Paper Presentation on

EXECUTION PROCEEDINGS IN RESPECT OF MONEY DECREE, INJUNCTION DECREE, DECREE FOR POSSESSION, RESTITUTION OF CONJUGAL RIGHTS AND DECREE FOR SPECIFIC PERFORMANCE

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1. INTRODUCTION :

(a) A decree is the formal expression of the adjudication of a civil court determining the rights of the parties. However, the mere passing of a decree does not always mean that the successful party has received the relief granted by the court. The process by which the decree is enforced and the successful party obtains the benefit granted to him is known as execution of the decree.

(b) Execution is therefore an essential part of the administration of justice. The purpose of a judicial decision is not merely to declare rights but also to ensure that those rights are effectively enforced. If a decree-holder obtains a decree but is unable to enjoy its benefit, the decree becomes merely a piece of paper. Hence, execution gives practical effect to the judgment of the court.

(c) The Code of Civil Procedure, 1908, provides a detailed mechanism for execution of decrees, mainly under Sections 36 to 74 and Order XXI. Various methods of execution are available depending upon the nature of the decree. These include delivery of property, attachment and sale of property, arrest and detention in certain circumstances, and other appropriate modes prescribed by law.

(d) The importance of execution can be understood from the principle that justice should not only be done but should also result in an effective remedy. At the same time, execution proceedings must be conducted in accordance with law. The rights of the judgment-debtor cannot be ignored, and the executing court generally cannot go beyond the terms of the decree. The execution process must balance the

legitimate rights of both parties while ensuring that the decree-holder receives what has been lawfully awarded.

(e) Thus, execution is the final and indispensable stage of civil litigation. A decree establishes the rights of the parties, whereas execution translates those rights into reality. The real success of a judicial system lies not merely in pronouncing judgments but in ensuring that successful parties receive the fruits of their decrees. Effective execution therefore strengthens the rule of law, preserves confidence in the courts, and ensures that justice is not reduced to a mere declaration without an effective remedy.

(f) Decree holders are often facing several problems in obtaining fruits of decree including extrodinary delay, obstuctions caused by Judgement Debtor,concealment or transfer of assets, difficulty in identifying and attaching property, repeated objections and applications, and procedural complications. In some cases, the judgment-debtor may deliberately avoid compliance or create obstacles to frustrate execution. Shortage of judicial time and heavy court workloads may also contribute to delays. These problems can make the execution process lengthy and expensive, thereby weakening the effectiveness of civil justice. Therefore, speedy and efficient execution is essential to ensure that a decree-holder obtains the benefit of the decree without unnecessary delay.

(g) Long back in 1872 privy council in **Raj Durbungah Vs. Maharaja Coomar Ramaput Singh** 1872 SCC Online PC 16 observed that, “the difficulties of a litigant in India begin when he has obtained a decree.” Further Hon’ble Supreme Court in **Pradeep Mehra Vs.**

Harijivan J. Jethwa reported in neutral citation 2023 INSC 958 observed that ***"the situation we are afraid is no better even today and the appeal before us shows how the execution proceedings under order XXI of the Code of Civil Procedure, 1908 are being delayed and the process is being abused in the execution proceedings to the peril of the helpless decree holder".*** It was also observed that the reality is that pure civil matters take a long time to be decided and regretfully it does not end with a decision, as the execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay which is universally caused throughout India in the execution of a decree has been a cause of concern with this Court for several years.

(h) Further hon'ble Supreme Court in **Rahul S. Shah V. Jitendra Kumar Gandhi and others (2021) 6 SCC 418** had observed that a remedy which is provided for preventing injustice is in fact being misused to cause injustice by preventing timely implementation of orders and execution of the decrees. It was observed that ***"The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are in effect becoming tools which are being easily misused to obstruct justice".***

(i) In this scenario to enable the decree holder to overcome the hurdles created by the judgment debtor in executing the decree and to help the decree holder to realize the fruits of the decree and thereby for putting an end to the litigation between the parties, it is necessary to refresh our memory of the provisions and case law on the subject from time to time.

B. EXECUTION PROCEEDINGS IN RESPECT OF MONEY DECREES:

Order XXI Rule 30 of Code of Civil Procedure, 1908 (hereinafter referred as C.P.C for the sake of convenience) provides that every decree for payment of money including a decree for the payment of money as the alternative to some other relief may be executed:

I. by the detention in the civil prison of the judgment debtor or
II. by the attachment and sale of his property or by both.

1. Arrest and Detention of the Judgment Debtor:

(a) Section 51(c) CPC lays down that on the application of the decree holder, the Court may order for execution of the decree by arrest and detention of the judgment debtor. The proviso lays down that where the decree is for payment of money, execution by detention in civil prison should not be ordered unless after giving the judgment-debtor an opportunity of showing cause why he should not be so detained and the Court for the reasons to be recorded in writing is satisfied that:

1) the judgment-debtor with the object 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

2) that the judgment-debtor has, or 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

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

(b) These provisions are mandatory in nature and must be strictly complied with. They are not punitive in character. The object of detention of a judgment-debtor in civil prison is two-fold. One the one hand, it enables the decree-holder to realize the fruits of the decree passed in his favour; while on the other hand, it protects the judgment-debtor who is not in a position to pay the dues for reasons beyond his control or is unable to pay. In an application for arrest and detention of the Judgment-debtor in prison, the decree-holder must state or must file an affidavit stating the grounds on which arrest is sought for.

