

Paper Presentation on
**Execution of Money Decree
Different Modes of Execution
– Provisions of Law & Case-Law.**

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The law exists to allow the plaintiff to get the relief given to him by the Court upon execution of the decree.
- Subrata Roy Sahara vs. Union of India, AIR 2014 SC 3241.

Introduction:-

The execution of a money decree is governed by the Code of Civil Procedure, 1908 (CPC) and it provides several modes for the execution of such decrees, ensuring that the decree-holder can effectively enforce the decree. In **Gurpreeth Singh vs. Union of India, (2006) 8 SCC 457**, the Hon'ble Apex Court provides significant clarification on the execution of money decrees, particularly focusing on the calculation of interest on decrees and the principles of appropriation. It was held that once a decree is passed, the interest should be calculated only on the outstanding balance of the principal amount, not on the whole decreed amount. The clarification of the Hon'ble Apex Court is that interest on the principal amount should cease as and when payments are made, and the D.Hr should not be entitled to interest on amounts that have already been paid. The Apex Court reaffirmed the principle laid down in *Ramanathan Chettiar's case, AIR 1939 Madras 50*.

Section 36 of Code of Civil Procedure deals. Application to orders.-

The provision of this Code relating to the execution of decree (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

EXPLANATION AND JUDICIAL DEFINITIONS

1. Execution in the popular sense of the term means enforcement of the decree or order of a court.
2. Execution means enforcement or giving effect to decrees or orders through the process of court.
3. It is the medium through which decree-holder compels the judgment-debtor to carry out the mandate of the decree or order as the case may be.
4. It enables the decree-holder to recover the fruits of the judgment.
5. Main rules of procedure are to be found in Part II of the Code

The Execution of the decrees governed under Sections 36-74 and Order XXI rules 1 to 106 of the Code.

Case 1. - The Supreme Court of India in Ghanshyam Das Gupta Anant Kumar Singh, AIR 1991 SC 2251 opined that "So far as the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order 21 of the Code taken care of different situations providing effective remedies not only to judgment-debtors and decree-holder but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the Civil Court."

To take a simple example, where a court passes a decree in favour of 'A' for the payment of Rs. 10,000/- and against 'B', there 'A' is decree-holder and 'B', the judgment-debtor and the sum of Rs. 10,000/- is judgment debt or decretal debt. In view of this decree for Rs.10,000/- in favour of 'A', 'B' should pay this sum to him. But despite this decree if 'B' refuses to pay the amount to W. 'A' will initiate steps to get the payment of Rs. 10,000/- through the medium of court or through the process of court. In other words 'A' will compel 'B' through the process of court to make payment of Rs. 10,000/-. So the entire procedure (through the process of court) with the help of which 'A' will realize the amount of Rs. 10,000/- from 'B' is known as execution.

Order XXI of Code of Civil Procedure deals with 'Execution of Decrees and Orders Payment under Decree'

1. Modes of Execution governed under sections paying money under decree.-

(1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

2. Payment out of Court to decree-holder.-

(1) Where any money payable under a decree of any kind is paid out of Court, ²[or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor ²[or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

¹[(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.]

²(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.
Courts executing decrees

2. In the application of the Act to Punjab, sub-rule (3) rep. by the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 36.

3. Lands situate in more than one jurisdiction.-

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

4. Transfer to Court of Small Causes. -

Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the title being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras ³[or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras ²[or Bombay], as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

2. In the application of the Act to Punjab, sub-rule (3) rep. by the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 36.

⁴**[5. Mode of transfer.-** Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.]

6. Procedure where Court desires that its own decree shall be executed by another Court.-

The Court sending a decree for execution shall send-

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

7. Court receiving copies of decree, etc., to file same without proof.-

The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

8. Execution of decree or order by Court to which it is sent.-

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Execution by High Court of decree transferred by other Court.-

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Section 51 of CPC – Procedure in execution

51. Powers of Court to enforce execution— Subject to such conditions and limitations as may be prescribed, the Court

may, on the application of the decree-holder, order execution of the decree—

(a) by delivery of any property specifically decreed;

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

(c) by arrest and detention in prison [31][for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or

some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

STATE AMENDMENTS

Uttar Pradesh— In section 51 of the Code Clause (bb) shall be inserted after clause (b).

"(bb) by transfer other than sale by attachment or without attachment of any property"

[U.P. Act No. 24 of 1954].

