Rule 91, or where such an application is made and disallowed, the Court shall make an order confirming the sale and the sale thereupon becomes absolute.

³⁸ AIR 2000 Mad 326

The proviso to Rule 92(1) is significant: **the Court shall not confirm the sale until any claim to, or objection to the attachment of, the property sold has been finally disposed of.**

Under **Rule 92(2)**, the sale is liable to be set aside where an application under Rule 89, Rule 90 or Rule 91 is allowed. In the case of Rule 89, the statutory deposit must also have been made within the period prescribed by law, subject to the provision concerning deficiency arising from clerical or arithmetical error.

The proviso to Rule 92(2) further requires that notice of the application be given to all persons affected before an order setting aside the sale is made.

Rule 92(3) provides that where an application under Rule 89, Rule 90 or Rule 91 has been disallowed, the person aggrieved cannot institute a separate suit to set aside the order made on such application.

Rule 92(4) deals with a suit instituted by a third party against the auction purchaser challenging the judgment-debtor's title. In such a proceeding, the decree-holder and judgment-debtor are necessary parties. Where such suit succeeds, Rule 92(4) permits the Court to direct refund of the purchase money to the auction purchaser and, unless otherwise ordered, the execution petition in which the sale took place may be revived at the stage at which the sale was ordered.

The Legal Effect of Confirmation of Sale :

The effect of Rule 92 is not merely procedural. On the sale becoming absolute, the auction purchaser acquires the property in accordance with the statutory consequences of the confirmed sale. The execution Court must therefore ensure,

before confirmation, that all applications and claims which the Code requires to be dealt with have been disposed of.

Refund of Purchase Money When an Execution Sale Is Set Aside :

Ramchandra v. Ramchandra³⁹ :

Gist of the Case: The question concerned the entitlement of an auction purchaser to recover the purchase money where an immovable-property sale conducted in execution proceedings was subsequently set aside.

Held: The Court recognised the protection afforded to the auction purchaser under **Order XXI Rule 93 CPC**. Where a sale of immovable property is set aside under Rule 92, the purchaser is entitled to receive back the purchase money, together with such interest, if any, as the Court may direct, from the person to whom the purchase money has been paid.

Principle: Rule 93 safeguards the position of the auction purchaser when an execution sale is subsequently set aside. The purchaser is entitled to **restitution of the purchase money**, with interest where the Court considers it appropriate, thereby preventing the purchaser from being left without either the property or the money paid for it.

Confirmation of Sale After Disallowance of an Application for Setting Aside :

Under **Order XXI Rule 92(1) CPC**, where an application under Rule 89, Rule 90 or Rule 91 is made and is disallowed, the executing Court is required to make an order confirming the sale, and upon such confirmation the sale becomes absolute.

³⁹ AIR 1938 Nag 54

The rule does not contemplate that confirmation should be postponed until an appellate or revisional Court affirms the order by which the application for setting aside the sale was disallowed. Once the application has been disallowed and the statutory requirements for confirmation are otherwise satisfied, the executing Court is required to pass the order of confirmation in accordance with Rule 92.

Thus, the mere possibility of an appeal or revision against the order disallowing the application does not, by itself, render the sale unconfirmed. The question of stay or any other order of the superior Court has to be considered separately.

Sale Certificate Follows the Sale Becoming Absolute :

Order XXI Rule 94 CPC :

Once the sale has become absolute, **Order XXI Rule 94** requires the Court to issue a certificate of sale to the purchaser. The certificate must specify:

- the property which has been sold;
- the name of the person declared to be the purchaser at the time of sale; and
- the date on which the sale became absolute.

The sale certificate therefore follows the **confirmation and finality of the sale**; it is not the event by which the sale itself becomes absolute.

Preparation of the Sale Certificate Is a Ministerial Act :

Harnandan Singh v. Aditya Narain Singh ⁴⁰ :

⁴⁰ AIR 1962 Pat 221; 1962 BLJR 204

Gist of the Case: The question was whether the judgment-debtor was entitled to notice before the sale certificate was prepared and issued under Order XXI Rule 94.

Held: The **Hon'ble High Court of Patna** held that preparation of the sale certificate under Rule 94 is a **ministerial act** consequent upon the sale having become absolute. Therefore, a separate notice to the judgment-debtor is not necessary merely for the preparation of the sale certificate.

Principle: The judicial determination occurs at the stage of **confirmation of sale under Rule 92**. Once the sale has become absolute, issuance of the sale certificate under Rule 94 is a consequential ministerial act, and the judgment-debtor is not entitled to a fresh notice merely because the certificate is being prepared.

PART II — EXECUTION OF INJUNCTION DECREES

A decree for injunction is enforced in a manner different from a money decree because its object is not recovery of an ascertainable sum but obedience to a command of the Court. Order XXI Rule 32 therefore adapts the execution mechanism to the nature of the injunction and permits attachment and, where the conditions of the rule are satisfied, detention for wilful disobedience. The distinction between prohibitory and mandatory injunctions is central.

Finality of the Injunction and the Duty of Obedience in Execution :

Once a perpetual injunction or mandatory injunction has become final, the judgment-debtor is bound to obey it. The executing Court does not reopen the merits of the injunction but gives effect to the command contained in the decree.

Continuing Disobedience of a Final Injunction and the Remedy of Execution :

Jai Dayal v. Krishan Lal Garg ⁴¹ :

Gist of the Case: The case concerned continuing interference with a right which had been protected by a final decree of injunction. The question was whether the continuing non-compliance with the decree could be addressed through the execution proceedings.

Held: The **Hon'ble Supreme Court** treated the continuing violation of the final injunction as continuing disobedience of the decree and recognised execution as the appropriate mechanism for enforcing the decree. The decree-holder need not be driven to institute a fresh proceeding merely because the judgment-debtor continues to act in breach of the injunction.

Principle: Once a decree for injunction has attained finality, **continuing disobedience of the decree can be enforced through execution under Order XXI Rule 32 CPC**. The execution Court is required to give effect to the decree as it stands, and the decree-holder should not ordinarily be compelled to commence fresh litigation for every subsequent act of disobedience.

A Previous Recording of Satisfaction Does Not Bar Execution for a Subsequent Breach of a Perpetual Injunction :

Saraswati Devi & others v. Santosh Singh & others ⁴² :

Gist of the Case: The predecessor-in-interest of the appellants had obtained a decree of permanent prohibitory injunction restraining the defendants from interfering

⁴¹ (1996) 11 SCC 588

⁴² 2025 INSC 715; AIR 2025 SC 2872

with the plaintiffs' peaceful possession of the scheduled agricultural land. In an earlier execution petition, the executing Court recorded full satisfaction after the judgment-debtors gave an undertaking that they would not interfere with the decree-holder's possession. Subsequently, on fresh instances of interference, the appellants filed another execution petition. The executing Court and the Revisional Court rejected the subsequent execution petition on the ground that satisfaction had already been recorded in the earlier execution proceedings and that the subsequent proceeding was barred by *res judicata*.

Held: The **Hon'ble Supreme Court** set aside the orders of the Courts below and restored the subsequent execution petition. The Court held that where the decree is one of **permanent prohibitory injunction**, a satisfaction recorded in an earlier execution petition in respect of an earlier instance of breach does not bar a subsequent execution petition founded upon a **fresh breach or subsequent interference**. The Court further held that a perpetual injunction operates against the judgment-debtors, their assignees and successors, and may be enforced whenever a breach occurs.

Principle: A decree of perpetual injunction is continuing in operation. **Each fresh breach gives rise to a fresh occasion for enforcement of the decree**, and satisfaction recorded in an earlier execution proceeding relating to an earlier breach does not extinguish the decree-holder's right to seek execution for a subsequent breach. The Court further clarified that, by virtue of the proviso to **Article 136 of the Limitation Act, 1963**, there is no period of limitation for enforcing a decree granting perpetual injunction.

The Executing Court Cannot Travel Beyond the Terms of the Injunction Decree :

Execution is confined to enforcement of the decree as it stands. Where the decree merely restrains the judgment-debtor from interfering with a particular right, the decree-holder cannot, through the execution proceedings, seek a new substantive or positive relief which was neither granted nor contemplated by the decree. Correspondingly, the executing Court cannot enlarge the scope of the decree while purporting to enforce it.

Gurram Somamma v. Nalamasa Yashoda⁴³ :

Gist of the Case: The execution application sought a direction in relation to the suit property which went beyond the relief actually granted by the decree.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the jurisdiction of the executing Court is confined to giving effect to the decree as it stands. The Court cannot, in execution, grant a relief which was not granted by the decree or enlarge the substantive rights determined therein.

Principle: An execution proceeding is intended to **enforce, and not enlarge or modify, the decree**. The decree-holder must obtain in the suit the substantive relief sought; the executing Court cannot confer such relief for the first time under the guise of executing an injunction decree.

Effect of a Material Change in Circumstances on the Execution of a Perpetual Injunction :

⁴³ 2008 (5) ALD 825

Surinder Kumar v. Ishwar Dayal⁴⁴ :

Gist of the Case: A decree of perpetual injunction had been granted with reference to the circumstances then existing between the parties. Subsequently, the factual situation concerning the subject matter of the injunction underwent a material change, and the parties acted upon the altered circumstances. The question was whether the decree could nevertheless be enforced in the same form as though the original factual situation continued to exist.

Held: The **Hon'ble Supreme Court** held that where the factual foundation on which the decree of injunction operates has materially changed or ceased to exist, the decree cannot be enforced mechanically as though the circumstances existing at the time of the decree continued unchanged.

Principle: A decree for perpetual injunction must be executed with reference to the **rights and circumstances actually governed by the decree**. Where a subsequent material change has altered the factual basis of the injunction, the executing Court cannot simply proceed on the assumption that the original situation continues. At the same time, such a change cannot be used to reopen or modify the decree under the guise of execution; the Court must determine the precise scope of the decree and whether the act complained of is in fact within its operative terms. **Ambiguity in the Injunction and the Question of Wilful Disobedience**

Wilful Disobedience Must Be Established Where the Injunction Is Capable of a Reasonable Interpretation :

State of Bihar v. Rani Sonabati⁴⁵ :

⁴⁴ (1996) 3 SCC 103

Gist of the Case: The proceedings concerned an allegation of disobedience of an injunction order, the terms of which were capable of being understood in more than one way. The question was whether the conduct complained of could be treated as wilful disobedience when the respondent had acted on an interpretation of the order which was reasonably open to her.

Held: The **Hon'ble Supreme Court** held that disobedience must be considered in the light of the actual terms of the injunction and the circumstances in which the alleged breach occurred. Where the order is reasonably capable of more than one interpretation and the person proceeded against has acted in accordance with a bona fide and reasonable interpretation of the order, the conduct cannot readily be characterised as **wilful disobedience**.

Principle: In execution of an injunction decree, the executing Court must first ascertain the **clear scope and meaning of the injunction** and then determine whether the alleged breach was wilful. Where the terms of the decree are reasonably capable of more than one interpretation, a bona fide act consistent with a reasonable interpretation of the decree cannot, without more, constitute wilful disobedience.

