

CLAIM PETITIONS IN EXECUTION PROCEEDINGS

INTRODUCTION:

Where any property is attached in execution of a decree, it is always open to the parties, their representatives or third parties to raise objection against such attachment. The rights of the third parties other than the parties to the suit are also protected in chapter Execution i.e., Order XXI of Code of Civil Procedure, 1908.

Before the amendment of CPC in 1976, the executing court used to deal with adjudication of claims and objections summarily. The scope of such enquiry was very limited and confined to possession and the only remedy for the aggrieved party is to institute a separate suit.

Pursuant to the recommendations made by the Law commission in its fourteenth report, the Legislature keeping in mind various nature of claims that may occasion during the long saga of any particular litigation; amended Civil Procedure Code, 1908, by providing that all questions including questions of title are to be settled finally in execution proceedings itself and not by a separate suit.

Before going into the intricacies of the claim petition, I would like to explain what claim petition is in a general parlance. A claim petition is a petition filed by the third party questioning the attachment effected under rule 54 or at the time of subjecting the property for auction or even at the time of delivery of property to the auction purchaser.

The paper aims to address the nature of claim petitions that can be filed and case laws governing the same under two limbs:

- 1. At the time of attachment and before confirmation of sale: Order 21 Rule 58.*
- 2. At the time of delivery of property: Order 21 Rule 97,98,99,100 .*

CLAIM PETITION AT THE TIME OF ATTACHMENT AND BEFORE CONFIRMATION OF SALE:

Relavant provision: Order 21 Rule 58:

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

Provided that no such claim or objection shall be entertained :

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

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

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

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

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

(b) disallow the claim or objection; or

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

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

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

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule(1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

1. WHO MAY APPLY:

It was held in **Union of India Vs Jardine Henderson (1979) 2 SCC 258** that **any person** who at the time of attachment of property **has some right, title or interest** in or possessed to the property attached, **may lodge a claim or raise an objection** against the attachment.

Even though the word third party is not used in the provision, a person who is **not** a party or representative of the party to the proceeding may file a claim petition if he has any right or other interest in the property attached by the court.

*The expression “third party” was interpreted by the Honourable Supreme Court as referring to such persons who do not derive any rights or claims through Judgment Debtor in **Sha Sulthana (died) Per Lrs vs Anil Agarwal and another reported in 2012 (5) ALT 546.***

Distinction between Section 47 CPC and O.XXI R.58:

If an objection is raised to the attachment of the property by a **party or his representatives**, to the execution petition, the question falls under section 47 of the CPC and it should be decided by the executing court and not by a separate suit.

On the other hand, if such an objection **is raised by a third party**, he has to file an application under Order XXI. R.58 CPC before the executing court.

Where the executing court entertains the claim or objection, it will hold a full-fledged enquiry into the right, title and interest of the claimant or objector and record a finding either upholding the claim or objection; or rejecting it.

2. Whether Order XXI Rule 58 of Code Civil Procedure, 1908 be invoked in case of attachment of moveable property or immovable property?

Prima facie, reading of the provision does not differentiate with regard to the nature of property against which claim can be raised. Furthermore, it was held in **Gopana Subba Rayudu Vs Pasupuleti Venkata Ramana [2009 (6) ALD 544]** that Rule 58 of Order 21 of Civil Procedure Code, 1908 can be invoked not only in cases of attachment of immovable property but also for movable properties and the rule does not differentiate between the nature of property that was attached.

3.What Is The Condition Precedent For Maintainability Of A Claim Application?

Proceedings by way of claim petition are applicable only in cases where property of the judgment-debtor has been attached. The language of Order 21 Rule 58 of CPC itself makes clear that a claim can be maintained only where an attachment is subsisting. As categorically laid down by the Hon'ble High Court in **K.L.Geetha Nandini and another vs. K.L.Nagaraju and another 2009 (3) APLJ 79 (AP)**.

Meaning of words "such attachment" in Sub-rule (1) of Rule 58 –

It pre-supposes attachment –

The precondition for filing an application under Order XXI Rule 58 CPC is that there must be an attachment of any property. If there is no attachment or if the property is not capable of being attached, then no petition can be filed under the rule.

4.When can the court refuse to entertain claim petition?

According to the proviso of **Sub-rule 1 of Rule 58**, the executing court may refuse to entertain a claim petition if-

- i) Where before the claim is preferred or objection is made, the property attached has already been **sold**
- ii) Where the court considers that the claim or objection was **designedly or unnecessarily delayed**.

First circumstance is when the property has already been sold:

Sale means confirmation of sale. If claim petition is filed pending confirmation Order XXI Rule 59 comes to the limelight. **Now the question is what should the court do when the claim petition under rule 58 is filed after confirmation of sale.**

In case of **Magunta Mining Co. vs. M.Kodandarami reddy, AIR 1983 AP 335**, it was held that whenever a claim is preferred under Order 21 Rule 58 against attachment of immovable properties, **the fact that the properties are sold or that the sale was confirmed, will not deprive the Court of its jurisdiction to adjudicate upon the claim.**

It is said that the **inquiry into the claim can be proceeded** with by the trial Court or the appellate Court and **in the event of the claim being allowed, the sale and the confirmation of sale shall be treated as a nullity.**

Second circumstance where the executing court may refuse to entertain the claim petition if it considers that the objection or claim was designedly or unnecessarily delayed.