52. Enforcement of decree against legal representative—

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession,

the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. Liability of ancestral property— For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Different Modes of Execution:

To enforce execution, power is conferred to the Court under Sec. 51 of CPC. Section 51 CPC deals with the power of a Civil Court to enforce execution of money-decrees rendered by a Civil Court, a fortiori, there is celebrated judgment '**Jolly George Varghese**'s case, (1980) 2 SCC 360

to follow while ordering arrest of J.Dr, wherein it was highlighted 'Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts.' and there is another important which is also significant ruling as to this context, and it is **Subrata Roy Sahara v. Union of India, AIR 2014 SC 3241**. There is always conflation between Civil law and Criminal law but it is seminal to see keep in mind the language of Order 21 Rule 37. 'The proviso attached to Rule 37 of Order 21 provides that the court can issue an arrest warrant without first issuing notice if the judgment-debtor is likely to abscond court's jurisdiction'.

Arrest and detention in the civil prison

Rule 37 - Discretionary power to permit judgment debtor to show cause against detention in prison— (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison: Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment- debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

Rule 38 - Warrant for arrest to direct judgment-debtor to be brought up

— Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Rule 39. Subsistence allowance—

(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder into Court such sum as the Judge thinks sufficient for the subsistence of the judgment- debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the

judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit : Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Rule 40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest—

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of the Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already

under arrest: Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

Attachment of property

Rule 41 . Examination of judgment-debtor as to his property—

[264][(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

(a) The judgment-debtor, or

(b) [265][where the judgment-debtor is a corporation], any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such

judgment-debtor, or officer or other person, and for the production of any books or documents. [266]

[(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.]

Rule 42 . Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined— Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Rule 43 . Attachment of movable property, other than agricultural produce, in possession of judgment-debtor— Where the property to be attached is movable property, other than agricultural produce, in the

possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.[267]

Rule [43A . Custody of movable property—

(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree- holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled

to the restoration thereof, for any loss or damage cause by his default;
and

(b) such liability may be enforced—

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.]

Rule 44. Attachment of agricultural produce— Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment- debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce

shall thereupon be deemed to have passed into the possession of the Court.

Rule 45. Provisions as to agricultural produce under attachment—

(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or

gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under the rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Rule 46. Attachment of debt, share and other property not in possession of Judgment-debtor — (1) In the case of—

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.[268]

[46A . Notice to garnishee—

(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the

amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

46B. Order against garnishee— Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

46C . Trial of disputed questions— Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit: Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

46D . Procedure where debt belongs to third person— Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

46E . Order as regards third person— After hearing such third person and any person or persons who any subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

46F . Payment by garnishee to be valid discharge— Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46G . Costs— The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

46H . Appeals— An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

46I . Application to negotiable instruments— The provisions of rule 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.]

Rule 47. Attachment of share in movables— Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Rule 48. Attachment of salary or allowances of servant of the Government or railway company or local authority—

(1) Where the property to be attached is the salary or allowances of a servant of the Government or of a servant of a railway company or local authority [269][or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one

payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the appropriate Government may be notification in the Official Gazette appoint in this behalf,—

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Courts.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment. [270]

[(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice

or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government Company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of the rule.]

[271] [Explanation.—In this rule, "appropriate Government" means,

—

(i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(ii) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or

State Act, or a servant of any other Government company, the State Government.][272]

[48A . Attachment of salary or allowances of private employees—

(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtors is within the local limits to which this Code for the time being extends and while he is beyond those-limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.]

Rule 49. Attachment of partnership property—

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the

judgment-debtor, and on such of the other partners as do not join in the application and as are within India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such application shall be similarly served.

Rule 50. Execution of decree against firm— (1) Where a decree has been passed against a firm, execution may

be granted—

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [273][section 30 of the Indian Partnership Act, 1932 (9 of 1932)].

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person

be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2) 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.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

[274]

[(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provision of rule 10 of Order XXX.]

Rule 51. Attachment of negotiable instruments— Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Rule 52. Attachment of property in custody of Court or public officer— Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court

from which the notice is issued: Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Rule 53. Attachment of decrees— (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or [275]

[(ii) (a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree.]

