REFRESHER TRAINING MANUAL IN EXECUTION MATTERS

FOR STAFF

In the District Courts of
Punjab, Haryana & UT
Chandigarh

2022

CHANDIGARH JUDICIAL ACADEMY

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Message

The journey of a Civil Suit culminating into a Decree is a long one. Strangely, sometimes the journey of executing a Decree is even longer. This Manual is an attempt to shorten and smoothen this journey.

Delay in delivery of justice, more often than not, results from complex and time consuming but avoidable prescribed procedures, formality of rules and regulations, amongst other factors. It takes years and years, many a times generations, for a litigation to reach its logical conclusion. The Apex Court, cognizant of the woes of a Decree Holder, who is unable to enjoy the fruits of litigation due to inordinate delay in execution of decrees in ***Rahul S. Shah v. Jinender Kumar Gandhi & others, 2021 SCC Online SC 341***, directed the Judicial academies to prepare a Manual and impart continuous training to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by execution courts.

The Manual, second of its kind for the court staff, is user friendly, couched in simple language, with a translated excerpt for those who are more at ease with Hindi Lanauge. The complicated procedure of the Civil Procedure Code has, to a great extent been put across in simplified manner making it easier to absorb and practice. Such a training manual is necessary to create awareness amongst the staff involved in implementing the orders of executing courts. The hand book has been structured well and covers all procedural aspects exhaustively.

Training and development of the work force impacts the growth of an institution. Need for the training of the court staff, particularly those engaged in execution work, cannot be cover emphasised. This manual, designed specially for such staff members, shall be the foundation for a training module which the Academy would develop, to expedite the justice delivery process. The efforts put in by the Faculty Members of the Chandigarh Judicial Academy would go a long way in improving the performance of the court staff. The manual should be immense use not to the court staff intrusted with duties relating to execution cases but also to the Judicial Officers handling execution work.

I am confident that the manual would serve as readily available reference for the Execution Clerks, Nazarat Staff, Process Servers and Bailiffs. The attempt of Chandigarh Judicial Academy is indeed commendable.

(Ravi Shanker Jha)

Hon'ble Mr. Justice Fateh Deep Singh
Judge,
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Message

It is no more a hyphothesis, the classical social theorists had advocated that law plays a vital role in effecting social change. Thus a dire need was there to make out for ways and means to reap the benefits of a Decree in a shortest possible time. The understanding of **"Execution of a Decree"**, the **"Procedural Intricacies"** in a simplied form was very much required for all the stake holders including the Court Staff. This Manual will come as a handy Tool for one and all.

It is another commendable step by the Chandigarh Judicial Academy towards achieving its Goal.

(Fateh Deep Singh)

Prof. (Dr.) Balram K Gupta
Professor Emeritus
Sr. Advocate
Director (Academics)
Chandigarh Judicial Academy

Why this Execution Manual ! Execution Petitions constitute an important part of civil litigation. Sometimes, the journey of getting a Decree executed is longer and more complex than a Decree itself. Therefore, this Manual. It is a comprehensive Manual with the flavor of: Brevity is thy soul of wisdom. The Manual has been capsuled into six chapters Chapter I is dedicated to **Execution in General.** It includes Introduction, Kinds of Decrees and which court is to execute the Decree. Chapter II contains: **Terms of Common Usage.** Chapter III pertains to **Service of Process.** Chapter IV is allocated to **Modes and Procedure of Execution.** Chapter V deals with **Process Serving Establishment.** Chapter VI answers **Frequently Asked Questions.** Chapters III, IV & V also provide the **Flow Charts** in order to ensure easy execution of Decrees.

The strength of the Manual is, it is written in simple language. It is user friendly. The different stake holders in the process of execution of a Decree will be benefitted the most. The Manual deals with each step and with the role of each stake holder. There is continuity and connectivity. The ultimate object of the Manual is to shorten and simplify the process of the execution of Decrees. Less time consuming and more effective execution.

The faculty of CJA comprising Ms.Madhu Khanna Lalli, Mr.Amrinder Singh Shergill, Ms.Sonia Kinra, Ms.Harshali Chowdhary, Ms.Karuna Sharma has collectively contributed in preparing and shaping the Manual in the present form. They have put in their best effort under the overall supervision and mentoring of Ms.Shalini Singh Nagpal, Director (Administration). The team deserves to be complimented. The final product is in your hands. Please make the best use of it.

Balram K Gupta

This Refresher Manual is a compilation of instructions issued by Punjab & Haryana High Court as contained in Punjab & Haryana High Court Rules and Orders, finding source in Civil Proceudre Code, 1908, the Criminal Procedure Code, 1973 and Indian Penal Code, 1860. The contents of this manual are for general information and guidance of Ministerial Staff in conduct of their duties. Utmost care has been exercised in compliling these guidelines. However, in case of any conflict, the provisions incorporated in Punjab & Haryana High Court Rules and Orders, Procedural/Substantive Laws or the Administrative Instructions shall prevail upon.

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CHAPTER I

EXECUTION IN GENERAL

Chapter I

EXECUTION IN GENERAL

1.1 INTRODUCTION :

An effort is being made through this manual to educate the staff members about relevant provisions of law and arrest the delay in disposal of execution petitions. Endeavour has been made to explain, in simplest form, the role of various court officials i.e. Readers, Ahlmad, Execution Clerk, Process Servers, Bailiff etc. in execution proceedings.

Under Volume IV Chapter 6 Part A Rule 4 of the of the Punjab and Haryana High Court Rules and Orders (hereinafter referred to as **'Rules & Orders'**), **the Civil Nazir is the Ministerial Head of the Process Serving Establishment** under the control of Civil Judge (Senior Division) at District Headquarter and Additional Civil Judge (Senior Division) at Sub-Divisional Quarter. He maintains the efficiency of the Process Serving Establishment and submits reports and make suggestions from time to time to the Civil Judge (Senior Division) and Additional Civil Judge (Senior Division).

Process Serving Establishment under the Controlling Officer and the Ministerial Head plays a vital role in service of the processes and effectuating the orders of the Court. Volume I Chapter 18 Part A, B and C of Rules & Orders deals with the appointment of various officials in the Process Serving Establishment. Volume 4 Chapter 6 Part A of Rules & Orders deals with various aspects of Controlling Officer and Ministerial Head of Process Serving Establishment. Such Process Serving Establishment would also include Process Servers as well as Bailiff who are duty bound to execute the Court process, so entrusted to them by Civil Nazir. Not only this, Officer In-Charge of the process serving agency also

deals with Sheriff Petty Account relating to the petty amounts deposited by the parties on the orders of the Court.

A civil litigation consists of three stages, initiation, adjudication and implementation. Upon adjudication of the litigation, when a case is decided in favour of the person who initiated the same, he is awarded with the fruits of the litigation in the shape of decree or order by the Court. The successful party is known as Decree Holder in law. It is a long journey for a plaintiff to be qualified as a Decree Holder. A Decree Holder can enjoy the fruits of the litigation by way of execution, with the aid of the Court which passed the decree or order in his favour. Thus, the term 'execution' denotes implementation/satisfaction of decree by Decree Holder.