(c) In the case of **Jolly George Verghese Vs. Bank of Cochin (1980) 2 SCC 360: AIR 1980 Sc 470: (1980) 2 SCR 913**, Hon'ble Supreme Court observes as follows: ***"The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here consideration of the debtor's other pressing needs and strained circumstances will play prominently. We would***

have, by this construction, sauced law with justice, harmonised Section 51 with the covenant and the Constitution."

(d) In a case "**Gouru Giridhara Rao vs. Bondada Mrutyunjayam in CRP.No. 166/2015 dt.12.08.2022**" where in our Hon'ble High Court held that, ***"When the petitioner seeking arrest and detention of respondent in civil prison, which involves liberty of the person, the petitioner shall prove the present means of respondent/Judgment debtor, which he failed to prove and averments in his affidavit with regard to age of the Judgment debtor are admittedly wrongly shown in the execution petition. When the petitioner failed to prove the present means of respondent/Judgment debtor, he is not liable to be detained in civil prison, which rightly observed by the learned trial Judge. This Court did not find any irregularity or illegality in the Orders passed by the trial Court dismissing the execution petition filed by the Decree Holder."***

(e) In a case **C. Dilip Kumar Vs. Y.Veera Raghavulu reported in 2024 ALT 437 (AP)** where in our Hon'ble High Court held that, ***"In the course of enquiry, if the executing Court gets a whiff of dishonest tactics by the judgment debtor to delay of default the execution, the executing Courts must be absolutely firm and ruthless in stopping such unhealthy practices. This is absolutely essential because otherwise the rule of law would not only be set at naught, but it would virtually nullify and neutralize the decree of competent Courts."***

(f) Steps to be taken while ordering the Jdr to civil imprisonment:

- Issue notice under Order 21 Rule 37 - Form No.12 Appendix E of CPC.
- If the Jdr fails to appear then issue Rule 37(2) warrant for production of the Jdr - Form No.13 / Appendix E of CPC.
- if the Jdr appears in response to Rule 37 notice or if the Jdr is produced on Rule 37(2) warrant of arrest, means enquiry must be conducted under Order 21 Rule 40 CPC.
- If the Jdr pays the decree amount, he must be released.
- As per Section 55 CPC, the Court has to inform the JDR that he is at liberty to file insolvency proceedings.
- if the Jdr expresses his intention to file IP within one month, he can be released on security.
- if the Jdr is prepared to give security when he is produced under Rule 37 (2) warrant, he must be released.
- If the Jdr obtains protection under Section 23 of Provincial Insolvency Act, the JDR must be released.
- If the JDR refuses to give security, he can be kept under Court

guard custody and the Court should conduct means enquiry

expeditiously.

- Before notice is ordered for a government servant, a seven days prior notice must be given to the head of the institution.
- The Dhr has to pay the subsistence allowance as per order 21 rule 39 (1) CPC.
- While conducting the means enquiry, Section 60 CPC must also be taken into consideration.

- As per Sec.58(1) CPC, the maximum period of detention is not exceeding three months. If the decree amount is less than Rs.2000, arrest cannot be ordered. If the decree amount exceeds Rs.2000 and does not exceed Rs.5000/- the period of detention is not exceeding six weeks.
- The decree holder has to pay the subsistence allowance as per Order XXI Rule 39 CPC, which the Court thinks sufficient for the subsistence of the Judgment debtor from the time of his arrest till he can be brought before the Court. It shall be paid in monthly payments in advance before the first of each month and it shall be deemed to be costs in the suit.
- As per Sec.58(2) the Jdr cannot be rearrested under the decree in execution of which he was detained in the civil prison. However his release will not discharge him from his debt.
- The Court may cancel the warrant of arrest on the ground of serious illness of the Jdr or not in a fit state of health to be detained in civil prison and the Jdr may be re-arrested for the remaining period of his detention.

2. Execution by Attachment of Property:

(a) A decree may also be executed on the application of the decree holder by attachment and sale, or only sale without attachment of property. Sale of property without attachment is not void and attachment is not a condition precedent for sale. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 of CPC deals with the

subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one Court.

(b) The code also declares that a private alienation of property after attachment is void. A decree may have to be executed by attachment and sale of Jdr's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the Jdr to comply with the decree or to expose him to a penalty in case of disobedience. Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the Jdr has attachable interest in the property and the property is not exempt from attachment.