The Mode of Execution Must Correspond to the Nature of the Injunction Decree :

Order XXI Rule 32 CPC contemplates different modes of enforcement depending upon the nature of the injunction decree. A prohibitory injunction requires the judgment-debtor to abstain from the act prohibited by the decree, whereas a mandatory injunction requires performance of the positive act directed by the Court.

⁴⁵ AIR 1961 SC 221

The executing Court must, therefore, examine the operative portion of the decree before determining the appropriate mode of execution. It cannot enlarge the decree or grant, under the guise of execution, a substantive relief which was not granted by the Court.

Korruri Mallaiah v. P. Narender⁴⁶ :

Gist of the Case: The execution proceedings concerned a decree for injunction, and the question was whether the decree-holder could seek removal of an existing construction by invoking the particular mode of execution under Order XXI Rule 32.

Held: The **Hon'ble High Court of Andhra Pradesh** held that the mode of execution must depend upon the nature of the injunction decree. The remedy applicable to a mandatory injunction cannot be invoked to obtain a positive relief which does not form part of the decree.

Narreddy Raji Reddy v. Pasula Enkhamma⁴⁷ :

Gist of the Case: The execution proceedings likewise raised the question whether the particular sub-rule of Order XXI Rule 32 could be invoked having regard to the nature of the injunction actually granted.

Held: The **Hon'ble High Court of Andhra Pradesh** reiterated that the rule-specific remedy must correspond to the decree sought to be enforced. The execution Court cannot employ the machinery applicable to a mandatory injunction to create or secure relief beyond a merely prohibitory decree.

⁴⁶ 2005 (2) ALD 831

⁴⁷ 1997 (3) ALD 30

Principle: The **operative terms and nature of the decree determine the permissible mode of execution.** A decree for prohibitory injunction cannot, through execution, be converted into a decree granting a positive or mandatory relief which was never adjudicated and granted.

Police Assistance in the Execution of an Injunction Decree :

Where a decree for injunction is violated, the decree-holder may require police assistance to ensure effective implementation of the decree. However, the power to grant police aid has to be exercised consistently with the statutory scheme governing execution. The availability of inherent powers under Section 151 CPC does not ordinarily permit a decree-holder to bypass the specific execution mechanism provided under **Order XXI Rule 32 CPC.**

B. Rama Krishna v. M. Naga Raju ⁴⁸ :

Gist of the Case: The decree-holder, alleging violation of a final injunction decree, sought police assistance for implementation of the decree.

Held: The **Hon'ble High Court of Andhra Pradesh** held that where the Code provides a specific mechanism for enforcement of an injunction decree under Order XXI Rule 32 CPC, the decree-holder cannot ordinarily invoke the inherent jurisdiction of the Court to obtain police protection as an independent remedy so as to circumvent the prescribed execution procedure.

⁴⁸ 2007 (1) ALD 148

Golikota Reddy v. Goli Raja Gopala Reddy ⁴⁹ :

Gist of the Case: Police assistance was sought for implementation of an injunction decree which had become executable.

Held: The **Hon'ble High Court of Andhra Pradesh** reiterated that enforcement of the decree should ordinarily proceed through the execution machinery prescribed by the Code. The inherent jurisdiction of the Court cannot be invoked to substitute or circumvent the specific statutory remedy available for execution.

Principle: Police assistance may be granted, where the circumstances so warrant, **in aid of an execution proceeding for effective enforcement of an injunction decree**. However, police protection cannot ordinarily be sought as an independent remedy under Section 151 CPC merely to avoid or bypass the procedure prescribed under Order XXI Rule 32 CPC.

Arrest and Detention for Wilful Disobedience of an Injunction Decree :

Where an injunction decree is enforceable under **Order XXI Rule 32 CPC**, detention of the judgment-debtor in civil prison is one of the coercive modes available to secure compliance with the decree. However, such detention is not automatic upon proof of a breach. The disobedience must be **wilful**, and the Court must satisfy itself that the statutory requirements for resorting to detention have been fulfilled. The mere fact that an injunction has been violated does not, by itself, justify imprisonment where the conduct complained of is accidental, technical or otherwise not wilful.

⁴⁹ 2000 (6) ALD 449

Yashodabai Ganesh Naik Gaunekar v. Gopi Mukund Naik⁵⁰ :

Gist of the Case: The execution proceedings arose out of a decree of permanent injunction, and the question before the **Hon'ble High Court** concerned the extent to which the judgment-debtor could be subjected to detention in civil prison for disobedience of the decree.

Held: The **Hon'ble High Court** held that detention in execution of a decree for injunction is subject to the limitations prescribed by **Order XXI Rule 32 CPC** and cannot be imposed for an unlimited period. The coercive consequence of detention must remain within the statutory framework governing execution.

Principle: Detention for disobedience of an injunction decree is a **statutory coercive measure and not a punitive consequence of indefinite duration**. Before ordering detention, the executing Court must be satisfied that the judgment-debtor has wilfully disobeyed the decree and must impose detention only within the limits prescribed by the Code. The nature of the decree, the circumstances constituting the breach and the statutory conditions under Rule 32 must all be kept in view.

PART III — EXECUTION OF DECREES FOR POSSESSION

Possession decrees present a different set of execution problems because the decree-holder must ultimately be placed in the possession which the decree has adjudged. Order XXI Rules 35 and 36 distinguish actual delivery from symbolic or formal delivery, while Rules 97 to 101 provide an adjudicatory mechanism for

⁵⁰ 2003 (1) ALT 32 (DB)

resistance and obstruction. The executing Court therefore performs a more active role than a merely ministerial officer carrying out a warrant.

Actual Delivery of Possession Under Rule 35 :

Where the decree is for delivery of immovable property, possession is delivered to the person adjudged entitled to it or his authorised agent. If a person bound by the decree refuses to vacate, the Court may remove that person. The rule also permits the Court, through its officers, to take necessary measures such as opening locks after the statutory safeguards have been observed.

Joint Possession and the Mode of Delivery under Order XXI Rule 35(2) :

A decree for **joint possession** stands on a different footing from a decree for exclusive possession. Where the decree-holder is adjudged entitled to joint possession with the judgment-debtor or other co-sharers, the executing Court does not ordinarily dispossess persons who are themselves entitled to remain in possession merely for the purpose of putting the decree-holder in physical possession. In such circumstances, **symbolic or formal delivery** is the appropriate mode of execution contemplated by Order XXI Rule 35(2) CPC.

Hasimathunnisa v. Vithal Rao ⁵¹ :

Gist of the Case: The decree obtained by the decree-holder was one for **joint possession**, and the question before the **Hon'ble High Court of Andhra Pradesh** concerned the appropriate mode by which such a decree was to be executed.

⁵¹ AIR 1979 AP 273

Held: The **Hon'ble High Court of Andhra Pradesh** held that where the decree is for joint possession, the decree-holder is entitled to symbolic or formal delivery in accordance with Order XXI Rule 35(2), rather than physical dispossession of the persons who are already in possession and are entitled to continue in such possession.

Principle: Where the decree itself awards **joint possession**, execution must correspond to the nature of that relief. The executing Court cannot convert a decree for joint possession into a decree for exclusive physical possession. Symbolic or formal delivery under **Order XXI Rule 35(2)** is the appropriate mode of giving effect to a decree for joint possession, subject to the terms of the decree and the rights of the co-sharers.

Formal or Symbolic Delivery of Possession and Its Legal Effect :

Where the property is in the occupation of a **tenant or any other person who is not bound by the decree**, the mode of delivery is governed by **Order XXI Rule 36 CPC**. In such a situation, the decree-holder is not ordinarily entitled to physical dispossession of the person in occupation merely by virtue of a decree against another person. The Code therefore provides for delivery of possession by the prescribed formal or symbolic process.

The legal effect of such delivery, however, depends upon the nature of the decree and the status of the person in possession. Symbolic delivery is not invariably a substitute for actual delivery; its legal efficacy has to be examined with reference to the circumstances in which it is effected.

M.V.S. Manikyalaya Rao v. M. Narasimhamswamy ⁵² :

Gist of the Case: The proceedings concerned delivery of possession in execution and the legal effect of symbolic delivery. A subsequent dispute arose as to whether the symbolic delivery effected in execution had the effect of interrupting the adverse possession of the person against whom the decree-holder was entitled to proceed.

Held: The **Hon'ble Supreme Court** recognised the legal significance of symbolic delivery effected in accordance with the procedure prescribed by the Code. The Court treated such formal delivery as capable, in the circumstances of the case, of interrupting the adverse possession of the person against whom the decree-holder was entitled to enforce the decree.

The Applicability of Symbolic Delivery Depends Upon the Nature of the Possession and the Person in Occupation :

Shew Bux v. Bengal Breweries ⁵³ :

Gist of the Case: The case concerned the execution of a decree for possession and the question whether possession could appropriately be delivered through the mode of symbolic or formal delivery prescribed by the Code, having regard to the nature of the possession and the person actually occupying the property.

Held: The **Hon'ble Supreme Court** recognised that the mode of delivery has to be determined with reference to the nature of the decree and the status of the person in possession. Where the person in actual occupation is one who is not bound by the decree, the possession cannot ordinarily be obtained by physically removing such

⁵² AIR 1966 SC 470

⁵³ AIR 1961 SC 137; (1961) 1 SCR 680

person, and the formal mode of delivery contemplated by the Code has to be resorted to.

Principle: The applicability of symbolic delivery under **Order XXI Rule 36 CPC** depends upon the **nature of the decree and the legal status of the person in actual possession**. Where the occupier is not bound by the decree, the executing Court must adopt the mode of delivery prescribed by Rule 36 rather than treating the decree as authorising physical dispossession. Symbolic delivery is therefore not determined merely by the physical fact of occupation, but by the relationship between the decree-holder, the judgment-debtor and the person in possession.

When Symbolic Possession Cannot Substitute Actual Possession :

The mode of delivery in execution must correspond to the nature of the decree and the circumstances in which possession is sought to be delivered. Where the decree-holder is entitled to **actual physical possession**, a mere formal or symbolic act of delivery cannot be treated as equivalent to effective execution of the decree. The executing Court must therefore ascertain, before recording delivery, whether the decree and the circumstances of the case permit symbolic delivery or require actual possession to be delivered.

K. Ramalingam v. K.N. Krishnareddi ⁵⁴ :

Gist of the Case: The case concerned the distinction between actual and symbolic delivery of possession in execution and the question whether a formal mode of

⁵⁴ AIR 1974 Mad 325

delivery could be treated as sufficient where the decree-holder was entitled to effective possession of the property.

Held: The **Hon'ble High Court of Madras** held that where the decree and the circumstances require **actual delivery of possession**, a mere formal or symbolic act of delivery cannot take the place of actual possession. The mode of execution must correspond to the nature of the relief granted by the decree.

Principle: Symbolic delivery is not a substitute for actual possession where the decree-holder is entitled to physical possession. The executing Court must determine the nature of the decree and the status of the person in possession before deciding the mode of delivery. A formal endorsement of delivery cannot, by itself, amount to effective execution where the decree requires actual possession.