By way of execution, the person against whom the judgement/order is passed i.e. Judgement Debtor is compelled to carry out the mandate of the decree or order. Once the person in whose favour the judgement or decree is passed i.e. Decree Holder gets the fruits of decree, the execution is complete.

The principles governing execution of decree and orders are dealt with by sections 36 to 74 and Order XXI of the Code of Civil Procedure (hereinafter referred to as '**CPC**'**)**. The classification of Order XXI CPC is as follows:

- Application for execution and the process to be applied
- Stay of execution
- Mode of execution
- Sale of immovable property and movable property
- Adjudication of the claims and objections
- Resistance and delivery of possession

1.2 KINDS OF DECREES

There are different types of decrees, depending upon the relief granted in the judgement or order passed by the Civil Court, which are to be executed.

1.2.1 Money Decree

It is a decree in which payment of money has been ordered. For example – decree in recovery suit, decree for damages etc. In such decrees, the Decree Holder is entitled to recover money from the Judgement Debtor, in the shape of principal amount, interest and costs. Under Ord**er XXI Rule 30 CPC,** decree for the payment of money may be executed by :

i. Detaining the Judgment Debtor in civil prison or
ii. Attachment and sale of Judgment Debtor's property or
iii. Both

1.2.2 Decree for Specific Movable Property

Section 7 of the Specific Relief Act, 1963 provides for recovery of specific movable property by a person entitled to possession of the same. Under **Order XXI Rule 31 CPC,** decree for specific movable property may be executed by :

i) by seizure, if practicable, of the movable property or share, and
ii) by delivery thereof to the Decree Holder / his agent or
iii) by detaining the Judgment Debtor, in civil prison or
iv) by attachment of Judgment Debtor's property or
v) both or
vi) sale of attached property of Judgment Debtor if he does not obey the decree after three months. Out of the sale amount, the Court may award to the Decree Holder, any amount mentioned in the decree as

alternative to delivery of property and in other cases, compensation. Balance amount is to be paid to the Judgement Debtor.

1.2.3 Decree for Specific Immovable Property

Section 5 of the Specific Relief Act, 1963 provides for recovery of specific immovable property by a person entitled to possession of the same. Under **Order XXI Rule 35 CPC,** decree for immovable property may be executed by:-

i. Delivery of possession to Decree Holder / his agent by removing the Judgment Debtor from the property, if required.

ii. Delivery of joint possession by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, the substance of the decree.

iii. If free access is not provided, then, by removing or opening any lock or bolt or breaking open any door or doing any other act necessary for putting the Decree Holder in possession, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the Country to withdraw.

1.2.4 Decree for delivery of Immovable Property when in occupancy of a Tenant

Recovery of immovable property under the occupancy of a tenant is dealt with under the relevant Rent Act. Under **Order XXI Rule 36 CPC**, decree for delivery of immovable property, when in occupancy of tenant or any other person entitled to occupy the same and not bound by the decree to relinquish the occupancy, may be executed by:-

i. Delivery of possession by affixing a copy of the warrant in some conspicuous place on the property and proclaim to the occupant by beat of drum, the substance of the decree

1.2.5 Decree for Specific Performance, for restitution of Conjugal Rights, or for an Injunction

Decree for restitution of Conjugal Rights entitles a spouse for restoration of company of the other spouse. Section 9 of the Hindu Marriage Act, 1955 deals with restitution of Conjugal Rights. Injunction means an order restraining the other party temporarily or permanently from doing or abstain from doing a particular act. Injunctions can also be directory (mandatory) directing the other party to do a particular act. They are dealt with under the Specific Relief Act, 1963. Under **Order XXI Rule 32 CPC,** decree for specific performance or restitution of Conjugal Rights may be executed by:-

i. Attachment of Judgment Debtor's property

Under **Order XXI Rule 33 CPC,** decree for restitution of Conjugal Rights may be executed by the Court by directing :-

i. The Judgment Debtor to make periodical payments to the Decree Holder as ordered by the Court

ii. Securing such periodical payments

Under **Order XXI Rule 32 CPC,** decree for an injunction and decree for specific performance may be executed by:-

i. Detaining the Judgment Debtor in civil prison or

ii. Attachment of Judgment Debtor's property or

iii. Both

iv. Where any attachment in decree for injunction or specific performance has been in force for six months and the Judgment Debtor does not obey the decree, the property may be sold and Court can award compensation as deemed fit to the Decree Holder out of sale amount and pay balance (if any) to the Judgment Debtor or

v. Directing the required act to be done by the Decree Holder or some other person appointed by the Court, at the cost of the Judgment Debtor.

1.2.6 Decree for Execution of Documents, or endorsement of Negotiable Instrument

Execution of a document or endorsements of Negotiable Instrument are dealt with under the Specific Relief Act, 1963. Under **Order XXI Rule 34 CPC**, decree for execution of document, or endorsement of Negotiable Instrument may be executed by:-

i. Decree Holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court;

ii. The Court will cause the draft to be served on the Judgment Debtor together with a notice requiring his objections (if any) to be made within time fixed by the Court;

iii. Court shall pass order approving or altering the draft, after receiving the written objections;

iv. Decree Holder will deliver to the Court, a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper, if required by the law;

v. Court shall appoint Officer or itself execute the document or the endorsement of a Negotiable Instrument;

vi. Registration of the document as per law, if required, by Court or Officer appointed by the Court.

Once the Decree Holder, in whose favour the decree / order is passed, files an application for execution of the same before the executing Court, the Process Serving Establishment plays an important role in executing the processes for procuring service of the Judgement Debtor and in the implementation of various orders passed by the Court.

1.3 WHICH COURT TO EXECUTE DECREE

As per **Section 38 CPC**, a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. As per The Limitation Act, 1963, the Period of limitation for filing execution petition is 12 years from the date of decree.

1.4 TRANSFER OF DECREE

As the Court which passed the decree is not authorised to execute the decree against any person or property outside local limits of its jurisdiction, it may, either on the application of the Decree Holder or suo moto, send it for execution to another Court of competent jurisdiction as laid down under **Section 39 CPC**. While transferring the decree for execution, the Court shall send all relevant documents i.e. copy of the decree, certificate of non-satisfaction of decree, copy of order for execution of the decree etc. The Court to which the execution is transferred shall have the same powers as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable

by such Court in the same manner as if it had passed the decree. The order of the Court executing the decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

1.5 DETERMINATION OF QUESTIONS

All questions which arise between the parties to a suit (in which decree is passed) relating to execution, discharge or satisfaction of the decree have to be determined by the executing Court and separate suit relating to such questions is barred.

CHAPTER II

TERMS OF COMMON USAGE

Chapter II

TERMS OF COMMON USAGE

2.1 Attachment:

Attachment is the legal process through which a charge is created over the property wherein movable property is seized and taken in possession, other movable property which cannot be conveniently moved is given in custody and immovable property is restrained from being used in any manner.