3. Attachment of immovable Property:

(a) Section 51(b) of CPC empowers the Court to order execution of a decree by attachment and the Court is competent to attach the property if it is situated within the local limits of the jurisdiction of the Court. Order 21, R.54 CPC deals with attachment of immovable property and the directions as to the mode of attachment mentioned therein are not merely directory but mandatory. This provision deals with the word "attachment"' mentioned in Or 21, Rule 64. Attachment before Judgment is actually not an attachment in execution as there is no decree in existence on the date of attachment. Yet, such attachment becomes an attachment in execution after the decree has been passed and after an

application to execute such decree is made. An omission to have the drum beaten as required by the rule is material irregularity which will vitiate the execution sale. A copy of proclamation order should be affixed on a conspicuous part of the property. If this is not done, it is also a ground to set aside sale, as it is a material irregularity. Any defect or error in the mode of attachment is only an irregularity which does not render the sale ipso facto void.

(b) It is immaterial that the place of the business of the judgment-debtor is outside the jurisdiction of the Court. (**Raoof vs. Lakshmipathi, AIR 1969 Mad 268**). Rule 54 provides for the attachment of immovable property and the procedure for the proclamation of such attachment. The object of Rule 54 is to inform the judgment-debtor about attachment so that he may not transfer or create encumbrance over the property thereafter. A judgment debtor has no right to question the auction sale on the ground of want of attachment or because the attachment was effected in a irregular manner was held in **Shivapadegowda V. Anniachiar AIR 1954 Mys 142**.

4. Property which can be attached:

(a) Section 60 of Civil Procedure Code provides that the property which can be attached and which cannot be attached.

(b) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the Judgment-

debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the Judgment-debtor or by another person in trust for him or on his behalf.

5. **Property which cannot be attached :**

- the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- Tools of artisans, in the opinion of the Court, be necessary to enable him to earn his livelihood as such (e.g., tools of carpenters, blacksmith, tailors etc.);
- Houses, sites and other buildings belonging to an agriculturist or a laborer or a domestic servant and occupied by him;
- Books of account;
- a mere right to sue for damages;
- Any right of personal service;
- Stipends and gratuities allowed to pensioners of the Government;
- The wages of laborers and domestic servants, whether payable in money or in kind;
- Salary to the extent of the first one thousand rupees and 2/3 of the remainder in the execution of any decree other than a decree for maintenance;
- one third of the salary in execution of any decree for maintenance;
- pay and allowances of persons to whom the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1957 applies;

- All compulsory deposits and other sums covered by Provident Funds Act of 1925 and declared by the said Act not to be liable to attachment;
- any sum which covered by the Public Provident Fund Act of 1968 and declared by the said Act not to be liable to attachment;
- all money payable under a policy of insurance on the life of the judgment debtor;
- the interest of lessee of residential building to which the provisions of law for the time being in force relating to control of rent and accommodation apply;
- Any allowance forming part of the emoluments of any Government servant or Railway company may be exempted from attachment by gazette notification;
- An expectancy of succession by survivor ship or other merely contingent or possible right or interest;
- A right to future maintenance;
- Any allowance declared by an Indian law to be exempt from liability to attachment or sale in execution of decree;
- When a movable property is exempt from sale for recovery of land revenue, such property is not liable for attachment and sale under this section.

6. Precept:

If the property of J.Dr., is situated within the local limits of the Court, the Court can attach the property towards satisfaction of the Decretal amount. If the property of Judgment-Debtor is situated outside the jurisdiction of the Court, upon the application of Decree Holder, may

issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the Judgment debtor and specified in the precept as contemplated under Section 46(1) of Civil Procedure Code.

7. Attachment of salary:

While ordering attachment of salary regard must be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment as contemplated under section 60 of CPC. In execution of a decree for maintenance one third of the salary of J.Dr. is exempted from attachment. In other money decrees salary to the extent of first one thousand rupees and two third of the remainder are not liable to attachment. Thus, if the J.Dr. gets a salary of Rs.10000/- the first Rs.1000/- plus two thirds of the remainder ie., two thirds of Rs.9000/- i.e. Rs.6000/- and in all Rs.7000/- would be non-attachable, leaving only Rs.3000/- available for attachment. The pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment.

8. Attachment against Agriculturist:

(a) Before ordering attachment of livestock, the Dhr should be asked to deposit sufficient sum for removal of property to Court premises or other place as the Court may direct and also for its maintenance and guarding. Property attached may be placed in custody of Dhr for removal and conveyance to the place appointed by the Court. Growing crop shall not be attached at any time less than 20 days before it is likely to be fit to be cut or gathered. When crop is attached, warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been

cut or gathered, on the threshing floor, on the house in which the J.Dr. resides, and shall also be sent to the Collector. Order for attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered.

(b) The J.Dr. may be allowed to cut and gather the crop and if he fails, the D.Hr. may be allowed to do the needful. All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by executing Court and not by a separate suit. When decree is satisfied the attachment is removed. When the execution application is for any reason dismissed, the Court has to indicate the period upto which the attachment shall continue. If the Court fails to pass such orders, attachment shall cease at the expiry of period of appeal.

9. Attachment of decrees:

(a) As per Order 21, R.53 CPC, decree for mesne profits including ascertained or unascertained, decree for arrears of rent, any order for restitution of costs (however, a right to recover mesne profits by way of restitution by reason of reversal of the decree in appeal cannot be attached under this rule) which are held to be money decree and hence those decrees can be attached under this provision.