Subsequent Execution for Actual Possession After Symbolic Delivery :

Mumtaj v. Insha⁵⁵ :

Gist of the Case: After symbolic delivery of the property had been effected in the earlier execution proceedings, the decree-holder subsequently sought actual possession. The question before the **Hon'ble High Court of Delhi** was whether a further execution proceeding seeking actual possession was barred by the earlier symbolic delivery.

Held: The **Hon'ble High Court of Delhi** held that a subsequent execution proceeding for actual possession was not, in the circumstances of the case, barred merely because symbolic possession had earlier been delivered. Where the earlier process

⁵⁵ AIR 1983 Del 65

had not resulted in effective delivery of possession to which the decree-holder was entitled, the decree-holder could take further steps for obtaining actual possession.

Principle: Symbolic delivery does not invariably exhaust the decree-holder's right to seek actual possession. Where the decree requires actual possession and the earlier symbolic delivery has not effectively placed the decree-holder in possession, a subsequent application for actual delivery may be maintainable. The executing Court must therefore examine the nature of the decree, the mode of possession lawfully required, and the legal effect of the earlier delivery before deciding whether further execution is permissible.

Execution Against Tenants, Sub-Tenants and Persons Claiming Through Them :

A decree for possession or eviction is not necessarily executed against the person actually found in occupation unless that person is bound by the decree. At the stage of delivery, the executing Court must therefore ascertain the legal status of the occupant—whether he is the judgment-debtor himself, a tenant or sub-tenant claiming through the judgment-debtor, a licensee, or a person asserting an independent right. The consequence of the decree upon the occupant depends upon that relationship.

Kamala Bai v. Bhikchand ⁵⁶ :

Gist of the Case: The execution of an eviction decree involved machinery belonging to the tenant remaining in the premises, and questions arose concerning the implementation of the decree and delivery of possession.

⁵⁶ AIR 1982 SC 709; (1982) 1 SCC 377

Held: The **Hon'ble Supreme Court** considered the manner in which an eviction decree was to be effectively enforced and the consequences flowing from the decree against the tenant in possession.

Principle: Execution of an eviction decree must be directed towards placing the decree-holder in the possession to which he has been adjudged entitled, subject to the rights, if any, which the law recognises in persons in occupation of the premises.

Ameena v. Sundaram ⁵⁷ :

Gist of the Case: A decree for possession had been obtained against the tenant, but the sub-tenant in occupation had not been impleaded as a party to the suit and no decree had been passed against him. In execution, the question arose as to the effect of the sub-tenant's presence upon the execution of the decree.

Held: The **Hon'ble Supreme Court** held that the absence of a decree against the sub-tenant did not extinguish the decree-holder's right to execute the decree against the tenant. Where the sub-tenant resisted delivery, the appropriate execution-stage remedy could be pursued against the resistance in accordance with law.

Principle: The executing Court must distinguish between **the liability of the judgment-debtor under the decree and the independent position of a person in occupation who is not a party to the decree**. The inability to execute directly against a sub-tenant does not, by itself, render the decree against the tenant inexecutable.

⁵⁷ (1994) 1 SCC 743

P.N. Pathak v. Renuka ⁵⁸ :

Gist of the Case: The execution proceedings concerned an eviction decree and the rights of a person whose occupation was claimed through the tenant against whom the decree had been passed.

Held: The **Hon'ble High Court** considered the effect of an eviction decree upon persons claiming possession through the tenant and recognised the distinction between derivative possession and an independent claim to the property.

Principle: A person whose possession is **derivative of and dependent upon the tenant** cannot ordinarily assert a position superior to that of the tenant merely by reason of his separate physical occupation. The executing Court must determine whether the occupant claims through the judgment-debtor or sets up an independent right.

Importers etc. v. Pheroze ⁵⁹ :

Gist of the Case: The question concerned the effect of an eviction decree upon a person claiming possession through a tenant and whether such person could resist execution on the basis of his occupation.

Held: The **Hon'ble Supreme Court** recognised the importance of determining whether the person in possession derives his right from a party to the decree or claims an independent right which requires separate consideration.

⁵⁸ AIR 1959 Cal 613

⁵⁹ AIR 1953 SC 73

Principle: For the purpose of execution, the Court must distinguish between a **derivative occupant** claiming through the judgment-debtor and a **stranger asserting an independent right**. The former may be bound by the decree in the circumstances recognised by law, whereas the latter cannot be dispossessed merely because he happens to be physically occupying the property.

Incidental Powers of the Executing Court in Giving Effect to a Decree for Possession :

A decree for possession must be effectively enforced. The executing Court is therefore not confined to mechanically issuing a warrant of possession where some obstruction or superstructure prevents the decree-holder from obtaining the possession to which he has been adjudged entitled. In appropriate circumstances, the Court may pass **incidental, ancillary or consequential orders** which are necessary to make the decree effective. Such power, however, is only in aid of execution and cannot be exercised to enlarge, modify or substitute the substantive relief granted by the decree.

B. Gangadhar v. B.G. Rajalingam ⁶⁰ :

Gist of the Case: The decree-holder had obtained a decree for possession, but a structure raised during the pendency of the proceedings obstructed delivery of the property. The question was whether the executing Court could direct removal of the structure even though the decree did not contain an express direction for its demolition.

⁶⁰ (1995) 5 SCC 238; AIR 1996 SC 780

Held: The **Hon'ble Supreme Court** recognised that, under **Order XXI Rule 35(3) CPC**, the executing Court possesses the power to take such incidental and ancillary measures as are necessary for effectively enforcing a decree for possession. Where a superstructure or other obstruction prevents delivery of the property in terms of the decree, its removal may be directed where such removal is necessary to give effect to the decree.

Principle: The executing Court may grant **incidental and ancillary relief which is necessary to effectuate the decree**, and the absence of an express direction in the decree does not, by itself, prevent the Court from taking such consequential steps. The power is particularly relevant where a structure or obstruction raised *pendente lite* prevents delivery of the very possession decreed.

Dongala Venkaiah v. Dongala Raj Reddy⁶¹ :

Gist of the Case: The execution proceedings arising from a decree for possession involved a request for consequential relief concerning the property in order to secure effective implementation of the decree.

Held: The **Hon'ble High Court of Andhra Pradesh** recognised that the executing Court may pass incidental or consequential orders where they are necessary to give effect to the decree. At the same time, such power cannot be employed to alter the substantive terms of the decree or to confer a relief which was not adjudicated upon and granted.

Principle: The incidental jurisdiction of the executing Court is **ancillary to the decree and not independent of it**. While the Court may adopt necessary measures to make

⁶¹ 2007 (5) ALD 716

the decree effective, it cannot, under the guise of consequential relief, enlarge or modify the substantive rights declared by the decree.

Third-Party Obstruction — A Stranger Can Be Heard Before Dispossession :

Rules 97 to 101 recognise that a person who is not a party to the decree may nevertheless be in possession and may have a claim which requires adjudication. The fact that the decree-holder has a final decree does not mean that every person physically found on the property can be removed without considering the source and nature of his possession.

Adjudication of Third-Party Resistance to Delivery Under Order XXI Rules 97–101 :

Where a decree for possession is sought to be executed and a person other than the judgment-debtor resists or obstructs delivery, the executing Court cannot treat the mere existence of the decree as sufficient to remove the objector without examination. The Court must ascertain the nature of the objector's claim and determine whether he is bound by the decree or claims an independent right, in accordance with the procedure prescribed under **Order XXI Rules 97 to 101 CPC**.

Bhanwar Lal v. Satyanarain ⁶² :

Gist of the Case: A person resisted delivery of possession while claiming an interest derived from the judgment-debtor. The question was whether such resistance could be dealt with merely by proceeding with the delivery warrant.

⁶² (1995) 1 SCC 6

Held: The **Hon'ble Supreme Court** held that the executing Court is required to adjudicate the obstruction and the right, title or interest asserted by the objector in accordance with the statutory scheme. The objection could not be ignored merely because the decree-holder had obtained a decree for possession.

Principle: Where resistance to delivery is raised by a person claiming through the judgment-debtor, the executing Court must examine the nature of that claim and adjudicate the objection under the execution provisions before deciding whether possession should be delivered.

Noorduddin v. Dr. K.L. Anand ⁶³ :

Gist of the Case: A person who was not a party to the original proceedings and was not named in the decree raised an objection when execution of the decree for possession was sought against the property in his possession.

Held: The **Hon'ble Supreme Court** reiterated that the executing Court must adjudicate the claim or objection raised by the person resisting delivery and determine whether the objection can be sustained under the provisions governing execution.

Principle: A person who was not a party to the decree is not liable to be dispossessed mechanically merely on the strength of the decree. Where his resistance falls within the scope of Order XXI Rules 97 to 101, the executing Court itself must determine the relevant right, title or interest.

⁶³ (1995) 1 SCC 242

Shreenath v. Rajesh ⁶⁴ :

Gist of the Case: A third party resisted execution of a decree for possession and asserted an independent right in the property. The question arose as to the stage at which such objection could be raised.

Held: The **Hon'ble Supreme Court** held that the objector need not wait until he is actually dispossessed before seeking adjudication. The executing Court is required to deal with the resistance in accordance with the provisions of Order XXI and determine the claim before proceeding further with delivery.

Principle: **An objector claiming an independent right in the property need not await actual dispossession.** Resistance to delivery itself attracts the execution machinery under Rules 97–101, and the executing Court must adjudicate the claim before taking further steps for delivery.

CONCLUSION :

Execution is the point at which a decree passes from the realm of adjudication into the realm of practical relief. The responsibility of the executing Court is therefore twofold: to protect the judgment-debtor from an execution which is contrary to law, and at the same time to ensure that lawful execution is not defeated by delay, repeated objections or the re-opening of matters which have already attained finality.