2.2 Civil Imprisonment:

It is a process vide which the Judgment Debtor is detained in Civil Prison to compel him to obey the Decree or Court Order, after inquiry into his means and his intention to pay it.

2.3 Decree:

A Decree is the formal expression of final adjudication drawn on the basis of Judgment passed, conclusively determining rights of the parties. It can be either Preliminary or Final (**Section 2 (2) of CPC).**

2.4 Decree Holder:

As per **Section 2(3) CPC**, a Decree Holder is a person in whose favour a Decree has been passed by the Court and who moves an application to seek its execution.

2.5 Executing Court:

An Executing Court is a Court which is approached by the Decree Holder for seeking execution of the Decree as per **Section 38 CPC** and it can either be the Court which passed the Decree or to which the Decree is sent for execution.

2.6 Garnishee:

Garnishee is a person who is under the legal liability to make payment of money to Judgment Debtor.

2.7 Garnishee Order:

It is an Order vide which the Court directs the Garnishee to pay the amount which is due to the Judgment Debtor directly to the Decree Holder, thereby discharging not only his own liability towards Judgment Debtor but also satisfying the liability of Judgment Debtor towards the Decree Holder.

2.8 Judge:

Judge means the Presiding Officer of the Civil Court. Civil Court also includes Executing Court (**Section 2(8) of CPC).**

2.9 Judgment:

Judgment simply means the statement given by the Civil Judge on the grounds of a Decree or Order. It is the final adjudication reduced into writing, bearing signature of the Presiding Officer, detailing the case set up by both the litigant parties, issues framed, evidence led, arguments addressed and reasons for the decision, on conclusion of trial (**Section2(9) CPC)**.

2.10 Judgment Debtor:

Judgment Debtor is a person against whom a Decree has been passed or an Order capable of execution is passed. In simple words a person who is obligated to satisfy the Court's decision is the Judgment Debtor **(Section 2(10) CPC)**.

2.11 Legal Representative:

Legal representative is a person who represents the estate of the deceased person. He is a person who represents the interest of the deceased party in that very litigation (**Section 2(11) CPC).**

2.12 Movable Property:

Movable property is a property which is capable of moving like vehicles, jewellery etc. It includes growing crops (**Section 2(13) CPC)**.

2.13 Order:

It is a formal expression of an adjudication by a Civil Court, other than a Decree, which is capable of execution (**Section 2(14) CPC**).

2.14 Precept:

As per Section 46 CPC, it is a command issued by a Court in which Execution Application is pending, for attachment of immovable property situated outside the jurisdiction of that Court and is sent to the Court where such property is situated.

2.15 Receiver:

Receiver is a person or an office who is authorized by Executing Court to take complete charge of a property in Execution.

2.16 Subsistence Allowance:

It refers to an amount which is to be paid by the Decree Holder before detaining a Judgment Debtor in Civil Prison, for meeting his expenditure.

2.17 Transferee Court:

Transferee Court is the court to which the Decree stands transferred for execution.

2.18 Transferred Decree:

A Decree which has been transferred to the Transferee Court for Execution.

2.19 Warrant of Arrest:

Warrant of Arrest is a command issued by the Executing Court to apprehend a person and to bring him before that Court for not obeying the Order of the Court or for not satisfying the Money Decree.

2.20 Warrant of Attachment:

Warrant of Attachment is a command issued to create a charge/restraint over any movable or immovable property.

CHAPTER III

SERVICE OF PROCESS

Chapter III

SERVICE OF PROCESS

3.1 INTRODUCTION

The processes issued by the Civil Courts are covered in **Volume 4 Chapter 7 Part A and Service of Process is discussed in Part B of the Rules & Orders.**

Though the term 'summons' has not been defined in the CPC, according to the dictionary meaning, a summons is "a document issued from the office of a Court of Justice, calling upon the person to whom it is directed to attend before a Judge or Officer of the Court for a certain purpose."

According to **Order XLVIII Rule 2 CPC,** all orders, notices and other documents required by the CPC to be given or served on any person shall be served in the manner provided for the service of summons. (**Rule 5 of the Rules & Orders**)

3.2 MODES OF SERVICE

Order V Rule 9 CPC deals with delivery of summons by Court. Order **V Rule 10 CPC** deals with mode of service and it states that service of summons shall be made by delivering a copy which is duly signed by the Judge or a person authorised by him and bears the seal of the Court. Service may be affected through following modes:

3.2.1 Direct Service (Order V Rule 12 CPC)

Service of summons is made by delivering or tendering a copy of summons upon the :

(a) Defendant;

(b) His agent. (the party causing the service to be effected must give proof to this effect)

(c) Adult family member (**Order V Rule 15 CPC**)

(i) to be served in this manner only in the absence of the agent and such a family member should be actually residing with the defendant (**Part B- Proof of service – Rule 3 (iv) of the Rules & Orders)**

Note : Servant is not a member of the family.

(a) Service Within Jurisdiction

Order V Rule 9 CPC provides that where the defendant (Judgment Debtor) is residing within the jurisdiction of the Court, or has an agent empowered to accept service of summons, the summons should be served upon him or upon his agent, through

(i) Court Officer or

(ii) Approved courier service.

As per **Order V Rule 9 sub rule (3) CPC**, a summons can also be served through

(iii) registered post acknowledgement due (RPAD),

(iv) speed post,

(v) fax,

(vi) email or

(vii) by any other means of transmission of documents, provided by the rules made by the High Court, at the expense of the plaintiff/ Decree Holder.

Where there are more defendants than one, service of the summons shall be made on each defendant individually (**Order V Rule 11 CPC**)

(b) Service Outside Jurisdiction

According to **Order V Rule 9 sub rule (4) CPC**, where the defendant is residing outside the jurisdiction of the Court, a summons should be served upon him by such mode of service referred to in **Order V Rule 9 sub rule (3) CPC** i.e. by speed post, courier service, fax, email or by any other means of transmission at the expense of the plaintiff/ decree holder in accordance with **Order V Rule 21 CPC** i.e. by sending a copy to the Court having jurisdiction in the place where the defendant resides. The said Rule shall not apply when summons are issued through RPAD.

According **to Order V Rule 13 CPC**, in a suit relating to any business or work, where a person does not reside within the local limits of the jurisdiction of the Court, service can be effected upon Manager or agent, who at the time of service personally carries on such a business or work for such person within such limits.

3.2.2. Service by Affixation (Order V Rule 17 CPC)

(i) Where the defendant or his agent refuses to sign the acknowledgment; or

(ii) Where the serving officer, after due and reasonable diligence, cannot find the defendant

(a) who is absent from his residence at the time of service of summons, and

(b) there is no likelihood of him being found at his residence within a reasonable time and

(c) there is no authorised agent nor any other person on whom service can be made,

- the service of summons can be made by fixing a copy on the outer door or
- some other conspicuous part of the house in which the defendant

  (i) ordinarily resides. or

  (ii) carries on business. or

  (iii) personally works for gain.