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under subhead

(ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceeds to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another of decree the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1) the attachment shall be made by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the

judgment- debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order [276][with knowledge thereof or] after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Rule 54 . Attachment of immovable property—

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge. [277]

[(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government in the office of the Collector of the district in which the land is situate [278][and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

Rule 55 . Removal of attachment after satisfaction of decree— Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Rule 56. Order for payment of coin or currency notes to party entitled under decree— Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.[279]

Rule 57. Determination of attachment—

(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.] [280]

Order XXI Rule 30 to Rule 36 deals to Mode of Execution.

30. Decree for payment of money.-

Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

31. Decree for specific movable property.-

(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for ³[three months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the

decree to be paid as an alternative to delivery of movable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 3[three months] from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

1. Attachment and Sale of the Judgment Debtor's Property (Movable or Immovable):-

Sections 51(b), 60-67, Order XXI, Rules 41-57 CPC:- Sec. 51 of CPC:

Section 51 of the Civil Procedure Code (CPC), 1908, outlines the '*modes of execution of a decree*'. This section provides the court with various options to ensure that a decree is executed in a manner that is just and effective.

Modes of Execution :- The section enumerates different methods through which a decree can be executed.

a. By delivery of any property specifically decreed.

- b. By attachment and sale, or by sale without attachment, of any property.
- c. By arrest and detention in prison.
- d. By appointing a receiver.
- e. In such other manner as the nature of the relief granted may require.

Useful Citations:

1. Ch. Kranti Vs. G. Ganesh Goud and another, 2023 (6) ALT 93.
2. Sri Sri Housing Constructions, (Builders and Developers) rep. by its Managing Partners, Hyderabad Vs. Kanuri Annapuran and others, 2023 (4) ALT 749.
3. Sabira Vs. Kammili Rajababu and another, 2023 (2) ALT 26.
4. D. Meena Vs. K. Lakshmi Narayana and anr, 2023 (5) ALT 398.
5. H. Nirmala Vs. C. Padmavathi and others, 2020 (5) ALT 424.

2. Discretion of the Court:-

The court has the discretion to choose the appropriate mode of execution based on the specifics of the case. The aim is to ensure the decree-holder gets the relief granted in the decree effectively.

Useful Citations:

1. G. Rama Mohan Rao and another Vs. Government of Andhra Pradesh, rep. by its Principal Secretary and Chairman, Agricultural, Marketing and

Co-operative Department and another, 2017 (3) ALT 1 (DB), U. DURGA PRASAD RAO and RAMESH RANGANATHAN,jj

2. P.R. Yelumalai Vs. N.M. Ravi, 2015 (4) SCJ 203 (DB)

3. Somisetty Bala Venkata Subbaiah Shetty (Died) per L.R., S. Venkateswarlu Gupta v.

P. Sreenivasulu Setty, 2007 (2) ALT 205.

4. Bhoganadham Sessaiah Vs. Veerabhadrayya and others, 1971 (2) alt 227 (F.B)

5. K. Seetharama Dass vs. Sikile Moses and others, 1999 (2) ALT 567.

3. Arrest and Detention:-

- The provision for *arrest and detention* is particularly significant. However, it comes with safeguards to prevent abuse. The civil court must be satisfied that the J.Dr has the means to pay the decree but refuses or neglects to do so. This provision seeks to balance between enforcing decrees and protecting the rights of individuals. A decree holder who seeks execution by way of arrest and detention of the judgment debtor in civil prison shall file an affidavit in terms of Order 21 Rule 11-A CPC stating the grounds on which the arrest is applied for, as was held by *His Lordship Hon'ble Sri Justice U. Durga Prasad Rao*, in *Rajeti Prabhakara Rao Vs. Mosa Satyavathi and others*, 2019 (4) ALT 142.

Useful citations:

1. Rajeti Prabhakara Rao Vs. Mosa Satyavathi and others, 2019 (4) ALT 142.
2. Kalepu Nagavenkata Durga Prasad and another Vs. M/s. Sriram Transport Finance Company Limited, Rajamahendravaram, rep. by its Authorized Signatory-cum-GPA Holder Sri Tupakula Nageswara Rao, 2024 (2) ALT 327 (DB).
3. Robert C Dsilva Vs. Tikkana China Demudu, 2022 (6) ALT 45.
4. Badireddi Nageswara Rao Vs. Telu Satyanaarayana Murthy, 2022 (1) ALT Online (AP) 11459.
5. C. Dilip Kumar Vs. Y. Veera Raghavulu, 2024 (2) ALT 437.