In a money decree, arrest and detention require particular vigilance because personal liberty is involved. Salary attachment requires accurate application of Section 60 and the special rules governing the disbursing authority. Movable-property

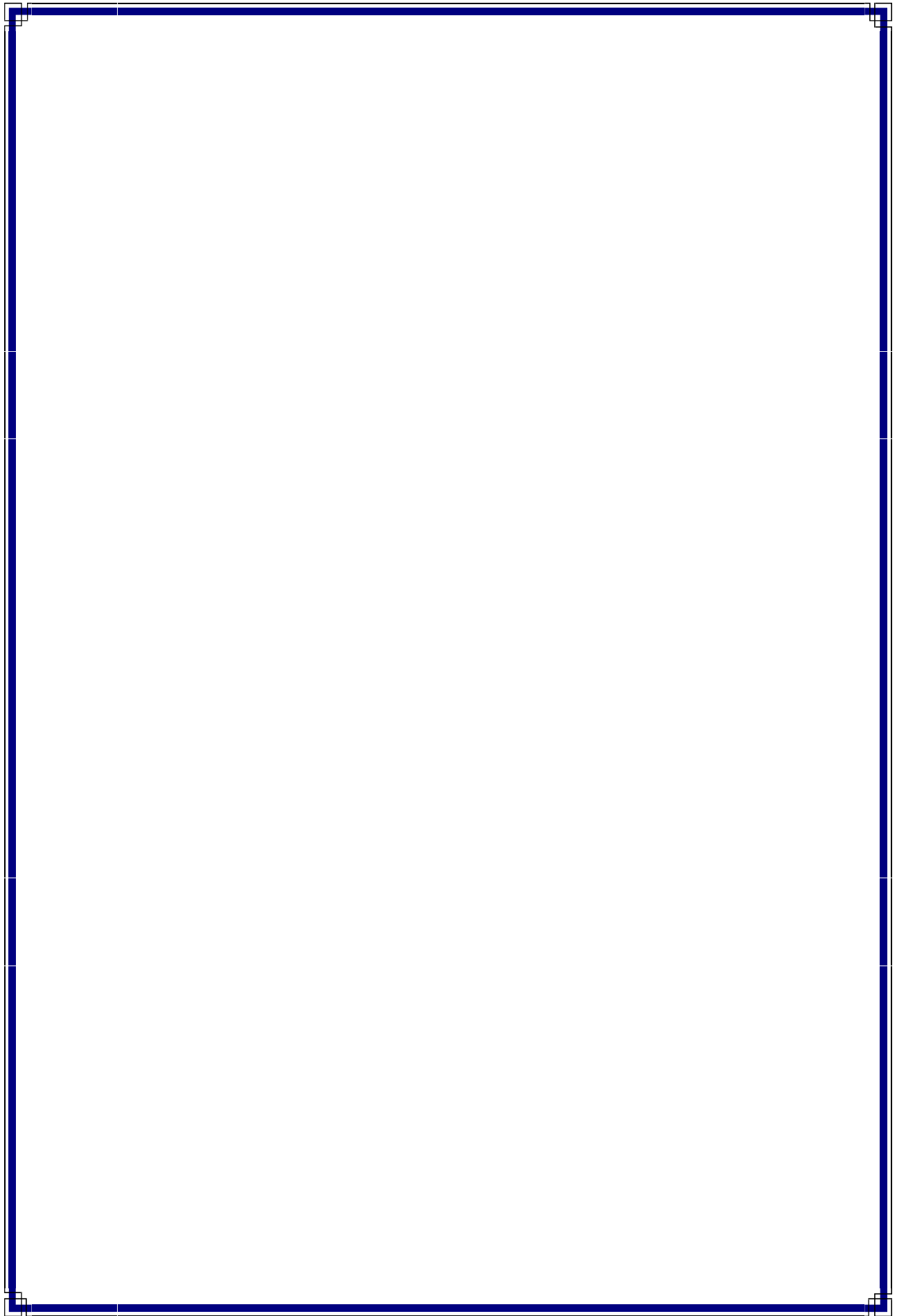
⁶⁴ (1998) 4 SCC 543; AIR 1998 SC 1827

execution requires attention to the nature of the asset, the rights of garnishees and third parties, custody and sale. Immovable-property execution requires even closer supervision of attachment, proclamation, valuation, sale, confirmation and delivery.

In injunction execution, the character of the injunction controls the permissible mode of enforcement, and the executing Court must neither dilute the decree nor enlarge it. In possession execution, the Court must distinguish actual from symbolic possession, identify who is bound by the decree, and use the adjudicatory machinery under Rules 97 to 101 where resistance or obstruction is raised.

The common thread is that the execution docket should never become a mere sequence of endorsements. Every substantive stage calls for the Court to identify the statutory requirement, apply the governing judicial principle and pass an order which both protects the integrity of the process and advances the decree towards satisfaction. That is what ultimately gives practical meaning to the adjudication already rendered.

***** Thank you *****



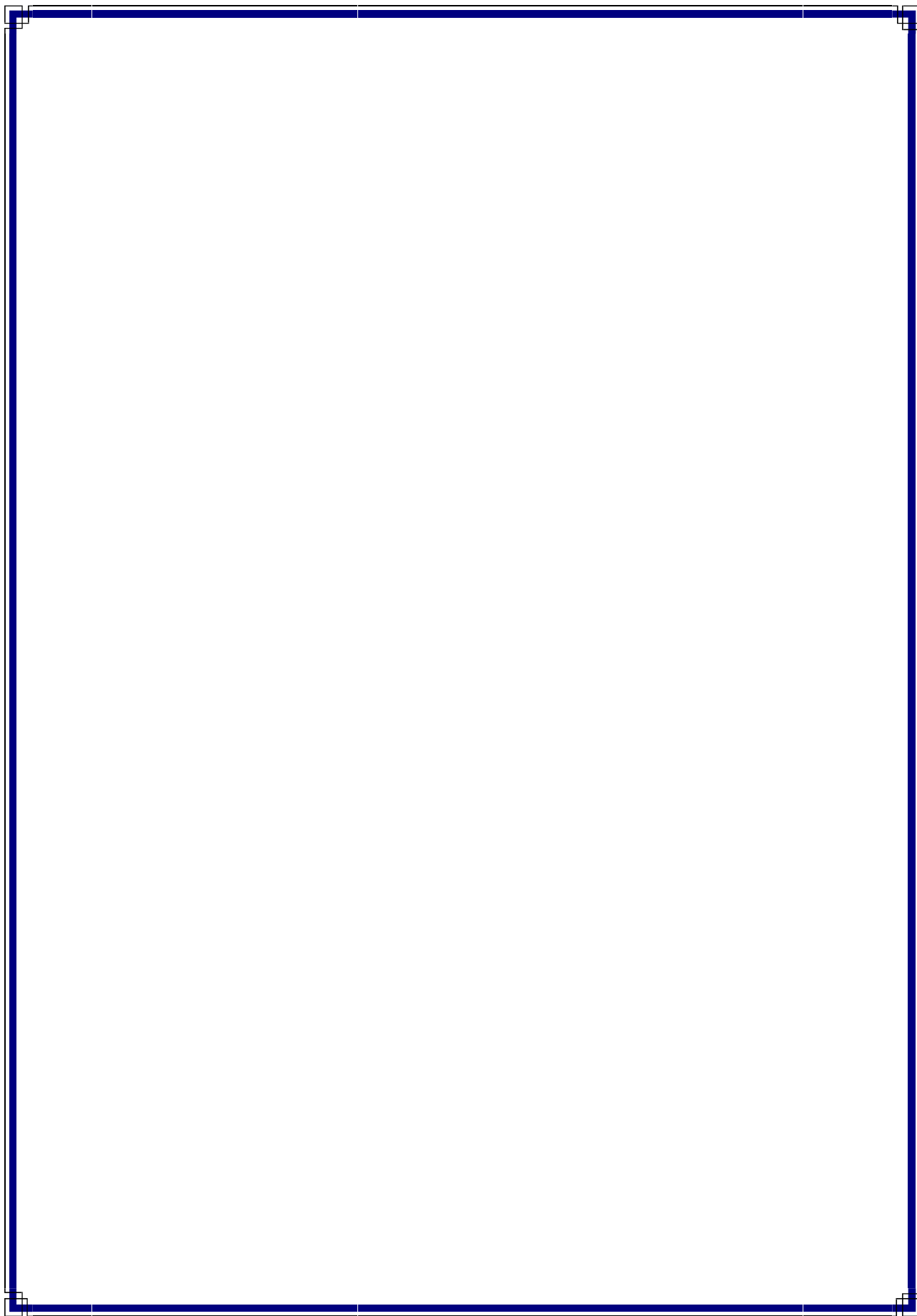
TOPICS

- d). Decree for restitution of
conjugal rights.**
- e). Decree for specific performance.**

Paper Presentation

by

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EXECUTION OF A DECREE FOR RESTITUTION OF CONJUGAL RIGHTS

I. INTRODUCTION :

Restitution of conjugal rights is a matrimonial remedy which, after adjudication, gives rise to a distinctive problem of enforcement. A decree may declare that one spouse is entitled to the society of the other, but the ordinary machinery of civil execution cannot be used to deliver one human being into the physical custody of another or to compel the continuation of marital cohabitation. The central issue, therefore, is how such a decree can be given practical legal effect while respecting the limits of civil process in matters involving intimate personal relations.

The principal execution provisions governing a decree for restitution of conjugal rights are Order XXI Rules 32 and 33 of the Code of Civil Procedure, 1908 (CPC). Rule 32 provides for enforcement where the judgment-debtor, having had an opportunity to obey the decree, wilfully fails to do so, principally through attachment of the judgment-debtor's property. Rule 33 operates as a special mechanism in relation to a decree for restitution of conjugal rights and permits the Court, in the circumstances prescribed by the rule, to fix a period for compliance and thereafter order periodical payments.

The distinctive character of restitution lies in the fact that the decree is directed towards restoration of matrimonial cohabitation, while the law does not contemplate the physical or forcible removal of one spouse and delivery of that spouse to the other. The issue is consequently not merely whether a decree for restitution can be obtained, but how it may be effectively executed when the judgment-debtor does not resume cohabitation.

The jurisprudence on execution consequently reflects a balance between preserving the authority of a judicial decree and respecting the limits of coercive civil process in the sphere of personal and matrimonial relations.

II. STATUTORY FRAMEWORK FOR EXECUTION :

A. Order XXI Rule 32 CPC: General Mode of Enforcement :

Order XXI Rule 32 provides the general execution mechanism for a decree for restitution of conjugal rights. Where the judgment-debtor has had an opportunity to obey the decree but has wilfully failed to do so, the decree may be enforced through attachment of the judgment-debtor's property. The rule therefore recognizes a civil consequence for non-compliance rather than a mechanism for physically enforcing the marital relationship.

In ***Saroj Rani v. Sudarshan Kumar Chadha***¹, the Hon'ble Supreme Court expressly linked the constitutional validity of restitution of conjugal rights to this restricted mode of execution. The Court distinguished restitution decrees from forms of execution capable of directly producing physical compliance and held that such a decree is not enforceable through physical custody or compelled sexual relations. The principal mode of enforcement is attachment of property.

This mode of enforcement also serves a social purpose. By imposing a civil consequence for continued non-compliance, it may operate as an inducement for the husband or wife to live together and settle the matrimonial dispute amicably, thereby assisting in the prevention of breakdown of the marriage.

The nature of the decree is also material when Rule 32 is compared with the execution of decrees for specific performance or injunction. In ***M.P. Shreevastava v. Mrs. Veena***², the Hon'ble Supreme Court recognized that the modes of enforcement available under Order XXI Rule 32 depend upon the nature of the decree. In the case of restitution, attachment of property is the relevant mode of enforcement. The broader coercive measures associated with specific performance or injunction do not become available merely because the decree is being executed.

B. Order XXI Rule 33 CPC: Special Mechanism for Restitution :

Order XXI Rule 33 begins with a non-obstante clause—"Notwithstanding anything in Rule 32" and consequently creates a special route for execution of a restitution decree in the circumstances prescribed by the provision.