The serving officer shall then return the original to the Court from which it was issued

(i) with a report endorsed thereon that the copy of summons was duly affixed,

(ii) the circumstances under which affixation was done, and

(iii) the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

Note: No formal order of the Court is required for affixing a copy of summons on the house of the defendant.

In case titled **Kuntala vs Sadhu Charan AIR 1966 Ori 166,** one of the points for consideration was whether there was service of notice under **Order XXI Rule 22 CPC.** The said notice was served by affixture when the Judgement Debtor was absent from her home. It was held that a person could not be said to be "not found" within the meaning of **Order V Rule 17 CPC**, *merely by reason of his being temporarily absent from his usual place of residence.* **The serving officer must use all "due and reasonable diligence" to find out the defendant.**

3.2.3 Substituted Service (Order V Rule 20 CPC)

It means service of summons by a mode which is substituted for the ordinary mode of service of summons/notice when the Court is satisfied that the defendant is avoiding the service.

Substituted service under **Order V Rule 20 CPC** can be affected by **affixing a copy of summons**;

(i) in a conspicuous place in the Court premises and ;

(ii) also upon conspicuous part of the house in which the defendant last resided, carried on business or personally worked for gain ; or

- by an **advertisement in an approved daily newspaper**, preferably in a vernacular paper, circulating in the locality in which defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. (**Order V Rule 20-1A & Part B (a)- Mode of Service- Rules 4,5 & 7 of Rules & Orders)**

In case titled **Yallawwa vs Shantavva (1997) 11 SCC 59,** the ex-parte decree of divorce was challenged by wife. The Hon'ble High Court of Karnataka had allowed the revision application, setting aside the ex-parte decree of divorce on the ground that *being **illiterate,** the wife would not have read the notice published in the newspaper* about the pendency of the divorce proceedings taken out by her husband against her. It was held by the Hon'ble Apex Court that *substituted service has to be resorted as the last resort when the defendant cannot be served in the ordinary way and the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in ordinary way.*

Note: Thus, this is not a regular mode of service and, hence, it should not normally be allowed.

3.3 SERVICE OUT OF INDIA (Order V Rule 25 CPC)

Order V Rule 25 CPC provides that

a) where the defendant resides out of India and

b) has no agent to accept the service on his behalf,

the summons shall be addressed to the defendant at the place where he is residing, through

i. post (if there is postal communication) or

ii. courier service as may be approved by the High Court,

iii. by fax,

iv. email or

v. by any other means as may be provided by the rules made by the High Court

If defendant is residing in **Pakistan** or **Bangladesh,** the summons together with a copy may be sent to any Court (except High Court) in that Country for service upon the defendant. In case, the defendant is a Public Officer, or servant of Railway Company or local authority in that Country, the summons together with a copy may be sent for service to such officer or authority in that Country as specified by the Central Government in the official gazette.

3.4 SERVICE ON FIRM (Order XXX Rule 3 CPC)

The summons or notice should be served upon any one or more of the partners of the firm concerned, or at the principal place at which the partnership business is carried on within India. The concerned person should have the control or management of the partnership business at the time of service.

In case, the partnership has been dissolved, the summons shall be served on every person within India who has been made liable.

In case titled **P.Sen (Engineering) Pvt. Ltd. vs Delite Builders (P) Ltd. AIR 1993 Cal 28,** service of summons on the agent of the partner of the firm was held as sufficient service on the partner of the firm.

3.5 SERVICE ON EMPLOYEES IN THE ARMY, NAVY & AIR FORCE (Order V Rule 28 CPC)

Such process should invariably be transmitted for service to the proper military authority i.e. Commanding Officer and the summons should be accompanied by a copy to be retained by the defendant.

3.6 SERVICE ON DEFENDANT IN PRISON (Order V Rule 24 CPC)

The summons shall be sent to the officer in charge of the prison for service on the defendant,

(i) by post
(ii) by courier service as approved by the High Court
(iii) by fax message
(iv) by electronic mail service, or
(v) such other means as may be provided by the rules made by the High Court

3.7 GENERAL

- The Rules clearly stipulate that every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family. The Process Server should go again and again for the said purpose and obtain for each successive attempt at service, attestations of witnesses different from those who had attested the reports of previous attempts.
- As per **Order V Rule 9 sub rule 5 CPC,** refusal of acceptance of summons shall be treated as a valid service.
- The panel of courier agencies for service of summons shall be made by the High Court or the District Judge, as the case may be [**Order V Rule 9 sub rule 6 CPC**]
- Every process issued by the Court shall be signed by the Judge or by such officer appointed by him and shall be sealed with the seal of the Court and delivered to the proper officer for execution. A day shall be specified on

or before which the process shall be executed and a day shall also be specified on or before which it shall be returned to the Court.

- The Serving officer entrusted with the execution of the process shall make an endorsement regarding the day on which and the manner in which the said process was executed. In case, there is any delay in the execution of the process then the said Serving officer shall specify the reason for delay of the process beyond the day specified therein. In case of non-execution of the process, the reason shall be specified before returning the process to the Court.(**Order V Rule 18 CPC)**
- Postal charges on the processes, notices and other such documents, issued from any Court and transmitted by post, are to be paid by means of service postage stamps, without any additional charge being levied from the parties at whose instance the process is issued.
- Every summon shall be accompanied by a copy of the plaint.

Affidavit of the Process Server which should accompany the return of summons prescribed in **Volume 4 of Chapter 7 Part K Appendix 1 of Rules & Orders** is **Form No.11 in Volume 6 Part A1 of Rules & Orders** and its format is as under:

(O5 R18)

Title

Format 1

The affidavit of _____ son of _____ I make oath/ affirm and say as follows:-

(1) I am a process server of this court.

(2) On the _____ day of _____ 20- I received a summon / notice, issued by the court of _____ in suit no. _____ of _____ in the said court, dated the _____ day of _____ for service on _____

(3) The said _____ was at the time personally known to me and I served the said summons/notice on him/her on the _____ day of _____ at about _____ a.m./p.m at _____ by tendering a copy thereof to him/her, and requiring his/her signature to the original summons/notice

(a)

(b)

NOTE :

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process server.

Or

Format 2 (only for para 3)

3) The said _____ not being personally known to me was identified by_____ (respectable person) who pointed out to me a person whom he stated to be the said_____ and I served the said summons/notice on him/her,on the _____ day of 20_____at about _____ a.m./p.m at_____ by tendering a copy thereof to him/her, and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process server.

Or

Format 3 (only for para 3)

3) The said_____ and his house in which he ordinarily resides being personally known to me(format 1)/pointed out me by(format2), _____ I went to the said house and there on the _____ Day of _____ 20 _____ at _____a.m /p.m I did not find the said_____ present in the house. I enquired from neighbours.(a)_____

(b)_____

I was told that _____ had gone to _____ and would not be back till_____

signature of process-server,

Or

(Format 4)

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/ Affirmed, by the said _____ before me this _____ day ____ of ___20 _____

Empowered unde.r Section 139 of the Code of Civil Procedure to administer the oath to deponents.