4. Appointment of Receiver : -

This mode allows the court to appoint a receiver to manage the property or business of the judgment-debtor to satisfy the decree.

Useful citations:

1. Kavuru Venkataramanamma @ Sitaravamma (died) per L.R and another Vs. Kavuru Narayana Rao, 2017 (2) ALT 62.
2. Avon Lifesciences Limited, Medak District rep. by its Director Vs. M/s. Ashika Credit Capital Ltd., Kolkata, rep. by authorized rep. Ms. Subidha Saraf, 2018 (4) ALT 448 (DB).
3. M/s. Sherali Khan Mohamed Manekia Vs. State of Maharashtra and others, 2015 (3) scj 722 (DB).
4. Dasari Laxmi Vs. Bejjenki Sathi Reddy and another, 2015 (1) ALT 209.

5. Shree Ram Urban Infrastructure Ltd. (Formerly known as Shree Ram Mills Ltd.) Vs. Court Receiver, High Court of Bombay, 2014 (7) SCJ 359 (DB).

5. The clause in Sec. 51 (e):- -

The clause in Sec. 51 (e), '*in such other manner as the nature of the relief granted may require*' provides flexibility to the court to devise other methods of execution that are suitable for the specific circumstances of the case.

a). Attachment:- The court may order the attachment of the judgment debtor's property. Example: Or. 38 Rule 5; Or. 21, Rules 43, 54, 52 of CPC.

b). Movable properties are attached by actual seizure, while immovable properties are attached by prohibitory orders by following the procedure under Order 21 of CPC. Ex:- Or.21 R.43.

c). Sale:- After attachment, the property may be sold through a public auction to realize the decree amount. Ex:- Or. 21 Rules 54, 64, 66 of CPC, Sale of Immovable property.

Landmark Cases: -

1. Jolly George Varghese Anr. v. The Bank of Cochin, AIR 1980 SC 470:-

- Facts of the case in succinct:- In this case, the issue was whether a person could be detained in civil prison for non-payment of a debt.

- Judgment:- The Hon'ble Supreme Court held that arrest and detention for non-payment of debt are permissible under Section 51 only if the court is satisfied that the judgment-debtor has the means to pay but refuses or neglects to pay. The Court emphasized that the provision must be applied judiciously and not arbitrarily, ensuring that the judgment-debtor's fundamental rights are not violated. The decision underscored the need for a careful and humane approach in the application of Section 51. Please read the recent ruling of Andhra Pradesh High Court in ***C. Dilip Kumar vs. Y.Veera Raghavulu, 2024 (2) ALT 437.***

2. Harnandrai Badridas vs Debidutt Bhagwati Prasad & Ors, AIR 1973 SC 2423, it was held that It is important to remember that after the decision of the Privy Council in Ganapathy's case ((1918) 20 BOMLR 580) there has been an amendment of sec. 47 as a result of which the purchaser at a sale in execution of a decree, whether he is the decree-holder or not, is unquestionably a party to the suit for the purpose of sec. 47. Having regard to this, all questions arising between the auction purchaser and the judgment- debtor must in our view be determined by the executing court and not by a separate suit. See. Latest case:

2. Garnishee Proceedings:-

Order 21, Rules 46-46F CPC:-

Garnishee proceedings allow the decree-holder to attach debts owed to the judgment debtor by a third party (the garnishee). The Civil court may order the garnishee to pay the amount directly to the decree-holder. Garnishee proceedings under Order 21 Rules 46 to 46F of the Civil Procedure Code, 1908, provide a mechanism for a decree-holder to collect the decretal amount directly from a third party (the garnishee) who owes money to or holds funds on behalf of the judgment-debtor. These proceedings enable the court to issue a notice to the garnishee, requiring them to disclose any debts owed to the judgment-debtor and to show cause why those funds should not be used to satisfy the decree. If the garnishee acknowledges the debt, the court may order the garnishee to pay the amount directly to the decree-holder. This process ensures that the decree-holder can effectively and efficiently recover the owed amount without solely relying on the judgment-debtor's cooperation. The garnishee is given an opportunity to contest the claim, ensuring that their rights are also protected. These rules aim to prevent the judgment-debtor from evading payment by hiding assets with third parties and provide a fair and transparent process for debt recovery.