¹ AIR 1984 SC 1562

² AIR 1967 SC 1193 : (1967) 1 SCR 147

The Court may, at the time of passing the decree or thereafter, direct that the decree be executed in the manner provided by Rule 33. If the decree is not obeyed within a period fixed by the Court, the judgment-debtor may thereafter be directed to make periodical payments to the decree-holder. The rule further provides for security and for subsequent variation or suspension of such payments.

The independent character of Rule 33 was considered in ***Sunil Kashinath Kale v. Aarti Sunil Kale***³. There, the decree-holder sought monthly payments after obtaining a restitution decree, and the executing court ordered payment without first fixing a period within which the judgment-debtor was required to comply with the decree. The Hon'ble Bombay High Court held that Rule 33 may be resorted to independently of Rule 32. However, it emphasized that Rule 33(2) cannot be invoked until the Court has first fixed a specific period within which the judgment-debtor is required to obey the decree.

Thus, although Rule 33 is independent of Rule 32, its internal procedural requirements must nevertheless be satisfied.

III. NATURE AND PURPOSE OF EXECUTION OF A RESTITUTION DECREE :

A. Symbolic Rather Than Physical Execution :

The nature of execution is central to understanding the operation of Rules 32 and 33.

In ***M.P. Nalini v. R. Karthikeyan***⁴, the husband had obtained a decree for restitution of conjugal rights which was confirmed in appeal. The wife did not resume cohabitation, and the husband subsequently sought divorce under Section 13(1-A)(ii) of the Hindu Marriage Act. The trial court treated the husband's failure to initiate execution proceedings as a reason to deny divorce, reasoning that he could not take advantage of his own wrong.

The Hon'ble Madras High Court rejected that approach and held that only symbolic execution is contemplated under Order XXI Rule 32. The law does not

³ Writ Petition No. 4831 of 2011, Bombay High Court, decided 4 August 2011.

⁴ (2013) 2 CTC 724

impose an obligation to physically bring the spouses together through execution proceedings.

The principle emerging from the decision is that execution of a restitution decree is symbolic rather than physical. Its purpose is not to secure bodily custody or compel sexual or physical cohabitation, but to attach the civil consequences authorized by law to continued non-compliance.

B. Limited Civil Consequences and Constitutional Justification :

The Supreme Court's decision in *Saroj Rani v. Sudarshan Kumar Chadha* further establishes the constitutional significance of this limited mode of enforcement.

In that case, the wife had obtained a consent decree for restitution of conjugal rights. After more than one year of non-resumption of cohabitation, the husband sought divorce under Section 13(1-A)(ii) of the Hindu Marriage Act. The wife contended that the consent decree was collusive, that the husband was taking advantage of his own wrong, and that Section 9 of the Hindu Marriage Act violated Articles 14 and 21 of the Constitution. The Supreme Court dismissed the appeal and upheld the statutory scheme.

For purposes of execution, the decision is significant because the Court treated the limited civil consequence as a defining characteristic of restitution. The decree is enforceable through the attachment mechanism recognized under Order XXI Rule 32, rather than through physical compulsion of marital relations. The existence of an executable restitution decree therefore does not amount to authorization to compel sexual or physical cohabitation.

IV. PERIODICAL PAYMENTS UNDER RULE 33(2) :

A. Compensatory, Not Penal- Consequence :

Rule 33 provides restitution decrees with a mechanism through which non-compliance may have financial consequences. The character and purpose of such payments were examined in ***Vijendra B. Singh v. Uma Vijendra Singh***⁵ :

⁵ AIR 2010 Bom 131

The case arose after the wife obtained a decree for restitution of conjugal rights and subsequently initiated execution proceedings. The Family Court directed the husband to obey the decree within one month and, upon failure to do so, to pay Rs. 20,000 per month to the wife. The husband challenged the order, contending that the executing court had exceeded the decree, that Rule 33 required wilful disobedience, and that periodical payments were penal in character.

The Hon'ble Bombay High Court rejected the characterization of the payments as penal. It treated periodical payments under Rule 33(2) as compensatory in nature. Their purpose is to compensate the wife for the material benefits of matrimonial cohabitation that she would ordinarily have enjoyed had the decree been implemented.

Accordingly, the quantum should be determined by reference to the broad financial and lifestyle considerations ordinarily relevant to maintenance and alimony. At the same time, the amount should not become punitive or exceed the financial capacity of the judgment-debtor.

B. Commencement of Periodical Payments :

The same decision establishes that the commencement date of periodical payments is fact-sensitive. The Family Court had directed that payment operate from the date of the original restitution decree. The High Court modified the order so that payments commenced from the date of the execution application.

The decision therefore does not support a mechanical rule that periodical payments under Rule 33(2) must invariably begin from the date of the restitution decree. The appropriate commencement date depends upon the circumstances of the case, including the stage at which the execution proceedings were initiated.

V. PROCEDURAL POWERS OF THE EXECUTING COURT UNDER RULE 33

A. Independence of Rule 33 from Rule 32 :

The decision in *Sunil Kashinath Kale v. Aarti Sunil Kale supra*, provides the principal authority on the procedural relationship between Rules 32 and 33.

The decree-holder invoked Rules 32 and 33 and sought monthly payments. The executing court ordered payment of Rs. 10,000 per month without first directing the judgment-debtor to obey the restitution decree within a specified period.

The Hon'ble Bombay High Court held that the non-obstante clause makes Rule 33 independent of Rule 32. Consequently, the Court need not first obtain an order under Rule 32 before resorting to Rule 33.

However, the independence of Rule 33 does not mean that all its sub-rules operate without procedural distinction. The Court differentiated between the power under Rule 33(1) to direct the manner in which the decree is to be executed and the monetary consequence contemplated by Rule 33(2).

B. Condition Precedent to Periodical Payments :

The procedural sequence under Rule 33(2), as clarified in *Sunil Kashinath Kale*, is therefore significant:

The Court must first fix a specified and just period within which the judgment-debtor is required to obey the restitution decree. If the decree is not obeyed within that period, the Court may thereafter direct periodical payments. A direct order for monthly payments which bypasses the first step is unsustainable. Thus, while Rule 33 is independent of Rule 32, the monetary consequence under Rule 33(2) remains subject to an express statutory condition precedent.

VI. ROLE OF THE FAMILY COURT AS EXECUTING COURT :

The statutory scheme applicable to Family Courts is also relevant where the decree is passed and executed by the same judicial forum. Section 10 of the Family Courts Act applies the CPC to proceedings before the Family Court, while Section 18 gives a decree of the Family Court the same effect as a decree of a civil court and permits execution by the same court or by the ordinary civil court to which the decree is sent.

Consequently, where a Family Court has passed a decree for restitution of conjugal rights, the fact that the same Family Court is also acting as the executing

court does not disable it from exercising the powers available under Order XXI Rule 33. The executing court remains subject to the same statutory limitations and procedural safeguards that govern execution before a civil court.

VII. PROCEDURAL LIMITS AND SAFEGUARDS :

A. The Executing Court Cannot Rewrite or Enlarge the Decree :

Although the executing court possesses powers necessary to give effect to the decree, those powers are not unlimited.

In *Ishwarappa Malappa Birajdar v. Meenakshi Ishwarappa Birajdar*⁶, the husband was subject to a restitution decree dated 17 May 2008. During execution, the wife sought attachment of his salary and immovable property. The executing court passed an attachment order and subsequently treated the husband's application as one under Rule 33.

The husband challenged the orders, contending that he had not been properly heard and that the proceedings had been taken under a provision that had not been invoked in the original application.

The Hon'ble Bombay High Court quashed the impugned orders. The decision demonstrates two important limitations. First, the executing court must identify and apply the correct statutory mechanism. Secondly, Rule 33 cannot be used as a general discretionary power detached from the terms of the decree and the procedural application before the court. The decision also reinforces the importance of procedural fairness. An opportunity to address issues relating to attachment and protected salary deductions must be afforded at the execution stage.

B. Satisfaction of the Decree and Section 47 CPC :

The jurisdiction of the executing court under Section 47 CPC was considered in *M.P. Shreevastava v. Mrs. Veena* supra.

The husband had obtained an ex parte decree for restitution of conjugal rights. The wife subsequently returned to the matrimonial home and sent

⁶ Writ Petition No. 3544 of 2014, decided on 3 April 2014

communications seeking to resume cohabitation, but the husband refused to accept them. She consequently sought to have the decree recorded as satisfied.

The Supreme Court held that Section 47 CPC confers plenary jurisdiction upon the executing court to determine questions relating to the execution, discharge and satisfaction of a decree. The expression “court executing the decree” is not restricted to a situation in which the decree-holder has already instituted formal execution proceedings.

The decision is particularly significant from the perspective of the judgment-debtor. A person against whom a restitution decree has been passed is not without procedural agency. Where circumstances establish satisfaction or discharge, Section 47 may be invoked to prevent subsequent misuse of the decree—for instance, by treating a subsisting but already satisfied decree as the basis of a subsequent matrimonial claim.

C. A Void Portion of a Decree May Be Refused Execution :

The general principle that an executing court cannot go behind the decree is subject to the important qualification that a legally void portion of a decree need not be executed.

In ***Vijay Kumar v. Mst. Kamla***⁷, the decree combined restitution of conjugal rights under Section 9 of the Hindu Marriage Act with directions under Section 33 of that Act concerning property or a monetary alternative. During execution, the husband challenged the latter portion as being without jurisdiction.

The Hon’ble Jammu and Kashmir High Court held that Section 33 does not apply to proceedings for restitution under Section 9 because its operation in that context would contradict the conciliatory purpose of restitution. The offending portion of the decree was therefore treated as a nullity to that extent.

The case illustrates that although an executing court ordinarily enforces a decree as drawn, it is not bound to execute a portion that is itself void for want of jurisdiction. The finality of a decree does not compel execution of a legally null direction.

⁷ 1988 AIR J&K 39 : 1987 KASHLJ 707,

VIII. RESTITUTION AND MAINTENANCE :

A. Section 125 CrPC: Non-Compliance Does Not Automatically Bar Maintenance :

The relationship between a restitution decree and a subsequent maintenance claim was considered by the Hon'ble Supreme Court in ***Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto @ Dinesh Kumar Mahato & Anr.***⁸

The question before the Court was whether a wife's failure to comply with a decree for restitution of conjugal rights automatically disentitled her from claiming maintenance under Section 125(4) CrPC. The husband relied upon the restitution decree as a complete answer to the maintenance claim. On the facts, however, the Court found that the husband's conduct, including his failure to support the wife in important circumstances and his failure to take bona fide steps to restore marital life provided sufficient reason for her to remain apart.

The Supreme Court restored the Family Court's maintenance order and emphasized that the existence of a restitution decree and non-compliance with it do not, by themselves, create an automatic bar under Section 125(4). The statutory inquiry remains whether the wife refused to live with her husband without sufficient reason. A civil decree for restitution is therefore relevant to a maintenance proceeding, but it is not conclusive of the distinct statutory question arising under Section 125(4) CrPC.

B. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 :

A similar distinction arises in proceedings for separate residence and maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (HAMA).