Hindi Translation of above affidavit is as below :

मैं_____ सपुत्र_____ शपथ लेकर घोषित करता हूँ ।

कि मैं इस कोर्ट का प्रोसेस सर्वर हूँ

दिनांक_____ महीना _____ साल को _____ न्यायालय द्वारा जारी किया हुआ summans नोटिस केस No. _____ दिनांक _____ आपूर्ति (सर्विस) के लिए मुझे मिला ।

(2) यह summons मैंने व्यक्तिगत तौर से _____ को दिनाक _____ महीना _____ साल _____ समय _____ एक प्रति देकर सर्विस कराई और उसके हस्ताक्षर ओरिजिनल कॉपी पर करवाए।

अथवा

(a)

(b)

(a) अगर उस व्यक्ति ने summons पर हस्ताक्षर किये या हस्ताक्षर करने से मना कर दिया तो किसकी मौजूदगी मे किया।

(b) प्रोसेस सर्वर के हस्ताक्षर

अथवा

(3)

FORM OF SUMMONS

Forms of processes are available in **Appendix B to Schedule I of the CPC.** In the case of persons of distinction, a letter may be substituted for a summons if the Court thinks fit **(Order V Rule 30 CPC)**

Every summons under **Order V Rule 1** should be in **Form No.1** of **Appendix-B**. Notice under **Order XXI Rule 2 CPC** should be in Form No.1 and Notice under **Order XXI Rule 16 CPC** in Form No. 7 of Appendix E (Volume 6 Part A of Rules & Orders).

3.8 FORMAT OF REGISTERS

According to **Volume 6 Part A-IV of Rules & Orders,** the format of register of Processes served by Process Servers (Register No.XXIII) is as under:

No. XXIII
Register of Process Servers

Name of the process server _____

Month	*Number of processes entrusted for service*	*Number of processes served according to law and returned within time*	*Number of processes served personally*	*Percentage of personal service*	*REMARKS*

According to **Volume 6 Part A-IV of Rules & Orders,** format of the Register of Diaries of Process servers is as under :

Register No. XXIX
Register of Diaries of Process-Servers

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*
Serial	*To be filled at the time of departure*						
	Date of departure	*The number of processes to be served in each village, or area*	*The name of the village or area in which to be served*	*The serial number of Register No.6 in Ch8-D, H.C.R.O., Vol.II at which entered*	*Date fixed for service of the processes in the village*	*Date of return fixed by the Nazir*	*Date on which the process server visited the village*

9	*10*	*11*	*12*	*13*	*14*	*15*	*16*
Travelled from which village to which village	*Distance travelled*	*Number of processes served and time of service, i.e., morning or evening etc.*	*Manner of service*	*The number of processes unserved*	*Signature or thumb impression of the Lambardar or chowkidar or any other respectable person of the village*	*Signature of Nazir*	*REMARKS*

NOTE :

- PROCESS SERVERS may effect personal service on a date other than the date mentioned in column 6 but before the date fixed for the return of the process. They must however record the reasons for doing so in the remarks column.
- Processes received unserved should be entrusted for service again and again if the date of hearing fixed in the case admits of it.

Volume 2 Chapter 8 Part E Rule 3 of Rules & Orders mandates that in order to watch the return and execution of warrants etc, entrusted to the Execution Bailiffs and to see on what dates the amounts were realised by them and paid into treasury, each Execution Bailiff is required to maintain a note book in the following Format :

Notebook of ..... Execution Bailiff
Court of ..... For the month of ..... 20 .....

Form No. 1

(Vide Rule 3)

Note Book of ..... Execution Bailiff
Court of ..... for the month of ..... 19/20 .....

Monthly Serial No.	*Date of Issue of warrant*	*Serial No. in the Register of processes received and disposed of by the local agent*	*Name of the Court Issuing the warrant*	*Name of parties*	*Name of judgment debtor*	*Date of next hearing in the case*	*Date of return of warrant fixed by the Nazir*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*

Nature of execution i.e., attachment of property or arrest of the debtor	*Date*	*Amount and / or No. of articles received*	*Date of Credit of realization*	*Amount*	*Particulars whether exaction was carried out or not*	*Acknowledgement of Nazir with date and No. of entry in Register of Receipts*	*REMARKS*
9	*10*	*11*	*12*	*13*	*14*	*15*	*16*

- As per **Volume 2 Chapter 8 Part D Section III Rule 13 of Rules & Orders,** when an application involving a deposit in the Sheriff's Petty Accounts is presented in Court for summoning of witnesses to whom diet money is to be paid, the Court reader shall note thereon the number of the case, in order to enable the process serving agent to make the necessary entry in the "Register of Receipt".

- As per **Rule 16** of the same Chapter, all processes issued by Courts for service within the District should be sent to the local agent and should contain a reference to the amount deposited with the agent.

- As per **Rule 17** of the same Section & Chapter of the Rules & Orders, process issued by a Court for service in another District will be made over to the local agent by the issuing authority for entry in the Register in Form No.6.

- **Rule 20 Section IV** of the same Chapter & Volume of Rules & Orders provides that the sums as mentioned in **Rule 19** will be given to Process Servers together with the processes, but before this is done the following procedure must be carried out.

(a) Each process should be entered in the "Register of processes received and disposed of by the local agent".

(b) Payment to Process-Server should be entered in the appropriate column of the "Register of Receipts" against each sum.

(c) Payment entries should be made in the "Register of Disbursements" and the Process-Server's acknowledgement of receipt in column 11.

(d) Details of each sum should be entered in the "Process-server's Note-book".

No Process-Server should have more than Rs. 200/- in hand at any one time. (taken from the website)

According to **Volume 2 Chapter 8 Part D of Rules & Orders**, formats of Form Nos.6 and 7 (Vide Rules Nos. 17 and 20) are as follows:

FORM NO. 6

(Vide Rule Nos. 17 and 20)

Register of processes of including warrants, etc., received from _____ Tehsil / District _____ with / without diet money of Munadi-fee by Process-Serving Agent at

Remarks	*21*
Date of submission of process to the issuing Court with abstract of final orders	*20*
Date of return of undisbursed diet money	*19*
Amount of diet money received back in case of unserved process with No. of entry in the Register of Receipts (Form No.1) in which return money Accounted for	*18*
Whether served or unserved	*17*