(b) A decree for possession of immovable property, or a decree for foreclosure or a preliminary decree for partition, shall be attached under this provision. A decree for partition, mesne profits and costs comes within the purview of Order 21, Rule 53 (4). This rule makes a distinction, as to attachments, between decree for the payment of money or for sale in enforcement of a mortgage or charge, and other decrees. A mere

order for attachment will not effect the attachment of a decree under this provision. Where an exparte decree under which property has been made in the execution of decree is set aside, on the application of J.Dr and a fresh decree in favour of the plaintiff is passed after trial on the merits, the original attachment must be taken to be revived as soon as a fresh decree on the merits is passed.

10. Removal of attachment after satisfaction of the decree:

As per Order 21, Rule 55 CPC , in the following circumstances, the attachment may be terminated:

(a) When all the costs and charges of the decretal amount are paid into the Court.

(b) Satisfaction of the decree is otherwise made through the Court or certified to the Court.

(c) The decree is set aside.

(d) On furnishing the required security by the J.Dr.

(e) By compromise between the parties.

(f) By an express order withdrawing or putting an end to the attachment.

(g) By sale of the attached property in execution of the decree.

(h) By abandonment of the attachment by the decree holder.

11. Sale of Immovable property:

(a) A decree may be executed by attachment and sale or sale without attachment of any property. Section 65 to 73 and rules 64 to 94 of Order 21 CPC deals with the subject relating to sale of movable and immovable property. Before ordering sale, the Court has to decide

whether it is necessary to bring entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and decree to be satisfied is small, the Court must bring to sale only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder.

(b) Hon'ble Apex Court in **Bhikchand (deceased) through L.Rs V. Shamabai Dhanraj Gugale (deceased) through L.Rs 2024 (4) ALT 1 (SC)**, held that, "It is, thus, settled principle of law that court's power to auction any property or part thereof is not just a discretion but an obligation imposed on the Court and the sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. In the case at hand, the executing Court did not discharge its duty to ascertain whether the sale of a part of the attached property would be sufficient to satisfy the decree. When the valuation of three attached properties is mentioned in the attachment Panchanama, it was the duty of the Court to have satisfied itself on this aspect and having failed to do so the Court has caused great injustice to the judgment debtor by auctioning his entire attached properties causing huge loss to the judgment debtor and undue benefit to the auction purchaser. The fact that the properties were sold for a sum of 34,000/- would further demonstrate that the decree holder who himself is the auction purchaser has calculatedly offered a bid at 34,000/- despite being aware that the value of the attached properties is 1,05,700/-"

(c) The Court shall cause proclamation of the property intended to be made after issuing notice to the J.Dr and after settling the terms of the proclamation. The proclamation shall be published in a local

newspaper. The sale may be adjourned to a specified day and if it is adjourned for a longer period than thirty days, fresh proclamation shall be made. The decree holder cannot bid for the purchase of the property without the express permission of the Court.

(d) Rule 82 provides that the sale of immovable property in execution of decree can be held by any Court except a Small Causes Court. Small Causes Court has neither power to attach nor sell immovable property of the judgment-debtor. In this connection it may be noted that if a Small Cause decree is to be executed by bringing to sale the immovable property of the JDr, the procedure is that the decree shall at first be got transferred from small cause side to the original side under Section 39, C.P.C. Then it can be executed against the immovable property.

(e) Rule 83(1) provides for postponement of sale on the application of the JDr, if he can satisfy the Court that there is reason to believe that the JDr would be able to raise the decretal amount by the mortgage or lease or private sale of the property brought to sale or some part of it or of any other immovable property of the JDr, and the Court may postpone the sale of the property brought to sale on such terms and for such period as it thinks proper, to enable him to raise the amount. Subrule (2) says that in such case the Court shall grant a certificate authorising the JDr to make the proposed mortgage, lease or sale, and that Section 64 does not bar the same. The 1st proviso says that all the moneys payable by such mortgage, lease or sale shall be paid into Court, except where the DHr will be entitled to set off under Rule 72. The 2nd proviso says that until the Court confirms the said mortgage, lease

or sale it shall not become absolute. Sub-rule (3) says that such postponement cannot apply to mortgage or charge decrees.

(f) Hon'ble AP High Court in **Hebbar Venkata Subha Rao v Veeramma (died) per LRs. Reported in 2006 (1) ALT 270** held that Sale of property in execution of a mortgage decree cannot be postponed under Or.21, R.83, C.P.C. Further in **Ravi Nagabhushanam v. Neti Gopala Krishna Murthy, reorted in AIR 1969 AP 184,** Hon'ble AP High Court held that the purpose of postponement of sale under this Rule is for the benefit of the decree-holder. This Rule does not empower the Court to grant permission to the judgment-debtor to sell the property privately for the purpose of discharging his other debts.

(g) Sub-rule (1) of Rule 84 provides that on every sale of immovable property the auction-purchaser shall deposit one-fourth of the purchase money immediately with the bailiff. If he commits default in depositing the said amount, the property shall be re-sold. Sub-rule (2) says that if the purchaser happens to be the DHr himself and entitled to set off the purchase money under Rule 72, the Court may dispense with his depositing the said 1/4th amount.