In ***Laxmi Sahuani v. Maheswar Sahu***⁹, the wife had previously obtained a decree for restitution of conjugal rights and subsequently instituted proceedings for maintenance and separate residence. She alleged that, despite the decree, the husband failed to take her back and acted in a manner amounting to desertion.

⁸ 2025 INSC 55 : (2025) 1 SCR 462.

⁹ AIR 1985 Ori 11 : (1984) 1 OLR 518 : (1985) 2 DMC 176

The Hon'ble Orissa High Court held that Section 18(1) must be read with Section 18(2). A wife living separately must establish a statutory ground justifying separate residence in order to claim separate maintenance. On the facts, the Court treated the husband's failure to make bona fide efforts to restore conjugal life as relevant to the question of desertion and consequently allowed maintenance.

The decision demonstrates that a restitution decree does not mechanically extinguish or establish a maintenance claim. A subsequent maintenance proceeding requires an independent examination of the statutory grounds and the conduct of both parties.

C. Satisfaction of a Restitution Decree and the Conduct of the Parties

In ***Smt. Maya Devi v. Kailash Chander***¹⁰, the petitioner-wife had obtained a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act on 10.01.2003 and subsequently sought maintenance. The husband thereafter approached the executing court under Sections 47 and 51 and Order XXI Rule 32 CPC seeking to have the restitution decree recorded as satisfied, contending that he was willing to resume matrimonial life but that the wife had refused to join him. The wife opposed the application on the ground that the husband had contracted a second marriage and had subjected her to abuse and mental cruelty, which provided a reasonable justification for her refusal to cohabit.

While recognizing, in light of *M.P. Shreevastava v. Mrs. Veena*, that either party may approach the executing court for recording satisfaction of a restitution decree, the High Court held that the trial court had erred in treating the wife's refusal as intentional disobedience despite the husband's second marriage. The Court emphasized that the purpose of Section 9 HMA is reconciliation and preservation of marriage, but matrimonial cohabitation ultimately cannot be compelled irrespective of the circumstances prevailing between the parties. The trial court's findings were therefore held to be perverse and based on a misreading of the law, and the impugned order was set aside. The decision reinforces that execution and satisfaction of a restitution decree cannot be determined mechanically. The executing court must consider the subsequent conduct and circumstances of the

¹⁰ Civil Revision No. 1571 of 2006

parties while ensuring that the decree is not treated as an instrument for compelling matrimonial cohabitation.

IX. RESTITUTION, EXECUTION AND SUBSEQUENT DIVORCE :

A. Non-Execution and Section 13(1-A)(ii) of the Hindu Marriage Act :

The relationship between execution and subsequent divorce was examined in *M.P. Nalini v. R. Karthikeyan* supra.

The husband had obtained a decree for restitution of conjugal rights but had not instituted execution proceedings. The wife argued that this omission demonstrated that the husband did not genuinely seek resumption of marital life and was therefore taking advantage of his own wrong.

The Hon'ble Madras High Court rejected that proposition. It held that failure to execute a restitution decree does not, by itself, constitute the kind of positive misconduct contemplated by Section 23(1)(a) of the Hindu Marriage Act.

The decision separates two distinct legal questions. Execution provides a procedural means of giving effect to the restitution decree, whereas Section 13(1-A)(ii) creates an independent statutory consequence where there has been no restitution of conjugal rights for the prescribed period. The absence of an execution petition does not, by itself, extinguish that statutory consequence.

B. Consent Decree, Non-Compliance and Section 23(1)(a) :

The decision in *Saroj Rani v. Sudarshan Kumar Chadha* supra reinforces the same distinction.

The Supreme Court rejected the contention that a consent decree for restitution of conjugal rights was inherently collusive or that non-compliance with the decree automatically constituted the decree-holder's "wrong".

For the purposes of Section 23(1)(a), what is relevant is whether the party seeking matrimonial relief has committed a positive act or serious misconduct which makes the resumption of marital life impossible. Mere non-compliance with the restitution decree, without more, does not automatically satisfy that test.

X. SYNTHESIS OF THE LEGAL POSITION :

The authorities collectively establish several propositions concerning the execution of restitution decrees.

- a) A decree for restitution of conjugal rights is legally enforceable, but it is not physically enforceable. The law does not authorize the forcible production of one spouse before the other or the compulsion of sexual or personal cohabitation.
- b) Order XXI Rule 32 provides the general mechanism of enforcement through attachment of property where the judgment-debtor has wilfully failed to obey the decree after having an opportunity to do so.
- c) Order XXI Rule 33 constitutes a special and independent mechanism. It may be invoked without first obtaining an order under Rule 32, but the monetary consequence under Rule 33(2) is subject to a procedural condition: the Court must first fix a specified and just period for compliance.
- d) Periodical payments under Rule 33(2) are compensatory rather than penal. Their quantum should be assessed having regard to the financial circumstances, standard of living and other considerations ordinarily relevant to maintenance or alimony, while ensuring that the award does not become punitive or exceed the judgment-debtor's financial capacity.
- e) The executing court remains bound by the decree and the applicable procedural framework. It cannot rewrite or enlarge the decree, invoke an inappropriate statutory mechanism without procedural basis, or disregard the requirements of natural justice.
- f) Section 47 CPC provides the executing court with jurisdiction to determine questions relating to execution, discharge and satisfaction. A judgment-debtor may therefore seek recognition of circumstances demonstrating that the decree has already been satisfied or discharged.
- g) A restitution decree does not automatically determine subsequent claims for maintenance. Proceedings under Section 125 CrPC or Section 18 HAMA

involve independent statutory inquiries into the circumstances and conduct of the parties.

- h) The absence of execution proceedings does not, by itself amount to misconduct sufficient to defeat a subsequent matrimonial claim under Section 23(1)(a), nor does non-compliance with a restitution decree automatically preclude the operation of Section 13(1-A)(ii) of the Hindu Marriage Act.

XI. CONCLUSION :

The execution of a decree for restitution of conjugal rights reflects a deliberate compromise between two competing imperatives: preserving the authority and efficacy of a judicial decree, while recognizing the legal and practical impossibility of physically compelling an intimate personal relationship. Order XXI Rules 32 and 33 of the CPC embody this compromise. Rule 32 provides the general mechanism of enforcement through attachment of property, while Rule 33 establishes a special and independent mechanism under which continued non-compliance may, subject to the prescribed procedural sequence, attract periodical financial consequences.

The proper understanding of restitution execution is therefore neither that the decree is coercively enforceable in the physical sense nor that it is merely declaratory. It occupies an intermediate category: a decree carrying real and enforceable civil consequences, implemented through symbolic and financial mechanisms, but confined by the safeguards governing civil execution. The jurisprudence further demonstrates that execution cannot be considered in isolation from the broader matrimonial consequences of a restitution decree. Questions concerning satisfaction, maintenance, separate residence and subsequent divorce remain governed by their respective statutory frameworks and require independent consideration of the conduct and circumstances of the parties.

Ultimately, the law seeks to preserve the juridical value of a restitution decree without converting the civil process into an instrument for bodily or intimate compulsion.

EXECUTION PROCEEDINGS IN RESPECT OF A DECREE FOR SPECIFIC PERFORMANCE

I. Introduction :

A decree for specific performance marks the successful adjudication of a contractual dispute, particularly in transactions concerning immovable property, where the court directs the vendor to perform the contractual obligation, ordinarily by executing a sale deed in favour of the decree-holder upon fulfilment of the conditions stipulated in the decree. However, the grant of such a decree does not necessarily bring the dispute to an effective conclusion, as its ultimate efficacy depends upon successful execution.

Difficulties may arise where the judgment-debtor refuses to execute the sale deed or deliver possession, the identity or extent of the property is disputed, the property has been transferred to a subsequent or *pendente lite* transferee, the vendor possesses only a limited share in the property, statutory restrictions affect the transfer, or there is delay in depositing the balance sale consideration. Questions may also arise where execution proceedings encounter competing claims or revenue proceedings. The law governing such execution proceedings is primarily shaped by the Specific Relief Act, 1963, the Code of Civil Procedure, 1908, and the Transfer of Property Act, 1882. The judicial approach has generally been to ensure that a decree-holder obtains the fruits of the decree without allowing technical objections to frustrate its implementation, while simultaneously maintaining the fundamental limitation that an executing court cannot go beyond the decree or create substantive rights that were not adjudicated. Thus, execution of a decree for specific performance involves a careful balance between faithful enforcement of the adjudicated contractual right and adherence to statutory and procedural limitations.

II. Nature and Scope of Execution of a Specific Performance Decree :

The execution of a decree for specific performance may involve several stages:

1. Payment or deposit of the balance sale consideration by the decree-holder;

2. Execution and registration of the sale deed by the judgment-debtor;
3. Execution of the document through the court where the judgment-debtor fails or refuses to comply;
4. Delivery of possession where the circumstances warrant it;
5. Determination of the identity or boundaries of the property;
6. Resolution of objections by persons claiming under the judgment-debtor; and
7. Dealing with applications concerning extension of time, rescission, or other matters arising under Section 28 of the Specific Relief Act.

The executing court cannot ordinarily alter, enlarge, or substitute the decree. At the same time, it is required to interpret and implement the decree in a manner that makes the adjudicated relief effective. This principle is particularly important in property disputes because technical discrepancies in survey numbers, boundaries or descriptions should not automatically defeat a decree where the identity of the property can otherwise be satisfactorily established.

III. Power of the Executing Court to Grant or Facilitate Possession :

One of the recurring questions is whether possession can be delivered in execution when the decree primarily directs specific performance and does not expressly contain a separate direction for possession.

The leading authority is ***Babu Lal v. Hazari Lal Kishori Lal***¹¹. The Supreme Court examined Sections 22 and 28 of the Specific Relief Act, 1963, read with Section 55 of the Transfer of Property Act, 1882. It held that Section 22 is substantially a rule of pleading intended to prevent multiplicity of proceedings. The absence of an express prayer for possession does not necessarily require the decree-holder to institute a separate suit after obtaining a decree for specific performance. The Court upheld the grant of possession in execution and rejected a hyper-technical approach that would deprive the successful plaintiff of the fruits of the decree.

¹¹ AIR 1982 SC 818

The significance of this case lies in distinguishing between the substantive right created by the decree and the incidental relief necessary to make that right effective. Where possession is a natural and necessary consequence of the specific performance of a contract for sale, the execution court may facilitate such relief in accordance with the statutory scheme. Thus, a decree-holder should not automatically assume that a separate suit for possession is necessary merely because possession was not separately articulated in the operative portion of the decree.

IV. Execution Against Subsequent and Pendente Lite Transferees :

A. The Problem of Subsequent Transfers :

A particularly difficult situation arises when the judgment-debtor transfers the suit property to a third party after the agreement to sell, during the pendency of the specific performance suit, or after the decree. The effect of the transfer depends significantly upon its timing and the legal basis on which the transferee claims title. Section 19 of the Specific Relief Act permits enforcement of specific performance against persons claiming under the original contracting party by a subsequent title, subject to the statutory protection available to a transferee for value who has acted in good faith and without notice of the original contract.