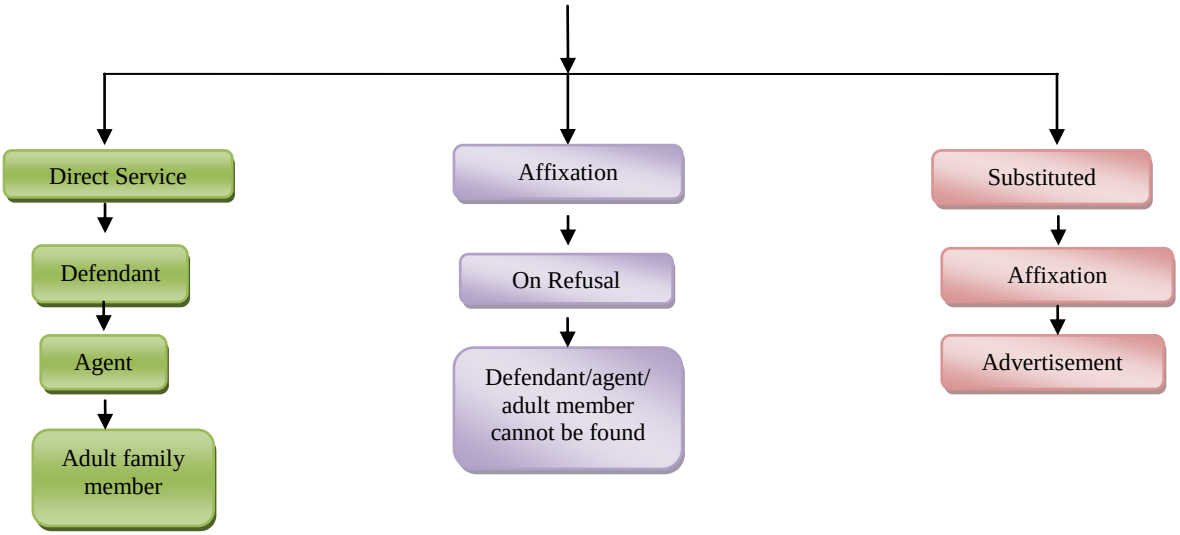
	Date of return from Process-Server or other District or Tehsil	*16*
	Reference to corresponding Serial No. and date of Register of disbursements (Form No.2 Sheriffs' Petty Account Rules)	*15*
	Date on which made over to Process – Server for service or on which sent to other District and Tehsil	*14*
	No. and name of Process-Server or Bailiff by whom to be served or Tehsil or district to which sent for service together with abstract of immediate order	*13*
	Date fixed by the issuing Court for return of the process	*12*
	Name of person on whom process is to served	*11*
	Purpose for which received	*10*
	Reference to correspondence Serial No. and date of Register of receipts (Form No.1 Sheriff's Petty Accounts Rules)	*9*
	Amount with detail of diet money or Munadi fee received with the process	*8*
	Amount of Process fee (Talbana) levied	*7*
	Description of Process	*6*
	Name of Parties	*5*
	Case No.	*4*
	Name of the Court, Tehsil and District from which received	*3*
	Date of receipt of process	*2*
	Serial No.	*1*

Format of Form No.7 (Vide Rule No. 20) is as follows :

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*9A*	*10*	*11*	*12*
	To be filled up by the Agent (Nazir)				*To be filled up by process-server*				*To be filled up by the Agent (Nazir)*			
Date	*Reference to No. of items in Register of Disbursements*	*Name of person to whom money is to be disbursed*	*Amount*	*Initials of the process-serving Agent (Nazir)*	*Date of service*	*Amount paid*	*Acknowledgement*	*Amount undisbursed*	*Signature of the witness in whose presence the amount was paid*	*Number of items in Register of Receipts against which re-deposited*	*Signature of the process serving Agent (Nazir)*	*REMARKS*
			Rs.			*Rs.*		*Rs.*				

FLOW CHART

ISSUANCE OF SUMMONS



Excerpt of Chapter in Hindi (खंड)

प्रतिवादी पर तीन प्रकार से तामील की जा सकती है :

i. Direct Service डायरेक्ट सर्विस (प्रत्यक्ष सर्विस)

ii. Service by Affixation सर्विस बाय अफिक्सेशन (चस्पानगी)

iii. Substituted Service सब्स्टिटूटेड सर्विस (किसी अन्य प्रकार से तामील)

1. डायरेक्ट सर्विस (प्रत्यक्ष सर्विस)

- इसमें तामील प्रतिवादी या उसके एजेंट या वयस्क परिवार के सदस्य पर करवाना अनिवार्य है।
- कोशीश की जाए की प्रतिवादी की प्रत्यक्ष तामील हो।
- एजेंट या वयस्क परिवार के सदस्य की तामील तभी करवाई जाए जब प्रत्यक्ष तामील दुर्लभ हो।
- वयस्क पारिवारिक सदस्य का प्रतिवादी के साथ रहना आवशयक है। घर का नौकर परिवार का सदस्य नहीं माना जायेगा।
- अगर दो से ज्यादा प्रतिवादी हैं तो हर एक प्रतिवादी को अलग सम्मन दे कर तामील की जाएगी।
- अगर प्रतिवादी कोर्ट की जूरिस्डिक्शन में नहीं रहता, वहां तामील मैनेजर या एजेंट के द्वारा भी करवाई जा सकती है जो उस समय बिज़नेस या कार्य कोर्ट की जूरिस्डिक्शन में करता है।

2. सर्विस बाय अफिक्सेशन (चस्पानगी)

- जब प्रतिवादी या उसका एजेंट सम्मन लेने से मना कर देते हैं।
- जब बार -बार प्रयास करने पर प्रतिवादी का पता नहीं चलता और उसके दिए हुये पते पर मिलने की कोई सम्भावना नहीं लगती तब सम्मन की एक प्रति उसके घर / दफ्तर, जहाँ प्रतिवादी कार्य करता है या बिज़नेस चलाता है के बाहरी दरवाज़े पर चस्पा की जा सकती है या फिर ऐसी जगह पर चस्पा की जा सकती है जिस पर सबकी दृष्टि जाए।
- सम्मन की दूसरी पर्त पर चस्पानगी के बारे में विस्तृत रिपोर्ट देकर पर्त कोर्ट में प्रस्तुत की जाएगी। रिपोर्ट में लिखा जायेगा कि चस्पानगी क्यों और कैसे की गयी थी और घर को किस ने शिनाख्त किया।
- चस्पानगी के लिए कोर्ट के आर्डर की आवश्यकता नहीं है।

3. सब्स्टिटूटेड सर्विस (एवजी सर्विस)

इस सर्विस को निम्न प्रकार से किया जा सकता है :

- अफिक्सेशन (चस्पानगी)
  - i. सम्मन की कॉपी कोर्ट में किसी प्रमुख स्थान पर चिपका कर, और
  - ii. प्रतिवादी के घर के किसी प्रमुख स्थान पर सम्मन की कॉपी चिपका कर
- स्थानीय अखबार में विज्ञापन के द्वारा

नोट : प्रतिवादी का घर वही माना जायेगा जहाँ वो आखिरी बार रहना पाया गया था या जहाँ वह अपना व्यापार चलाता था / कार्य करता था। इस प्रकार की तामील आखिरी तौर पर करवानी चाहिए।