(h) Rule 85 provides that the balance 3/4th amount of purchasemoney shall be paid by the purchaser into Court before the close of the 15th day from the date of sale. The proviso provides that if the purchaser is the DHr, he shall have the advantage of any set off he is entitled to under Rule 72, and he will have to deposit the balance, if any, only.

(i) If the purchaser fails to deposit the three fourths amount within time as required by Rule 85, Rule 86 says that the Court may, if it thinks

fit, after defraying the expenses of the sale, forfeit the balance of the deposit of one fourth already made, re-sell the property, and the defaulting purchaser shall have no claim whatever to the property or any part of the sum for which it may subsequently be sold.

(j) On the default of the purchaser under Rule 85, the usual procedure of issue of proclamation for sale shall be followed even for re-sale as per Rule 87. Rule 88 postulates that the bid of a co-sharer shall be preferred if he bid the same amount like any other bidder.

12. Setting aside Sale:

(a) Order 21 Rule 89 CPC provides for an application to set aside the sale by any person claiming an interest in the property sold or by a person acting for or in the interest of such person, by depositing in Court (a) 5% of the purchase money for payment to the purchaser, and (b) amount mentioned in the proclamation for payment to the decree-holder, less any amount which may have been received by the DHr since the date of proclamation. Hon'ble Supreme Court in **Challamane Huchha Gowda v. M.R. Tirumala reported in (2004) 1 SCC 453 it was held that** the object of order 21 rule 89 of CPC provides a last opportunity to put an end to the dispute at the instance of the judgment-debtor before the sale is confirmed by the Court and also to save his property from dispossession.

(b) Rule 90(1) provides for filing such an application by (1) the DHr, or (ii) the purchaser, or (iii) any other person entitled to share in a

rateable distribution of assets, or iv) whose interests are affected by the sale. Any such person may file the application on the ground of a material irregularity or fraud in publishing or conducting the sale. Sub-rule (2) provides that the sale shall not be set aside unless it is proved that the applicant has sustained substantial injury thereby. Sub-rule (3) also provides that the application itself shall not be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. Then the Explanation at the end of the Rule says that "the mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this Rule".

(c) Rule 91 provides that a purchaser at such sale may apply to set aside the sale on the ground that the JDr had no saleable interest in the property sold.

(d) Hon'ble Supreme Court in **Skypak Couriers Ltd v Tata Chemicals Ltd. Reported in AIR 2000 SC 2008 held that** Material irregularity and fraud alone would confer jurisdiction on the Executing Court to set aside the sale. Question of saleable interest does not come within the ambit of Order 21. Rule 90 and as such the judgment-debtor had no locus standi to apply to the Court for setting aside the sale.

(e) Hon'ble High Court of Andhra Pradesh in **HH Mahanth Chethandosi Varu v T-T Devasthanams reported in (1965)1 ALT 175** held that Material irregularities per se will not invalidate a sale. Such irregularities will have the effect of avoiding the sale only if the connection is established between them and the inadequacy of price

realised at the sale. Inadequacy of price proprio vigore would not result in avoiding the sales. If the inadequacy of price is the result of factors other than the material irregularities complained of, the proviso to R.90 cannot come into operation. Further Hon'ble High Court of Madras in **A. Parvatham v Bank of Baroda reported in AIR 2000 Mad 326** held that Mere inadequacy of sale price is not a ground of material irregularity.

(f) Section 92 CPC deals with when the sale has become absolute. It further says that the property is deemed to have vested in the auction purchaser from the date of sale date itself and not from the date the sale has become absolute by confirmation of sale. Rule 92 deals with cases when the sale becomes absolute or when the sale shall be set aside. Sub rule (1) speaks of cases when the sale becomes absolute. They are :

(i) when no application to set aside sale is made under Rule 89, 90 or 91;

(ii) when any such application is made and disallowed. The Proviso says that the Court shall not confirm the sale until the final disposal of any claim to, or any objection to the attachment of, such property.

(g) Rule 92 Sub-rule (2) speaks of cases when the sale shall be set aside. They are: (i) when any application made under Rule 89, 90 or 91 is allowed and (ii) when in an application made under Rule 89, the deposit required is made within 60 days from the date of sale or if there was any deficiency due to any clerical or arithmetical mistake on the part of the depositor and it is made good within such time as may be fixed by

the Court. The 1st Proviso says that no order should be passed unless notice of the application has been given to all persons affected thereby. Sub-rule (3) says that the unsuccessful applicant cannot file a suit against the order made. Sub-rule (4) says that when a third party files a suit against the auction- purchaser challenging the JDr's title, the DHr and the JDr shall be necessary parties to that suit. Sub-rule (5) says that if the suit referred to in sub- rule (4) is decreed, the Court shall direct the DHr to refund the money to the auction-purchaser. In such a case, unless the Court otherwise directs, the EP. in which the sale had been held, shall be revived at the stage at which the sale was ordered.

(h) Rule 93 says that, where a sale of immovable property is set aside under Rule 92, the purchaser shall be entitled to refund of his purchasemoney, with or without interest as the Court may direct, against any person to whom it has been paid. Hon'ble High Court of Bombay in **Ramchandra v. Ramchandra reported AIR 1938 Nag 54** held that Rule 93 is intended to arm the Court with power to order the return of money to the purchaser in case the same has been paid to any person in the meantime before confirmation of sale during the execution proceedings in the executing Court.