Where the transfer takes place during the pendency of the suit, Section 52 of the Transfer of Property Act, 1882, the doctrine of *lis pendens* assumes particular importance. A transferee *pendente lite* takes the property subject to the result of the pending litigation. Recent Supreme Court decisions have reaffirmed that once proceedings concerning the property have been instituted, the doctrine of *lis pendens* limits the ability of a subsequent purchaser to claim protection merely by asserting absence of notice.

B. Form of Decree Against the Transferee :

The classic authority is ***Lala Durga Prasad And Another vs Lala Deep Chand And Others***¹². The Supreme Court held that, where a subsequent transferee holds title to the property, the proper form of decree is to direct specific

¹² AIR 1954 SC 75

performance between the original vendor and the plaintiff and require the subsequent transferee to join in the conveyance so as to pass the title vested in him to the plaintiff.

The same principle was subsequently recognized in ***R.C. Chandiok v. Chuni Lal Sabharwal***¹³. The object is not to impose the original contractual obligations upon the subsequent transferee but to ensure that the title held by that transferee is conveyed in implementation of the decree.

Accordingly, where a third party claims through the judgment-debtor and the transfer is legally subordinate to the decree, execution may proceed against the transferee in the manner permitted by law.

C. Obstruction by Third Parties :

Where a third party obstructs delivery of possession or otherwise resists execution, the appropriate procedure is ordinarily to invoke the machinery under Order XXI Rules 97 to 101 of the CPC. Such claims are to be adjudicated by the executing court in accordance with the statutory procedure rather than automatically relegating the decree-holder to a fresh suit.

The Supreme Court's approach in ***Silverline Forum Pvt. Ltd. v. Rajiv Trust***¹⁴, illustrates the broad principle that questions arising from resistance to execution can be adjudicated within the execution proceedings where the C.P.C so provides.

The crucial distinction, however, is between a person claiming under the judgment-debtor and a person asserting an independent title. A truly independent title claim may raise questions beyond the scope of ordinary execution and may require separate adjudication depending upon the facts and applicable procedural provisions.

V. Draft Sale Deed — Opportunity to Raise Objections :

¹³ AIR 1971 SC 1238

¹⁴ AIR 1998 SC 1754

In the case of ***P. Venkanna Chetti v. B. Apparao Naidu***¹⁵, the Hon'ble High Court of Andhra Pradesh considered the procedure under Order XXI Rule 34 CPC relating to execution of a document through Court. The Court emphasised the importance of furnishing the judgment-debtor with an opportunity to examine the draft document and raise objections before the document is settled and executed. Where the judgment-debtor appears in the execution proceedings and seeks to object to the form or contents of the proposed conveyance, such objections are required to be considered in accordance with the procedure prescribed under Rule 34. The decision thus underscores that the execution of the document through Court should remain confined to the terms of the decree, while preserving the judgment-debtor's procedural opportunity to object to the draft.

VI. Defect in Service of Draft — Execution Need Not Be Dismissed :

In the case of ***Shanmugam v. Arthanari***¹⁶, the Hon'ble High Court of Madras considered an execution petition under Order XXI Rule 34 CPC which had been dismissed on the ground that the draft sale deed had not been served upon the judgment-debtor. The Court held that the executing Court ought not to adopt a hyper-technical approach by dismissing the entire execution petition for a curable procedural defect. The Court could direct the decree-holder to file the draft document and effect proper service in accordance with Form No. 54 and the defect could be cured by exercising the procedural powers available under Sections 148 and 149 CPC. The decision therefore illustrates that a procedural lapse in Rule 34 proceedings need not defeat the execution itself where the defect can appropriately be rectified.

VII. Non-Service of Draft Where Judgment-Debtor Remained Ex Parte :

In the case of ***Darshan Kaur v. Gurdial Singh and Another***¹⁷, the Hon'ble High Court of Punjab and Haryana considered execution of a decree for specific performance where notice of the execution proceedings had been served upon the judgment-debtor, but he failed to appear and was thereafter proceeded against *ex parte*. A sale deed was executed through a Local Commissioner, and the judgment-

¹⁵ AIR 1959 AP 666 (DB)

¹⁶ AIR 2010 (NOC) 938 (Mad.)

¹⁷ AIR 1990 P&H 291

debtor subsequently challenged it on the ground that the draft had not been served upon him under Order XXI Rule 34. The Court held that, in the circumstances of a judgment-debtor who had remained ex parte despite notice, non-service of the draft did not by itself invalidate the execution, particularly in the absence of demonstrated prejudice. The decision thus has to be understood in the context of the judgment-debtor's failure to participate in the execution proceedings and not as laying down that service of the draft is generally unnecessary.

VIII. Court-Executed Document — Applicable Formal Requirements :

In the case of ***Sait General v. Pachigolla China Ramaswami and Others***¹⁸, the Hon'ble High Court of Andhra Pradesh considered a document executed by the Court under Order XXI Rule 34 CPC and the formal requirements applicable to such Court-executed document. The Court examined the special statutory mechanism by which the Judge executes the document on behalf of the person directed by the decree to execute it. The decision is relevant for the proposition that a document executed through the Court under Rule 34 must be dealt with according to the special procedure governing Court execution, rather than being treated in every respect as a document voluntarily executed by the judgment-debtor. The case may therefore be referred to while considering the formal validity of a document executed by the Court in implementation of a decree.

IX. Execution Cannot Alter the Substance of the Decree :

In the case of ***Jai Narain Ram Lundia v. Kedar Nath Khetan and Others***¹⁹, the Hon'ble Supreme Court considered a decree for specific performance containing reciprocal and interdependent obligations relating to transfer of shares and a partnership interest upon payment of the stipulated consideration. During execution, one component of the decree had become incapable of performance because the partnership had been dissolved and an attempt was made to substitute a different subject matter in its place. The Court held that a party seeking execution of a decree containing reciprocal obligations must be capable of performing the

¹⁸ AIR 1960 AP 465 (DB)

¹⁹ AIR 1956 SC 359; 1956 SCR 62

corresponding obligation, and that the executing Court cannot substitute a different subject matter or materially alter the decree in order to facilitate execution. The decree has to be executed according to its terms, and the executing Court cannot rewrite or divide the substantive obligations embodied in it.

X. Protection Available to Bona Fide Subsequent Purchasers :

The law does not render every subsequent purchaser automatically liable to a decree for specific performance. Section 19(b) of the Specific Relief Act recognizes the protection available to a transferee who: 1) acquires the property for value; 2) acts in good faith; and 3) has no notice of the original contract.

The protection is particularly relevant where the transfer occurred before institution of the suit. Once a suit concerning the property is instituted, the doctrine of lis pendens under Section 52 of the Transfer of Property Act becomes central. Therefore, the execution court must examine the date of the transfer, the date of institution of the suit, the transferee's source of title, the existence of notice or knowledge, and whether the transferee claims independently or through the judgment-debtor.

The Supreme Court has also emphasized that a subsequent purchaser seeking the benefit of the bona fide purchaser exception cannot rely merely on a formal assertion of innocence where the circumstances demonstrate inadequate due diligence concerning the property.

XI. Specific Performance to the Extent of the Vendor's Share :

Another important issue arises where the vendor contracts to sell the entire property but subsequently it is discovered that the vendor owns only a part or undivided share in it.

The Supreme Court's decision in ***Kammana Sambamurthy (D) by LRs v. Kalipatnapu Atchutamma (D) & Ors.***²⁰, is significant. The vendor had represented himself as the absolute owner but was found to possess only a half share. The Court considered Section 12 of the Specific Relief Act and held, in the

²⁰ AIR 2011 SC 103

circumstances of the case, that specific performance could be enforced to the extent of the vendor's lawful share.

The principle is important at the execution stage. An executing court cannot convey a title which the judgment-debtor does not possess. Consequently, where the vendor is legally entitled only to a particular share, execution may be confined to that share rather than resulting in an impermissible transfer of the interests of persons who were not bound by the decree.

Thus, execution of a specific performance decree must remain within the limits of the vendor's adjudicated and transferable interest.

XII. Statutory Restrictions on Execution :

A decree for specific performance does not operate in isolation from other laws governing transfer of property. The executing court cannot compel a transfer that is prohibited by a statutory restriction or that requires prior permission or sanction which has not been obtained. The decree-holder's contractual and decretal rights must therefore be reconciled with applicable land, ceiling, revenue, registration, planning and other statutory requirements. The principle is that an executing court enforces the decree but does not possess unlimited authority to disregard a statutory prohibition governing the transfer of property.

Accordingly, before seeking execution of a sale deed, the decree-holder should ascertain:

- Whether the judgment-debtor possesses transferable title;
- Whether any statutory restriction affects alienation;
- Whether permission or sanction from a competent authority is required;
- Whether the property is subject to acquisition, ceiling, tenancy or other statutory proceedings; and
- Whether registration and stamp requirements have been complied with.

The objection based upon a statutory prohibition must, however, be distinguished from a merely technical objection designed to frustrate execution. The

court must examine whether the restriction is legally operative and whether it actually prevents implementation of the decree.

XIII. Identification and Misdescription of the Suit Property :

Property identification disputes are common in execution proceedings, particularly in rural land litigation involving survey numbers, subdivisions, boundaries and revenue records.

The decision in ***Gurram Anantha Reddy v. Katla Sayanna***²¹, decided by the High Court of Judicature at Hyderabad on 30 March 2015, is instructive. The decree-holder sought appointment of an Advocate Commissioner to identify the property because of a discrepancy in the survey number. The judgment-debtor argued that the executing court could not go beyond the decree and that the decree itself required amendment.

The High Court rejected the challenge. It relied upon Order XXVI Rule 18-A CPC, which makes the provisions concerning commissions applicable to execution proceedings. The Court treated the discrepancy as a case of misdescription rather than a fundamentally different property and upheld the Commissioner's appointment.

The decision illustrates an important boundary: an executing court may use procedural mechanisms to identify the property actually covered by the decree, but it cannot use execution proceedings to introduce a completely new property or adjudicate a substantive right that was never granted.

The objective is to ensure that accidental mistakes or misdescriptions do not destroy an otherwise valid decree while simultaneously preventing execution from becoming a vehicle for enlarging the decree.

XIV. Delay in Payment — When Does the Decree Become Inexecutable?

In the recent case of ***Ram Lal v. Jarnail Singh (Deceased) through LRs & Ors.***²², the Hon'ble Supreme Court considered whether substantial delay in

²¹ 2015 (4) ALD 716

²² 2025 SCC OnLine SC 584

depositing the balance sale consideration under a decree for specific performance, by itself, amounted to abandonment of the contract or rendered the decree inexecutable. The Court held that mere delay does not automatically produce either consequence. What has to be examined is the conduct of the decree-holder and, in particular, whether it amounts to a positive refusal to perform his part of the contract. The Court also recognised the continuing power of the Court under Section 28 of the Specific Relief Act to consider extension of the time fixed for compliance, on appropriate terms and having regard to the circumstances of the case.

It was held that the delay in depositing the balance sale consideration is not, by itself, sufficient to treat a decree for specific performance as inexecutable. The Court has to examine the conduct of the decree-holder and the circumstances of the delay in the context of Section 28 of the Specific Relief Act.