Order XXI Rule 46 of the Civil Procedure Code, 1908,

1. Attachment of Debt:-

a). The rule allows for the attachment of debts not secured by a negotiable instrument, including debts owed by a third party (garnishee) to the judgment-debtor.

b). The court issues a prohibitory order to the garnishee, prohibiting them from making any payment to the judgment-debtor.

2. Prohibitory Order:-

a). Content: The prohibitory order directs the garnishee not to pay any debt due to the judgment-debtor and not to deliver any movable property belonging to the judgment-debtor, to anyone except the court.

b). Service: The order is served on the garnishee, who is then legally bound to comply with it.

3. Notice to Judgment-Debtor:-

a). The court must issue a notice to the judgment-debtor informing them of the attachment.

b). This ensures that the judgment-debtor is aware of the proceedings and has an opportunity to respond or contest the attachment.

4. Garnishee's Response:-

a). Show Cause: The garnishee is required to appear before the court on a specified date to show cause why they should not pay the debt to the decree-holder.

b). Options: The garnishee can either agree to pay the amount directly to the decree-holder or contest the garnishment on valid legal grounds.

5. Court's Decision:-

a). If the garnishee contests the attachment, the court conducts an inquiry into the validity of the debt and the garnishee's liability.

b). Order for Payment: If the court is satisfied that the debt is due, it may order the garnishee to pay the amount directly to the decree-holder or into the court.

6. Consequences of Non-Compliance:

a). Liability: If the garnishee fails to comply with the court's order without valid reason, they may be held liable for the amount specified in the prohibitory order.

b). Enforcement: The decree-holder can seek enforcement of the court's order against the garnishee, similar to enforcing a decree against a judgment-debtor.

7. Protection of Garnishee:

a). Discharge: Payment made by the garnishee pursuant to the court's order discharges them of their liability to the extent of the payment made.

b). Legal Protection: This ensures that the garnishee is not subject to further claims from the judgment-debtor for the same debt.

3. Arrest and Detention in Civil Prison:-

a). Sections 51(c) and 55-59 CPC:-

b). The court can order the arrest and detention of the judgment debtor in a civil prison if it is satisfied that the debtor has the means to pay but is wilfully refusing to pay the decree amount.

4. Appointment of a Receiver:-

- a). Section 51(d) CPC:-
- b). The court may appoint a receiver to manage the judgment debtor's property and collect rents, profits, or other income to satisfy the decree.

5. Attachment of Salary:-

- a). Order 21, Rule 48 CPC:-
- b). If the judgment debtor is a salaried employee, the court can order the attachment of a portion of the debtor's salary to satisfy the decree amount.

6. Attachment of Bank Accounts:-

- a). Order 21, Rule 46 CPC:-
- b). The court may attach the judgment debtor's bank accounts, directing the bank to remit the funds to the decree-holder.

7. Attachment of Shares and Securities:-

- a). Order XXI, Rule 46 CPC:-
- b). The court can attach shares, securities, and other investments held by the judgment debtor to realize the decree amount.

Provisions :—

1. Sections 51-74 CPC:- -

These sections outline the general and specific provisions for the execution of decrees and orders, including the powers of the court, modes of execution, and the rights of the decree-holder and judgment debtor.

2. Order 21 CPC:-

a). This order provides detailed procedural rules for the execution of decrees, including the various modes of execution, the process for attachment and sale of property, garnishee proceedings, arrest and detention, and other related matters.

Case Law:

1. Kiran Bala v. Surinder Kumar, (1986) 3 SCC 225:-

- This case elucidated the principles and procedures related to the attachment and sale of the judgment debtor's properties under purview of section 60 of CPC. The Supreme Court emphasized the need for proper valuation and adherence to procedural safeguards to prevent the undervaluation of assets.

2. Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360:-

- The Hon'ble Supreme Court held that arrest and detention in civil prison for the non-payment of a decree amount should be considered a last resort. The court must ensure that the debtor has the means to pay and is wilfully neglecting to do so.

3. Union Bank of India v. K.V. Venugopalan, (1994) 2 SCC 323:-

- The Hon'ble Court discussed the garnishee proceedings, emphasizing the need for clear and unambiguous orders to ensure that third parties (garnishees) comply with the court's directives to pay the decree-holder.

4. Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479:-

- The Hon'ble Apex Court underscored the importance of the appointment of a receiver in cases where the judgment debtor's property needs to be managed effectively to satisfy the decree. The receiver's role is to ensure that the property generates income to pay off the decree amount.

1. Notice to Judgment Debtor:-

a). Order XXI, Rule 22 CPC:-

b). Before proceeding with the execution, the court may issue a notice to the judgment debtor, requiring them to show cause why the decree should not be executed against them. This ensures that the debtor is aware of the execution proceedings and has an opportunity to respond.

2. Exemptions from Attachment:-

a). Section 60 CPC:-

b). Certain properties are exempt from attachment and sale, such as necessary wearing apparel, tools of artisans, and salary to the extent it is

necessary for the maintenance of the judgment debtor and their family. This provision ensures that the judgment debtor is not left destitute.

3. Objections by Third Parties:-

- a). Order XXI, Rules 58-63 CPC:-
- b). Third parties who claim a right to the attached property can file objections. The court will investigate these claims to determine whether the attachment should continue or be lifted.

4. Execution Against Legal Representatives:-

- a). Section 50 CPC:-
- b). If the judgment debtor dies before the decree is fully satisfied, the decree can be executed against the legal representatives of the deceased debtor.

5. Execution Outside Jurisdiction:-

- a). Section 39 CPC:-
- b). If the judgment debtor's property is located outside the jurisdiction of the court that passed the decree, the decree can be sent for execution to the court within whose jurisdiction the property is situated.

6. Delivery of Possession:-

- a). Order XXI, Rules 35-36 CPC:-

b). If the decree involves the delivery of specific movable or immovable property, the court can order the physical delivery of the property to the decree-holder.

c). Movable Property:- The court may direct its officers to seize the movable property and hand it over to the decree-holder.

d). Immovable Property:- The court may order the eviction of the judgment debtor or any person claiming under them and deliver possession to the decree-holder.

7. Execution through Attachment of Decrees:-

a). Order XXI, Rules 53 CPC:-

b). If the judgment debtor holds a decree in their favor against a third party, the court can attach that decree and direct the third party to pay the decree-holder directly.

c). This mode of execution is particularly useful when the judgment debtor has won a lawsuit but has not yet collected the amount awarded by the court.

8. Execution Against Partnership Property:-

a). Order XXI, Rule 49 CPC:-

b). If the judgment debtor is a partner in a firm, the court can order the attachment and sale of the judgment debtor's share in the partnership property to satisfy the decree.

9. Execution Against a Company:-

- a). Order XXI, Rule 46-B CPC:-
- b). In cases where the judgment debtor is a corporation, the court may issue orders affecting the company's assets, including the attachment of stocks, shares, or other securities held by the company.

10. Execution through Negotiable Instruments:-

- a). Order XXI, Rule 51 CPC:-
- b). If the judgment debtor holds negotiable instruments such as bills of exchange, promissory notes, or cheques, the court can attach these instruments and direct them to be delivered to the decree-holder.

Provisions of Law:

1. Order XXI CPC:- Order XXI of the CPC provides the detailed procedural framework for the execution of decrees and orders, including various modes of execution, procedural safeguards, and the rights and obligations of the parties involved.

2. Delivery of Possession:- Order XXI, Rule 35 CPC:-- This rule deals with the delivery of possession of immovable property. The court may issue a writ of possession, directing the bailiff to deliver the property to the decree-holder. If necessary, the bailiff can break open locks or doors to gain access.

3. Order XXI, Rule 36 CPC:- - This rule pertains to the delivery of specific movable property. The court may issue a warrant for the seizure of the movable property and its delivery to the decree-holder. Execution - Attachment of Decrees:

4. Order XXI, Rule 53 CPC:- The court can attach any decree held by the judgment debtor. The decree-holder can then execute the attached decree as if they were the original decree-holder.

5. Order XXI, Rule 49 CPC:- The court may attach the judgment debtor's interest in the partnership property and sell it to satisfy the decree. The other partners' interests are not affected unless they are also judgment debtors.

6. Order XXI, Rule 46-B CPC:- The court can issue orders affecting the assets of a company, such as attaching stocks, shares, or other securities. The execution can proceed against the company's assets to satisfy the decree.

7. Order XXI, Rule 51 CPC:- The court can attach negotiable instruments held by the judgment debtor. These instruments can then be endorsed and delivered to the decree-holder to realize the decree amount.