When Sale to be confirmed:

Whenever an application for setting aside a sale is disallowed, the Court has to make an order confirming the sale. Thereupon the sale shall become absolute. The provision does not contemplate or provide that the sale shall be deemed to have been confirmed after the order disallowing the application for setting aside the sale has been affirmed by the appellate Court.

13. Sale certificate under rule 94 Order 21 CPC:

(a) Rule 94 says that the Court shall grant a certificate to the purchaser on the sale becoming absolute, specifying therein the property sold and the name of the person who was declared to be the purchaser at the time of sale. It shall bear the date on which the sale became absolute.

(b) Hon'ble Patna High Court in **Harnandan Singh v. Aditya Narain Singh reported AIR 1962 Pat 221** held that the preparation of a sale certificate being a ministerial act, the JDr is not entitled to any notice of the proceeding under R.94 of O.21.

C. EXECUTION PROCEEDINGS IN RESPECT OF INJUNCTION DECREE, SPECIFIC PERFORMANCE AND RESTITUTION OF CONJUGAL RIGHTS:

(a) Order XXI Rule 32 applies principally to decrees for specific performance of a contract, restitution of conjugal rights and injunctions. The rule is triggered when the judgment-debtor has had an opportunity to obey the decree but has wilfully failed to do so.The requirement of an opportunity to obey is an important procedural safeguard. A person cannot ordinarily be subjected to coercive execution for failing to perform an obligation before there has been a reasonable opportunity to comply.The expression "wilfully failed to obey" is equally important. The provision contemplates deliberate non-compliance rather than mere inability or accidental failure. Therefore, before imposing coercive measures, the executing court must consider whether the conduct of the judgment-debtor amounts to wilful disobedience.

(b) The Hon'ble Supreme Court has reaffirmed the importance of this requirement in **Bhudev Mallick @ Bhudeb Mallick v. Ranajit Ghoshal, 2025 INSC 175** and held that where a judgment-debtor is sought to be dealt with under Order XXI Rule 32 for disobedience of an injunction decree, the executing court must record a finding that the judgment-debtor wilfully disobeyed or failed to comply with the decree despite having been given an opportunity to do so. The absence of such a finding constitutes a serious infirmity in an order directing detention. This judgment is particularly important because it demonstrates that although Rule 32 gives the executing court strong coercive powers, those powers are subject to strict procedural safeguards.

2. Modes of Execution under Rule 32:

(a) Order XXI Rule 32 CPC provides different methods by which the decree may be enforced. In the case of a decree for restitution of conjugal rights, the principal method is attachment of property. In the case of specific performance and injunctions, the decree may be enforced by detention of the judgment-debtor in civil prison, attachment of property, or both.The use of the words "or by both" is significant. The executing court is not necessarily restricted to choosing only one method. Depending upon the circumstances, attachment and detention may both be employed.

(b) However, Rule 32 does not stop at these coercive measures. Sub-rule (5) provides an additional and highly practical mechanism. Where a decree for specific performance or injunction has not been obeyed, the court may direct that the act required to be performed may,

so far as practicable, be performed by the decree-holder or another person appointed by the court at the cost of the judgment-debtor.

(c) The Hon'ble Supreme Court explained the significance of these alternative methods in **Samee Khan v. Bindu Khan, (1998) 7 SCC 59**. The case concerned disobedience of an injunction and the scope of the enforcement powers available under Order XXI Rule 32. The Supreme Court observed that Rule 32 provides a three-fold mechanism: detention in civil prison, attachment of property, and the possibility under sub-rule (5) of having the required act performed through another person at the cost of the judgment-debtor. The Court emphasized that the purpose of these mechanisms is enforcement of the decree. The decision in Samee Khan is therefore a leading authority on the interpretation of Rule 32.

3. Detention in Civil Prison:

(a) Detention in civil prison is one of the coercive methods expressly recognized by Rule 32. It is available in cases involving decrees for specific performance and injunctions where the judgment-debtor has wilfully failed to obey the decree.The object of detention is primarily coercive rather than merely punitive. The purpose is to compel obedience to the decree and thereby secure the benefit of the judicial decision. However, because detention affects personal liberty, the statutory requirements must be strictly satisfied. The judgment-debtor must have had an opportunity to comply and there must be a finding of wilful failure to obey.

(b) The recent decision of Hon'ble Supreme Court in **Bhudev Mallick v. Ranajit Ghoshal** is particularly relevant in this regard. The Court emphasized that the executing court must record a finding of wilful

disobedience before ordering imprisonment or other coercive measures. The Court also stressed the need for caution when ordering detention under Rule 32.Thus, detention should not automatically follow merely because the decree has not been complied with. The circumstances of the case must demonstrate deliberate disobedience.