XV. Effect of Appellate Decision — Doctrine of Merger :

In the recent Supreme Court decision in **Dr. Amit Arya v. Kamlesh Kumari**²³, it was considered whether a decree for specific performance could be treated as inexecutable merely because the execution petition was filed after expiry of the period fixed by the Trial Court for payment of the balance sale consideration. The Trial Court decree had subsequently been affirmed by the High Court in second appeal. The Hon'ble Supreme Court held that expiry of the period fixed by the Trial Court did not, by itself, bring execution to an end, particularly where the decree-holder had already been found ready and willing to perform his part of the contract. The Court further held that once the High Court had disposed of the appeal on merits, the Trial Court decree merged into the appellate judgment, and the decree of the superior Court became the final, binding and operative decree for purposes of execution.

It was held that the after an appeal is decided on merits, the appellate decree is the operative decree for execution by virtue of the doctrine of merger. The period originally fixed by the Trial Court cannot be considered in isolation to declare the decree inexecutable.

²³ 2025 LiveLaw (SC) 1240; SLP(C) No. 20091/2022, decided on 19 December 2025

XVI. Time for Payment of Balance Consideration and Section 28 of the Specific Relief Act :

Compliance with the condition requiring payment or deposit of the balance sale consideration is central to execution of a specific performance decree. Section 28 of the Specific Relief Act gives the court continuing control over the decree in specified circumstances and permits extension of time for payment where the interests of justice so require.

The decision in *Ram Lal v. Jarnail Singh (now deceased) through LRs & Ors.* Supra, is particularly relevant. The decree required payment of the balance consideration within a specified period. The plaintiff did not make the deposit within the originally contemplated period, and the High Court treated the decree as having become inexecutable. The Supreme Court disagreed and restored the executing court's order permitting the deposit, observing that where the appellate court had not stipulated a fresh time period, the decree-holder was required to act within a reasonable period. The Court also imposed interest as an equitable consequence of the delay.

The decision demonstrates that delay is not necessarily synonymous with abandonment. The court must consider the conduct of the parties, the terms of the decree, the history of the litigation and whether the decree-holder genuinely abandoned the contract.

XVII. Jurisdiction and Section 28:

The question of which court may consider an application under Section 28 received detailed consideration in *Ishwar (since deceased) through LRs & Ors. v. Bhim Singh & Anr.*²⁴.

The dispute concerned the decree-holder's failure to deposit the balance sale consideration within the stipulated period and the judgment-debtors' application for rescission of the contract. The Supreme Court considered the relationship between the execution proceedings and the original proceedings under Section 28. It recognized the jurisdiction of the court of first instance in relation to Section 28

²⁴ 2024 INSC 651

while emphasizing that such proceedings technically concern the original side of the suit rather than merely the execution side.

The decision is important because it prevents an overly technical approach to the procedural character of Section 28 applications. At the same time, it confirms that extension of time is not an automatic entitlement: the court must exercise judicial discretion having regard to the conduct of the parties and the circumstances of the case.

XVIII. Assignment of a Decree for Specific Performance :

The rights arising from a decree for specific performance may also become the subject of an assignment. In the recent case of ***Rajeswari & Ors. v. Shanmugam & Anr.*²⁵**, the Hon'ble Supreme Court considered whether an instrument assigning a decree for specific performance of an agreement for sale of immovable property was compulsorily registrable under the Registration Act, 1908.

The facts are significant. The dispute arises from an ex-parte decree dated 13.09.1993 for the specific performance of an agreement of sale regarding immovable property. On 17.07.1995, the decree-holder executed a "Made Over Deed" (assignment deed) in favour of the first Respondent (assignee), transferring the rights and interests of the suit, appeal, and decree. The first Respondent filed an Execution Petition seeking recognition of this assignment. On 13.03.2008, the Executing Court ordered the execution of the sale deed in favour of the assignee. The Appellants (legal heirs of the judgment-debtor) challenged the execution via E.A. No.180/2009 under Section 47 of the CPC. They contended that the assignment deed was not registered and was therefore unenforceable under Section 17 of the Registration Act, 1908, as it purportedly transferred an interest in immovable property. Conversely, the Respondent argued that the assignment only transferred the right to derive benefits from the decree, not the title to the property itself.

The Apex court dismissed the appeal, upholding the High Court's decision and held that:

²⁵ 2025 INSC 1329

1. A decree for specific performance, or an agreement of sale, does not create any legal interest, title, or charge in the immovable property; it only creates a personal obligation (as per Section 54 of the Transfer of Property Act and *Suraj Lamp & Industries*).
2. Since the decree itself does not create an interest in the property, an instrument assigning such a decree does not fall under the compulsory registration requirements of Section 17 of the Registration Act.
3. The assignee acts as a "representative-in-interest" under Section 15 of the Specific Relief Act.

The assignment deed did not require registration, and the High Court was correct in setting aside the Executing Court's order.

XIX. Revenue Proceedings and Competing Decrees :

A specific performance decree may sometimes encounter a competing revenue decree or revenue recovery proceeding concerning the same property. Such conflicts cannot be resolved through a blanket proposition that a civil decree automatically overrides every revenue proceeding.

The first question is the nature and legal effect of the competing proceeding. Revenue proceedings may concern fiscal liabilities, recovery of land revenue, mutation, classification or other matters within the statutory jurisdiction of revenue authorities, whereas a decree for specific performance determines contractual rights and obligations.

Where execution of a revenue order would directly defeat rights conclusively adjudicated by a competent civil court, the decree-holder may seek appropriate protection from the competent court. Conversely, the existence of a civil decree does not automatically extinguish an independent statutory liability or prevent lawful action by a revenue authority.

The correct approach is therefore to examine:

1. The subject matter of each decree or order;
2. The rights actually adjudicated;

3. The identity and legal status of the property;
4. Whether the revenue proceeding concerns title, possession or merely fiscal recovery;
5. Whether the revenue authority is legally competent to affect the right created by the civil decree; and
6. Whether the execution sought would contradict the express terms of either adjudication.

Accordingly, claims of “precedence” between a specific performance decree and a revenue decree should be determined from the statutory framework and precise facts rather than treated as an absolute rule.

XX. Discretionary Character of Specific Performance and its Effect on Execution :

Specific performance is an equitable remedy and its grant involves judicial discretion. The court considers factors such as the terms of the contract, the conduct of the parties, readiness and willingness, delay and the overall circumstances of the transaction.

Section 16(c) of the Specific Relief Act makes continuous readiness and willingness on the part of the plaintiff a fundamental requirement in cases to which the provision applies. The decree-holder must therefore demonstrate conduct consistent with an intention to complete the transaction. The significance of this requirement does not disappear merely because a decree has been obtained. At the execution stage, the decree-holder's conduct may become relevant when the court considers applications under Section 28, particularly applications for rescission or extension of time.

Nevertheless, once a final decree has been passed, the executing court cannot ordinarily reopen the merits of the original suit. The proper approach is to enforce the decree according to its terms while dealing with matters that the executing court is statutorily empowered to determine.

XXI. Legal Representatives and Continuity of Proceedings :

Specific performance proceedings may continue for several years, and during that period a party to the contract may die. The legal representatives of the deceased party may then have to be brought on record in accordance with the applicable procedural rules. Failure to substitute necessary legal representatives can have serious consequences. The issue is therefore not merely procedural but directly affects the enforceability and continuity of the litigation.

The practical lesson is that the decree-holder should maintain an updated record of all parties and their legal representatives throughout the execution stages. Where the judgment-debtor dies after the decree, the decree-holder should take appropriate steps to bring the legal representatives on record in execution, subject to the CPC and the nature of the decree.

XXII. Limits on the Executing Court :

The proposition that execution should secure the fruits of a decree does not mean that the executing court possesses unlimited jurisdiction.

The executing court generally cannot:

1. Go behind a final decree;
2. Adjudicate issues that were conclusively determined in the suit;
3. Grant a substantive relief inconsistent with the decree;
4. Convey property belonging exclusively to a person who is not bound by the decree;
5. Ignore a mandatory statutory prohibition; or
6. Convert execution proceedings into a new suit concerning an independent title.

At the same time, the executing court may adopt procedural measures necessary to implement the decree, including appropriate directions regarding execution of documents, delivery of possession, identification of property, and

adjudication of objections permitted by the CPC. The correct principle is therefore one of effective execution within the boundaries of the decree.

XXIII. Preliminary Scrutiny of an Execution Petition for Specific Performance :

1. **Executable Decree:** Whether the decree is final and executable and the relief sought corresponds with the operative portion of the decree.
2. **Parties:** Whether the decree-holder and the judgment-debtor are correctly shown and whether any legal representative is required to be brought on record by reason of a death already known at the time of filing.
3. **Property:** Whether the property described in the E.P. corresponds with the property covered by the decree and is sufficiently identifiable.
4. **Consideration:** Whether the E.P. discloses compliance with the decree-holder's obligation to pay or deposit the balance consideration, where such compliance is a condition of the decree.
5. **Relief Sought:** Whether the mode of execution sought is legally appropriate - particularly, whether the execution of the sale deed through Court is sought under Order XXI Rule 34 CPC.
6. **A.P. Civil Rules — Document Execution:** Where Rule 34 execution is sought, whether the requirements under A.P. Civil Rules 219 and 220 have been substantially complied with, including the draft document, duplicate, notice and prescribed process fee.
7. **Scope of E.P.:** Whether the relief claimed is confined to implementation of the decree and does not seek a substantive relief beyond the decree.

XXIV. Conclusion :

Execution of a decree for specific performance is not a merely mechanical stage following the judgment. It is the stage at which the contractual right recognized by the court must be translated into an effective transfer of property and where appropriate, possession. A decree-holder may in appropriate circumstances,

obtain possession in execution without being compelled into unnecessary multiplicity of proceedings. Subsequent and pendente lite transferees cannot ordinarily defeat the decree merely by acquiring the property from the judgment-debtor. At the same time, a bona fide purchaser protected by Section 19(b), a person holding an independent title, or a statutory prohibition affecting transfer may require separate consideration.

The execution court also possesses sufficient procedural flexibility to resolve property-identification difficulties and other matters necessary to implement the decree. *Gurram Anantha Reddy case* demonstrates that appointment of a Commissioner may be permissible in execution where it assists in identifying the property actually covered by the decree. Recent Supreme Court decisions further strengthen the principle that execution should not be defeated by an excessively technical approach. *Ram Lal case* and *Ishwar case* demonstrate the continuing significance of Section 28 in dealing with delayed payment and rescission, while *Rajeswari case* clarifies the legal character of an assignment of the benefit of a specific performance decree.

Ultimately, successful execution depends upon a careful examination of the decree, the title and share of the judgment-debtor, the status of subsequent transferees, compliance with statutory requirements, payment of consideration, and the precise relief sought. The guiding principle should be that execution must faithfully implement the decree, secure the fruits of adjudication, and at the same time remain within the legal boundaries of the rights actually determined by the court.

***** Thank you *****