8. Case Law:

1. *Mohammed Noorul Hoda v. Bibi Raifunnisa*, AIR ONLINE 1995 SC 608:-

Ratio-decidenti:

The Supreme Court emphasized the importance of following due process in delivering possession of immovable property. The court highlighted that the decree-holder must seek actual physical possession through the court's officers. Emphasized that '*Art, 113 is the appropriate Article applicable to the facts in this case. The right to sue accrued to the petitioner when his possession was ought to be interdicted in execution.*'

It is also discussed about section 55 (1) of Transfer of Property Act, 1882 holding that this provision regulates rights and liabilities of the buyer and seller. The seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover, The seller is to answer, to the best of his information, all relevant questions put to him by the buyer in respect of the property or the title thereto. The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.

2. *Govt. of the United State of Travancore and Cochin*, 1953 SCC OnLine Ker 80:- - Observed that it is well settled that an attachment does not create any charge on the attached property and that it does not confer any title in the attaching creditor. The attachment merely prevents a

private alienation of the attached property. In this case, *Ma Saw Yin v. Kookto*, AIR 1926 Rang 175 (L); — '*Maharaja of Benares v. Patraj Kunwar*', 23 All 262 (M) and in — '*Alvar Aivangar v. Subramania Diskshithar*', AIR 1932 Mad 169 (N). In — 'AIR 1930 Mad 152 (G), it was ruled that when a garnishee merely denies the existence of a debt sought to be attached in execution of a decree, it is not within the province of the executing court to decide whether the debt attached is really due or not.

3. *Prem Lata Nahata v. Chandi Prasad Sikaria*, (2007) 2 SCC 551:- - In this case, it was held that It is recognised that the court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise inconvenient. In that situation, the court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient.

Mohanlal Goenka vs Benoy Krishna Mukherjee and Others on 9 December, 1952

Transfer of **decree** for **execution-Execution** case dismissed for default - Executing Court sending certificate to Court which passed the **decree** under ... turn sent the **decree** to the Subordinate Judge of Asansol to

execute the **decree**. Such **execution** proceedings are 382 now pending before the Asansol Subordinate Supreme Court of India

Maganlal Etc vs Jaiswal Industries Neemach & Ors on 7 August, 1989

decree nor was the Financial Corporation a **decree** holder in a suit for sale it was only deemed to be a **decree** holder by legal ... **execution** of an order under section 32 of the Act was for purposes of **execution** put at par with sale in **execution** of a **decree**

Supreme Court of India

State Bank Of India vs Indexport Registered And Ors on 30 April, 1992

composite **decree** is a **decree** which is both a personal 1033 **decree** as well as a mortgage **decree**, without any limitation on its **execution** ...

composite **decree** is a **decree** which is both a personal **decree** as well as a mortgage **decree**, without any limitation on its **execution**, the **decree**

Supreme Court of India

Yeswant Deorao Deshmukh vs Walchand Ramchand Kothari on 1 December, 1950

court fees before executing the **decree** is not a conditional **decree** and time for making an application for **execution** of such a **decree** runs from ...

... application to execute a **decree** not being a **decree** granting an injunction has been made, no order for the **execution** of the same

decree shall Supreme Court of India

Shaukat Hussain Alias Ali Akram & Ors vs Smt. Bhuneshwari Devi (Dead))

By L. Rs. & ... on 25 August, 1972

instance of the **decree**-holder whose **decree** had been passed by that court only. If the **decree** in **execution** was not passed ... instance of the

decree- holder whose **decree** had been passed by that court only. If the **decree** in **execution** was not passed

Supreme Court of India

Ganpat Singh (Dead) By Lrs vs Kailash Shankar & Ors on 8 May, 1987

equated to an application for **execution** of **decree**. HEADNOTE: The mortgagee **decree**-holder in **execution** of the final **decree** for mortgage, himself purchased the disputed ... **execution** of a **decree** from the date on which the **decree** or order becomes enforceable or where the **decree** or any subsequent order directs

Supreme Court of India

Meyyappa Chettiar vs Chidambaram Chettiar on 17 December, 1923

attachment in **execution** when there is no **execution**. The turning point comes in my opinion when the **decree**-holder by filing an **execution** petition ... artist tense. In my opinion, when a **decree**-holder having obtained his **decree** takes out an **execution** petition, he has, in effect, elected to take