4. Attachment of Property:

(a) Attachment of property is another important method of execution under Rule 32. It provides an economic incentive for the judgment-debtor to obey the decree. The court may attach the property of the judgment-debtor when the statutory requirements are satisfied. If the judgment-debtor continues to disobey, the provisions relating to continued attachment and sale may become relevant. Attachment is particularly useful where the judgment-debtor has sufficient assets but refuses to comply with the decree. It may create effective pressure without immediately resorting to detention.

(b) The Supreme Court's decision in Samee Khan v. Bindu Khan confirms that attachment and detention are alternative or cumulative modes available under Rule 32(1), while Rule 32(5) provides a further mechanism for actual performance of the required act.

5. Rule 32(5) and Substituted Performance:

(a) The most practically significant provision in Rule 32 is arguably sub-rule (5). It recognizes that punishment of the judgment-debtor may not always provide the decree-holder with the relief granted by the court. Where the required act can be performed by another person, the court may direct the decree-holder or another person

appointed by the court to perform that act at the cost of the judgment-debtor.For example, if a judgment-debtor is directed to remove an unauthorized construction and refuses to do so, the court may, where practicable, authorize the removal through another person and recover the expenses from the judgment-debtor.

(b) The Supreme Court's interpretation in Samee Khan v. Bindu Khan is important here. The Court recognized that Rule 32(5) enables the court to have the required act performed through another person at the cost of the judgment-debtor. Thus, execution is concerned with obtaining actual compliance and not merely imposing punishment.

6. Execution of Specific Performance Decrees:

(a) Specific performance decrees present a common situation in which Rule 32 becomes important. Suppose a purchaser obtains a decree directing a vendor to execute a sale deed. If the vendor refuses to execute the document, the decree-holder need not ordinarily institute a fresh suit to obtain the benefit of the decree.

(b) The decree-holder may invoke the execution machinery. Rule 32(5) can be used to have the required act performed through the court or another authorized person, while Order XXI Rule 34 provides the specific procedure for execution of documents.

(c) This relationship was examined in detail by the Andhra Pradesh High Court in Suram Bapu Reddy v. Janagam Lakshmi, decided on 20 December 2018. The court explained that where a decree-holder seeks to enforce a specific-performance decree through Rule 32(5), the procedure under Rule 34 becomes relevant when a sale

deed or other document has to be executed. The court thus treated Rules 32(5) and 34 as complementary provisions. The decision is useful for understanding how the statutory provisions operate together in practice.

7. Execution of Permanent Injunctions:

(a) Permanent injunction decrees are another important category under Rule 32. A permanent injunction may prohibit the judgment-debtor from interfering with the rights of the decree-holder.If the judgment-debtor violates the injunction after the decree has become final, the decree-holder can invoke the execution machinery.

(b) The Supreme Court has in several judgements made it clear that a permanent injunction is capable of execution under Rule 32 and that continuing violations may give rise to successive enforcement proceedings.In **Jai Dayal v. Krishan Lal Garg, (1996) 11 SCC 588**, the Supreme Court considered the effect of a final decree of perpetual and mandatory injunction. The Court recognized that once such a decree becomes final, the judgment-debtor is required to obey it and acts obstructing the decree-holder may be addressed through execution proceedings under Order XXI Rule 32. The case has subsequently been relied upon in later decisions concerning enforcement of injunction decrees.

(c) This principle is important because a permanent injunction is intended to operate into the future. Its effectiveness would be seriously undermined if every subsequent violation required the decree-holder to institute an entirely new suit.

8. Restoration of Possession in Execution of Injunction Decrees:

(a) An important issue that has arisen before Indian courts is whether an executing court can restore possession when a decree-holder protected by a permanent injunction has subsequently been dispossessed. The Supreme Court's decision in Samee Khan v. Bindu Khan is important in this context because Rule 32(5) has been interpreted broadly enough to permit the court to secure effective compliance with an injunction decree.The Supreme Court has subsequently relied upon this principle in cases concerning restoration of possession following violation of a permanent injunction.

(b) In Bhudev Mallick v. Ranajit Ghoshal, the Supreme Court referred to the interpretation of Rule 32(5) in Samee Khan and recognized that, in an appropriate execution proceeding concerning a decree for injunction, restoration of possession may be ordered where the decree-holder was dispossessed after the decree.

(c) This is a significant development in execution law. It reflects the principle that an executing court should be capable of restoring the position contemplated by the decree rather than merely recording that a violation has occurred.

9. Continuing Breaches of Permanent Injunction:

A permanent injunction is continuing in nature. Consequently, a judgment-debtor may commit separate violations at different points of time.The Supreme Court in Bhudev Mallick v. Ranajit Ghoshal reaffirmed that each breach of an injunction can constitute an independent

actionable violation. A previous execution proceeding concerning one breach does not necessarily prevent a subsequent execution proceeding relating to a later breach. The Court emphasized that successive breaches may be dealt with separately and that res judicata does not ordinarily bar proceedings concerning fresh violations. This principle is particularly important in cases involving permanent injunctions because the obligation imposed by such a decree continues into the future.