However, before refusing the petition, the court shall give an opportunity to the claimant to explain the delay, failing which the only remedy left to the claimant would be filing a separate suit.

5. Whether failure to raise an objection to an attachment before judgment is a bar to claim at the time of execution or not?

In this regard, It was held by the Andhra Pradesh High Court in **A Eswarappa Vs M. Krishna Reddy AIR 1964 AP 99** that the failure to raise an objection to an attachment before judgment **is no bar to** file claim petition in the execution proceedings.

The claim may not be rejected on the sole ground that the claimant has an opportunity to prefer a claim or objection at the earlier stage of the proceeding. The court has to look into the reason for failure to raise an objection to an attachment before judgment.

It is also clearly laid in **Rule 58(2)** that, all issues including the questions relating to right, title or interest in the property arising between the parties to the proceeding or their representatives relevant to the adjudication of the claim or objection shall be determined by the court dealing with the claim or objection and not by a separate suit.

6. Whether order passed in the claim petition is subjected to appeal or revision?

According to Order XXI **Rule 58(4)**, the order made by the court shall have the same force and be subject to the same conditions as to **appeal or otherwise as if it were a decree**. The remedy available to the parties is to prefer appeal over the order passed by the execution court.

Rule 58 (5):

“Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to **entertain** it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the **result of such suit**, if any, an order so refusing to entertain the claim or objection shall be **conclusive**”.

Meaning of the word “entertain” in Rule 58(5) – the word “entertain” in Sub Rule 5 means **“adjudicate upon” or “proceed” to consider on merits – Hindustan Bank Vs. Punu Sahu (Dead) through L.Rs., AIR 1970 Supreme Court 1384.**

Meaning of the words – “Result of the suit” in Rule 58(5) – Includes result in appeal.

7. Procedure to be followed by the execution court if a claim petition is filed.

Relavant provision:Rule 59 of Order XXI

According to the rule, where before the claim was preferred or the objection was raised, the property attached has already been advertised for sale, the court may-

- (a) If the property is **movable**, postpone the sale.
- (b) If the property is **immovable**, make an order that the property shall not be sold or that it may be sold but the sale shall not be confirmed.

8. Nature of Petition:

Rule 246 of Civil Rules of Practice provides that an application by a claimant or objector under Rule 58 of Order 21 shall be made by a verified execution application entitled in execution petition under which the property in question has been attached and shall set forth the particulars of the claim in the manner prescribed for the plaint in a suit.

8. Can a claim decided by the court during suit proceedings be agitated again in Execution Proceedings?

The Hon'ble Supreme Court in **Ravinder Kaur V Ashok Kumar AIR 2004 SC 904** held that the plea which has already been adjudicated upon by the trial court **cannot be agitated** again in E.P. proceedings under Section 47 and Order XXI Rule 58 Code of Civil Procedure, **because the executing court is not competent to go behind the decree and substitute its own opinion to the one expressed by the court which passed the decree.**

SECOND LIMB OF THE PRESENTATION

IS CLAIM PETITION AFTER CONFIRMATION OF SALE:

When the property has been sold, the next step would be to obtain possession of the property, and when there is resistance to delivery of possession to decree- holder or purchaser under such circumstances claim petition can be filed.

The relevant provisions are section 74 and rules 97 to 103 of order XXI of the Code Of Civil Procedure.

Petition filed by the Decree Holder/ Purchaser of property are governed by Rule 97 and 98 r/w Rule 101 of Order XXI.

Petition filed by the person in possession other than judgment debtor is governed by Rule 99 r/w Rule 101 of Order XXI.

74. Resistance to execution—

Where the **Court is satisfied** that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such **other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.**

Order XXI Rule 97: Resistance or obstruction to possession of immovable property—

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

1. Whether objector's objection should be first adjudicated upon or whether the objector be first disposed and then the objection should be adjudicated upon?

In the case of **Brahmadeo Choudhary Vs Rishikesh Prasad Jaiswal [AIR 1997 SC 856]**, it has been held by the Hon'ble Supreme Court that the executing court must first adjudicate upon the objection of the objector on merits under Rule 97 (2) of Order 21 CPC.

2. What is the legal position if the objector filed a separate suit for declaration of his right or title over the property which the court has ordered for delivery to the auction purchaser/ Decree holder and the same is pending before another court?

In the case of **Tanzeem -E- Sufia Vs. Bibi haliman, [AIR 2002 SC 3083]** , it has been held that even if the objector filed a suit for declaration of right, title for which decree is sought to be executed, **the executing court shall have power to decide the objection under Order XXI Rule 97 CPC as covered under Rule 101.**

[98 . Orders after adjudication— (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the **applicant be put into the possession of the property or dismissing the application;** or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, **to be detained in the civil prison for a term which may extend to thirty days.**

99 . Dispossession by decree-holder or purchaser— (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

This rule applies where the person other than the judgment debtor is dispossessed by the decree holder or the purchaser he can claim for his dispossession and establish his independent right, title.