फर्म पर सर्विस

- सम्मन या नोटिस की सर्विस किसी भी पार्टनर पर करवाई जा सकती है अगर उसका पार्टनरशिप बिज़नेस पर नियंत्रण हो।

जनरल

- हर सम्मन के साथ दावे की कॉपी होना आवश्यक है।
- सर्विस न होने पर बार-बार जाना अनिवार्य है और हर बार अलग साक्षी से रिपोर्ट को अटेस्ट करवाना भी जरुरी है।
- सम्मन पर विस्तृत रिपोर्ट की जाए कि सम्मन किस दिन और किस प्रकार से तामील किया गया। यदि तामील में देरी हो तो देरी का कारण लिखा जाना आवश्यक है। यदि किसी कारण तामील ना हो पाये तो उसका कारण ज़रूर दिया जाए।
- सम्मन वापिस देते समय Process Server का शपथ पत्र संलग्न होना आवश्यक है।

CHAPTER IV

MODES AND PROCEDURE OF EXECUTION

Chapter IV

MODES AND PROCEDURE OF EXECUTION

4.1 MODES OF EXECUTION

On the application of the Decree Holder, decree may be got executed by way of following modes-

a) By arrest and detention in prison;
b) Attachment of salary;
c) By attachment and sale or by sale without attachment of any property;
d) By delivery of any property specifically decreed;
e) By appointing a Receiver; or
f) In such other manner as the nature of the relief granted may require.

The mode of execution depends upon the nature of decree i.e. nature of suit which has been decreed.

4.2 PROCEDURE OF EXECUTION

4.2.1 Duties of Ahlmad/Execution Clerk- On receipt of an application for execution of a Decree

Step-1: On receipt of Execution Application by the Court, the Court shall order the **Ahlmad/Execution Clerk** to check and report.

Step-2: **Ahlmad/Execution Clerk** to report on the following points:-

- Whether such decree is passed by the said Court or predecessor of the said Court ?
- Whether the Court has the jurisdiction to execute the decree?
- Whether information in all columns of the Execution Petition is complete as prescribed?
- Tally Column No.6 of the Execution Application with Register No.10.
- Whether it is the 1st Execution Application?
- If not the 1st application, what was the fate of the previous execution, whether partly or fully satisfied or unsatisfied ?
- If any payment on the basis of previous Execution Application has been made or recovered, if yes, how much ?
- Is there any stay order issued by any Higher Court of Appeal ?
- If any Appeal filed, what is the fate of that Appeal ? Check from the application.
- Whether execution received by assignment or transfer from some other Court in same District or transfer of decree from some other District ?
- Whether there is any mention in the application where property of Judgment Debtor falls or where Judgment Debtor resides ?
- Whether certified copy of a decree and the requisite documents are annexed therewith ?

The proforma of an application of Execution Application is as follows:

No. 6

APPLICATION FOR EXECUTION OF DECREE

(O. XXI, r.11.)

In the Court of

I, …… decree-holder, hereby apply for execution of the decree herein-below set forth:—

No. of Suit	*Name of parties*	*Date of decree*	*Whether any appeal preferred from decree*	*Payment or adjustment made, if any*	*Previous application, if any, with date and result*	*Amount with interest due upon the decree or other relief granted thereby together with particulars, of any cross decree*	*Amount of cost, if any, awarded*	*Against whom to be executed*	*Mode in which the assistance of the Court is required.*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*
789 of 1897	*A.B.-Plaintiff C.D.-Defendant*	*Oct.11, 1987*	*No.*	*None*	*Rs.72-4-0 recorded on application, dated the 4th March, 1899*	*Rs.314-8-2 principal [interest at 6 percent, per annum, from data of decree till payment]*	*As awarded in the decree subsequently incurred* *Rs. a. p.* *47 10 4* *8 2 0* ——— *Total* *55 12 4*		*[When attachment and sale of movable property is sought.]* *I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized*

									by attachment and sale of defendant's movable property as per annexed list and paid to me. *[When attachment and sale of immovable property is sought.]* *I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the cost of taking out this execution, be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.*

I …… declare that what is stated herein is true to the best of my knowledge and belief.

Signed, decree-holder.

Dated the …….. day of …….. 19…./20…. .

[*When attachment and sale of immovable property is sought*.]

Description and Specification of Property

The undivided one-third share of the judgment-debtor in a house situated in the village of ……, value Rs. 40, and bounded as follows:—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I …….. declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed,……decree-holder.

Step-3: Only after the detailed report, the matter shall be put up before the Presiding Officer who shall then order registration of Execution Application and pass an appropriate order.

Step-4: On receipt of file from Court by **Ahlmad/Execution Clerk**, he shall enter the same in Register No. X and fill column nos. 1-11, Volume-6 Part A-IV of Rules & Orders.

No. X
Register of Execution of Decrees

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*
Serial No.	*Date of application*	*Number of suit with names of parties, date of decree (stating whether original or appellate), and court by which passed*	*Name of person applying for execution*	*Name of person against whom application for execution has been made*	*Amount of property decreed, and nature of the decree*	*Whether any and what adjustment has been made subsequent to decree*	*Amount for which execution is now sought*

9	*10*	*11*	*12*	*13*	*14*	*15*	*16*
Mode in which assistance of court is required	*Date of hearing of the application*	*The purpose for which the date is fixed*	*By delivery of property specially decreed*	*AMOUNT REALIZED*			*Total*
				By payment, voluntarily	*By attachment and sale of property or temporary alienation through Collector or by the Court*	*After arrest and imprisonment*	

17	*18*	*19*	*20*	*21*	*22*	*23*	
1. Date of issue of certificate under order 21, rule 94, Civil Procedure Code in the case of immovable property. *2. Date of sending copy to registering officer*	*Cause of non-completion of execution*	*Date on which the case of execution was struck off the file or transferred to the Collector and purport of final order*	*Name of officer passing final order*	*Date of despatch of record to the Record-keeper*	*Date of consignment in the Record room with number in Record-keeper's Kuliat Register*	*Remarks*	

Notes –

(1) All second and subsequent applications in the same case should be entered in this register with red ink to ensure an accurate total of column 8 being obtained at the close of the year for annual district statement No.IV (civil)

(2) In column 2 both the dates of presentation and registration of the application should be entered, one over the other, the upper one being the date of presentation.

Step 5: Fill various columns of the register. Affix serial number on the register & on the Execution Application.

Step 6: Where the Court has passed an order to issue notice to JD, **Ahlmad/Execution Clerk** shall issue notice to JD to show cause why execution should not be issued against him on **Proforma No.7 Appendix E CPC** which is as follows:

No. 7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE
[(O. XXI, r.16.)]
(Title)

To

WHEREAS …… has made application to this Court for execution of decree in Suit No. …… of 19…./20…. on the allegation that the said decree has been transferred to him by assignment [or without assignment], this is to give you notice that you are to appear before this Court ……. on the …….. day of ……. 19…./20…. ., to show cause why execution should not be granted.