Madras High Court

Baijnath Prasad Sah vs Ramphal Sahni And Anr. on 24 October, 1961

16th November, 1953. The **decree**-holders filed an application for **execution** of the **decree** on the 8th August, 1955. An order dated the 6th September ... **decree** should be executed, the court shall order the **decree** to be executed. (2) where such person offers an objection to the **execution**

Patna High Court

Mallikarjunadu Setti And ... vs Lingamurti Pantulu And Valliappa ... on 10 February, 1902

decree and that orders passed under Section 93 were merely supplementary to the **decree** made under Section 92 , showing whether the terms of the **decree** ... **decree** for sale is a final **decree** and the order for sale, whether it be called absolute or not, is obtainable only in **execution**

Madras High Court

Lalji Raja & Sons vs Firm Hansraj Nathuram on 23 February, 1971

Morena court. According to the **decree**-holders the **decree** in question is not a **decree** of a foreign court as contemplated by 'the Code ... Court which passed a **decree** may, on the application of the **decree**-holder, send it for **execution** to another Court- (a) if the person against Supreme Court of India

Other useful citations:-

1. Kiran Bala v. Surinder Kumar, (1996 SCC (4) 372
2. Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360
3. Union Bank of India v. K.V. Venugopalan, AIR 1990 KER 223
4. Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479
5. Mohammed Noorul Hoda v. Bibi Raifunnisa, AIR ONLINE 1995 SC 608
6. Bank of Baroda v. Gopal Shriram Panda & Anr, (dt. of judgment 25 March, 2021),
7. Prem Lata Nahata v. Chandi Prasad Sikaria, (2007) 2 SCC 551
8. State of Maharashtra v. Dr. M.N. Kaul, AIR 1967 SC 1634
9. Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449
10. Ram Narain v. Simla Banking & Industrial Co., AIR 1956 SC 614
11. Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425
12. Srinivasa Iyengar v. Seshagiri Rao, AIR 1955 Mad 620
13. Gurpreet Singh v. Union of India, (2006) 8 SCC 457
14. Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388

15. Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527

16. Hiralal Moolchand Doshi v. Barot Raman Lal Ranchhoddas, (1993) 2 SCC 458

17. Babu Lal v. Hazari Lal Kishori Lal, (1982) 1 SCC 525

18. Lachhman Das v. Jagat Ram & Ors., AIR 2007 SC 1236

19. *Shyam Singh v. Collector, 1993 Supp (1) SCC 693.*

20. P.G. Ranganatha Padayachi V. The Mayavaram Financial Corporation Ltd., AIR 1974 Mad 1, 1973 SCC OnLine Mad

Supreme Court:

The 3-judge bench of the former CJI SA Bobde and L. Nageswara Rao and S. Ravindra Bhatt, JJ :

- had issued detailed directions to all Courts dealing with suits and execution proceedings after the troubles of the decree holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree were brought to the Court's notice. The Court noticed, "Remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees." As on 31.12.2018, there were 11,80,275 execution petitions pending in the subordinate courts. Hence, considering the

urgent need to reduce delays in the execution proceedings, the Court issued the following directions:

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

- 6.** In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
- 7.** In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit.
- 8.** The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
- 9.** 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.
- 10.** 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.
- 11.** 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.

- 12.** 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. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
- 13.** 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.
- 14.** 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.
- 15.** 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.
- 16.** The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to 32 the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts. [Rahul S. Shah v. Jinendra Kumar Gandhi, 2021 SCC OnLine SC 341, decided on 22.04.2021]...

Conclusion:-

The execution of a money decree under the Code of Civil Procedure, 1908, incorporates various modes such as attachment and sale of property, garnishee proceedings, arrest and detention, and the appointment of a receiver. The legal framework is designed to ensure that the decree-holder can realize the decree amount while safeguarding the rights and interests of the judgment debtor. Relevant case law from the Supreme Court provides further clarity on the application of these provisions, ensuring that execution proceedings are conducted fairly and justly.

*** THANKING YOU ONE AND ALL ***

**PAPER PRESENTATION ON
EXECUTION OF MONEY DECREE,
DIFFERENT MODES OF EXECUTION –
PROVISIONS OF LAW & CASE LAW**

FOR THE WORK SHOP ON _____

Submitted by
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