D. Simultaneous Execution of a Money Decree and Other Decrees:

Execution is the stage at which the successful litigant seeks to obtain the actual benefit of a decree. A recurring question under the Code of Civil Procedure, 1908 ("CPC") is whether a decree-holder can pursue more than one execution proceeding simultaneously, particularly where the decree is a money decree, or where different modes of execution are sought against the judgment-debtor. The answer depends upon the distinction between simultaneous modes of execution in respect of the same decree and simultaneous execution of the same decree before different courts.

(i) Statutory framework:

(a) Section 51 CPC empowers the executing court to order execution by, inter alia, attachment and sale of property or arrest and detention of the judgment-debtor. Order XXI Rule 30 specifically deals with money decrees. It permits execution by detention in civil prison, attachment and sale of property, or by both. Thus, the CPC does not ordinarily require a decree-holder to exhaust one mode before resorting to another.

(b) Order XXI Rule 21, however, provides an important qualification: the court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor. Consequently, simultaneous execution is permissible, but the court retains judicial discretion to regulate it.

Hon'ble Supreme Court in Padrauna Rajkrishna Sugar Works Ltd. v. Land Reforms Commissioner, U.P., (1969) 1 SCC 485, recognised the permissibility of simultaneous execution. The Court observed that the CPC imposes no obligation to proceed against movable property or by arrest before proceeding against immovable property and held that, by virtue of Order XXI Rule 30, "simultaneous execution both against the property and person of the judgment-debtor is allowed."

(c) The principle was subsequently considered in Shyam Singh v. Collector, District Hamirpur, U.P., 1993 Supp (1) SCC 693. Hon'ble Supreme Court reiterated that Order XXI Rule 30 permits execution of a money decree by detention, attachment and sale, or both. At the same time, it emphasised that the court's discretion under Order XXI Rule 21 must be exercised judicially. The Court therefore recognised the decree-holder's choice of mode while preserving the executing court's power to prevent oppressive or unnecessary simultaneous proceedings.

(ii) Simultaneous execution in different courts:

(a) A different question arises where the same decree is being executed simultaneously in two different courts. Section 38 CPC permits execution by the court which passed the decree or by a court to which the decree is transferred for execution. The issue is whether transfer of a decree prevents the decree-holder from maintaining another execution petition before the original court.

(b) In Ram Narayan Bhattad v. Krishna Bai Jhaver, Hon'ble Madras High Court considered several execution petitions relating to the same money decree. The Court examined Order XXI Rules 10, 21 and 30 and distinguished simultaneous modes of execution from simultaneous execution before

different courts. It ultimately held that there was no statutory requirement under the CPC or the relevant Original Side Rules requiring prior permission for simultaneous execution in the circumstances before it.

(c) Earlier, in Bethia Venkanna v. Sait Chunilal Moolchand, Hon'ble Andhra Pradesh High Court held that a decree-holder could proceed simultaneously against different judgment-debtors and observed that nothing in the CPC positively prohibited several execution applications from being filed simultaneously. Hon'ble High Court of AP in Andhra Pradesh. In Kaja Kishore Kumar v. Dr. Toleti Shyam Sundar, dealt directly with a money decree where one execution petition sought attachment of salary while another sought arrest. The Court referred to Order XXI Rule 30 and emphasised that the words "or by both" confer a choice upon the decree-holder to employ either or both modes, subject to the court's discretion under Rule 21.

(d) More recently, in Boina China Pothu Raju v. Meda Naga Sivaji (2025), Hon'ble Andhra Pradesh High Court reaffirmed that simultaneous execution against the person and property of the judgment-debtor is legally permissible, while stressing that the executing court must exercise its discretion on judicial principles.

(e) Hence a decree-holder is generally entitled to pursue more than one permissible mode of execution of a money decree simultaneously. The decree-holder need not ordinarily exhaust one remedy before invoking another. However, Order XXI Rule 21 preserves the executing court's discretion to refuse simultaneous execution against the person and property of the judgment-debtor. Where execution petitions are filed before different courts, the position requires separate consideration under Sections 38–42 CPC and the applicable case law. The crucial safeguards are prevention of double recovery, disclosure of

amounts realised, and proper coordination between executing courts. Thus, simultaneous execution is a recognised procedural remedy, but it cannot be used to obtain recovery exceeding the decretal amount or to subject the judgment-debtor to unjustified multiple recovery proceedings.

E. CONCLUSION:

(a) Execution proceedings are the final and indispensable stage of civil litigation, as they transform the rights declared by a decree into an effective and practical remedy. The provisions of the Code of Civil Procedure, 1908, particularly Sections 36 to 74 and Order XXI, provide various mechanisms for enforcing money decrees, injunctions, specific performance and restitution of conjugal rights. The discussion demonstrates that execution is not merely a procedural formality but an essential means of ensuring that the successful party actually receives the fruits of the decree.

(b) At the same time, execution must maintain a proper balance between the rights of the decree-holder and the judgment-debtor. Courts are required to prevent deliberate obstruction and undue delay while strictly following statutory safeguards, particularly where personal liberty or property rights are involved. The overall objective should therefore be speedy, fair and effective enforcement, so that decrees do not remain mere declarations on paper. Ultimately, an efficient execution process strengthens confidence in the judicial system, upholds the rule of law and ensures that the purpose of civil justice is truly achieved.

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