The Hon'ble Supreme Court in case of **Brahmadeo Choudhary Vs Rishikesh Prasad Jaiswal [AIR 1997 SC 856]** observed that **court should not insist that possession should be handed over first** and then an application under Order 21 Rule 99 be moved to complain about dispossession.

101 . Question to be determined— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court **dealing with the application and not by a separate suit and;**

for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

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

As per Rule 102, claim petition is not maintainable by the person who purchased the property pendente lite.

Under Rule 103 any order made by the Court upon adjudication under Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as **to an appeal or otherwise as if it were a decree.**

105. Hearing of application.—

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, **may fix a day for the hearing of the application.**

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

Period of limitation to prefer appeal is 1 year as per Article 98 from the date of final order.

CASE LAWS AND LEGAL POSITIONS:

1. Guidelines for speedy disposal of execution proceedings: Rahul S Shah v. Jitender Kumar Gandhi SLP (C) NOS. 11859-11860/2020

- 1) The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must **not issue notice on an application of third-party claiming rights in a mechanical manner**. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
- 2) 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.
- 3) The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.
- 4) 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.
- 5) 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.

2. Is investigation necessary when the court opines that claim or objection was designedly or unnecessarily delayed?

The Hon'ble High Court in case of **T. Muniratnam (Died) And Others v. T. Ashok And Another, dated 15.10.2001** observed that prior to 1976 amendment, for the court to take a decision whether it should investigate into the claim or not due to the delay, opportunity to a party to explain the delay must be necessarily accorded. After 1976 amendment **no such opportunity need be given to explain the delay, because the Rule prohibits entertaining belated application by Court.**

Further, alternate remedy under Rule 58(5) of Order 21 C.P.C. provides for opportunity to the claimant whose petition was dismissed under the proviso to sub-rule (1), to file a suit for establishing his right.”

3. On whom the burden of proof lies?

In case of **Rahatunnisa vs. Md. Saber Ali Khan, 2008(5) ALD 615**, it was observed that the claim petition is to be tried like a suit and the burden of proof lies on the claimant to lead evidence. If the claim petitioner fails to lead evidence in support of his claim, the Court cannot be found fault with especially after the original and appellate Court have also confirmed the dismissal.

4. A person whose claim was negated under under Order 21Rule 58 CPC , can such claim be re-agitated under Order 21 Rule 97 CPC.or not?

The Hon'ble High court of Andhra Pradesh in **M.Padma vs. M.Seshagiri Rao, 2003(5) ALD 3** once a claim application under Rule 58 of Order 21, claiming a right in the possession, was dismissed, the same claim cannot be raised at the time of delivery under Rule 97 of Order 21 CPC. It is held that the 2nd petition is barred by principles of res judicata.

6. For rejecting the application on ground of delay, should Court provide an opportunity to applicant or not?

The Court has undoubted power under Rule 58(1)(b) of Order 21 if the Court considers that the claim or objection was designedly or unnecessarily delayed. But this power cannot be exercised arbitrarily. Mere delay is not sufficient, **but a designed delay shall be apparent on the fact of the record to exercise such power.**

It is advised that whenever the Court proposes to refuse to entertain the application on the ground of such designed or unnecessary delay, the Court is bound to give an opportunity to the claimant to explain that the delay was unavoidable or was on account of ignorance of the proceedings pending. **Moreover perusal of rule 105 of order 21 goes to show that opportunity of hearing must be accorded to the parties.**

CONCLUSION:

Obtaining a decree in favor is just one half of the story, but the other half of the story is to enjoy the fruits of the decree. In general parlance, Order XXI is also addressed as a code within the code, and as such its understanding is very much necessary to ensure that the decree holder enjoys the fruits of the decree.

Execution can be fraudulent in several ways such as, the immovable property may not belong to the judgment-debtor; the decree-holder may take possession of such property without the knowledge of the real owner; the judgment-debtor may conceal the properties belonging to him, The judgment-debtor may have already filed an insolvency petition showing the same immovable property as one of his assets in which case such property becomes an object of rateable distribution among all the creditors of the judgment-debtor amongst others to name a few.

In order to ensure that execution is not delayed, the Hon'ble Supreme Court in case of **Rahul S Shah v. Jitender Kumar Gandhi SLP (C) NOS. 11859-11860/2020** laid down several guidelines that must be followed to ensure that execution proceedings are carried out in a smooth and systematic manner and to ensure that objections are addressed in a swift manner.

A clear understanding of the claim petitions will ensure that unnecessary objections by litigators are avoided at its inception stage and ensures that the decree gets executed at the earliest point of time, ensuring that justice is in fact served and not just seemed to be served.

Smt. P.J. Sudha	II Additional District Judge Kurnool at Adoni
Sri. G. Yagna Narayana	Civil Judge (Senior Division), Adoni
Sri. Sai Subhash	I Additional Civil Judge (Junior Division), Adoni