Given under my hand and the seal of the Court, this day of …….19…../20…..

Judge

Step-7: Enter in dispatch register.

Step 8: Hand over the processes to the Nazir for execution whose signatures shall be obtained in dispatch register in token of handing over the said process.

Step 9: On the Zimni order sheet, below the order of the Presiding Officer, make an endorsement to the effect that process issued alongwith serial number and date of issue.

Step 10: Place the execution file in the peshi for the date fixed.

4.3 EXECUTION OF DECREE BY WAY OF ARREST AND DETENTION IN CIVIL PRISON IN MONEY DECREE

If the Execution Application has been moved to execute the money decree by way of arrest and detention in civil prison, the Court shall issue the notice upon him to appear and show cause why he should not be committed to the civil prison. (**Order XXI Rule 37 CPC)**

Note : The notice upon the Judgement Debtor can be waived off by the Court if the Court is satisfied that the Judgment Debtor is likely to abscond or leave the jursidcition of the Court or delay the execution. **(Proviso to Order XXI Rule 37 CPC**)

Ahlmad/Execution Clerk shall issue notice on **Proforma No. 12 in Appendix E CPC** which is as follows:

No. 12
NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

(O. 21, r. 37. Of the Code of Civil Procedure:Schedule I, Appendix E,Form 12)

In the Court of .....

Suit No. ..... of 19.....

..... Plaintiff

Against

..... Defendant

To

WHEREAS ..... has made application to this Court for execution of decree in Suit No. .....of 19…./20…., by arrest and imprisonment of your person, you are hereby required to appear before this Court on the ..... day of ..... 19…./20…., to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this ..... day of ..... 19…./20….

(Seal)
Judge.

4.3.1 Role of Decree Holder in case of execution by way of arrest and detention in civil prison

The Decree Holder shall state in his execution application or file an affidavit alongwith application, the grounds on which the arrest is applied for. (**Order XXI Rule 11(A) CPC)**

The Decree Holder before issuance of the warrants of arrest has to pay **subsistence allowance** which is sufficient for subsistence of the Judgment Debtor from the time of his arrest until he can be brought before the Court. (**Section 57 and Order XXI Rule 39 CPC**)

On appearance of the Judgement Debtor (JD), it can be asked by the Court why he should not be committed to the civil imprisonment and if JD does not appear on service, the Court shall order to issue warrant for the arrest of the JD.

Note: If the JD appears upon show cause notice or is arrested and brought before the Court in execution of warrant of arrest, the Executing Court is to enquire into the means and bonafide of the JD.

Ahlmad/Execution Clerk shall issue warrants of arrest as per order of the Court on **Proforma No. 13 Appendix E CPC** which is as follows:

No. 13
Warrant of Arrest in Execution
(O. 21, R. 38)
(Title)

To

The Bailiff of the Court.

Whereas . . . . . was adjudged by a decree of the Court in suit No. . . . . of 19/20 . . . ., dated the . . . . . day of . . . . . 20. . . . , to pay to the decree-holder the sum of Rs. . . . . as noted in the margin, and whereas the said sum of Rs. . . . . has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs. . . . . together with Rs. . . . . for the cost of executing this process, to bring the said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the . . . . . day of . . . . . 20. . . ..,with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this . . .. day of 20

Judge.

4.3.2 Fixation of Subsistence Allowance (Section 57 and Order XXI Rule 39 CPC):

Subsistence allowance has to be fixed by the Court, prior to the arrest of the Judgment Debtor. Even where the Judgment Debtor is committed to civil prison in execution of decree, the subsistence allowance (monthly) is to be fixed by the Court as per the scales fixed by the State Government under **Section 57 CPC**. If no scales are fixed, the Court may order subsistence allowance as considered sufficient. The subsistence allowance has to be paid in advance, before the first day of each month, by the Decree Holder. The first payment is to be made to the **Ahlmad/Execution Clerk** for such portion of the month which is remaining and the subsequent payment is to be made to the Jail Superintendent. **(Order XXI Rule 39 CPC).**

4.3.3 Precautions: At the Time of Issuance of Warrant of Arrest

Ahlmad/Execution Clerk while issuing warrant of arrest has to take care that:

- No warrant of arrest of civil prision of female JD shall be issued in execution of a decree for payment of money **(Section 56 CPC).**
- No warrant of arrest of civil prison of a person shall be issued for execution of a decree for payment of money not exceeding Rs.2000/- **[Section 58(1A) CPC].**
- No warrant of arrest of civil prison of Judge, Magistrate or other Judicial Officer shall be issued and cannot be arrested

under civil process while going to, presiding in, or returning from, his Court. **(Section 135 CPC).**

- No person shall be liable to arrest or detention in prison under civil process–

  a) if he is a member of-

     i. either House of Parliament, or

     ii. the Legislative Assembly or Legislative Council of a State, or

     iii. a Legislative Assembly of a Union territory,

  during the continuance of any meeting of such House.

  b) if he is a member of any committee of –

     i. either House of Parliament, or

     ii. the Legislative Assembly of a State or Union Territory, or

     iii. the Legislative Council of a State,

  during the continuance of any meeting of such committee;

  c) if he is a member of-

     i. either House of Parliament, or

     ii. a Legislative Assembly or Legislative Council of a State having both such Houses

  during the continuance of any meeting of such House. **(Section 135A (1) CPC)**

- Warrant of arrest of civil prison shall be addressed to an officer of the Court **(Bailiff)** and endorsed to the appropriate officer of Process Serving Establishment **(Nazir)** to bring the JD before the Court.

- Mention on the warrant that if the JD pays the amount certified alongwith costs mentioned in the warrant, he shall not be arrested **(Proforma No.13 Appendix-E CPC)**

- Enter in dispatch register.

- Hand over the processes to the Nazir for execution whose signatures shall be obtained in dispatch register in token of handing over the said process.

- On the Zimni order sheet, below the order of the Presiding Officer, make an endorsement to the effect that process has been issued along with serial number and date of issue.

- Place the execution file in the peshi for the date fixed.

Note: Warrant of arrest of a Judgment Debtor may be cancelled on the ground of his serious illness and Judgment Debtor may be released if in the opinion of the Court, he is not in a fit state of health to be detained in civil prison. He may be rearrested but the period of his detention in civil prison shall not in aggregate exceed as prescribed under section 58. **(Section 59 CPC)**

4.3.4 Procedure and Precautions: By Bailiff on Receipt of Warrant of Arrest

A Judgment Debtor may be arrested in execution of decree at any hour and on any day and be brought before the Court at the earliest.

However, **no dwelling house shall be entered after sunset or before sun rise**; **that no outer door shall be broken open unless it is in the occupancy of the Judgment Debtor and he refuses or in any way prevents access** thereto but if the Bailiff, gains the access to any dwelling house, he may break open any room in which he has reason to believe that the Judgment Debtor can be found; that if the room is in actual occupancy of a **woman who is not the Judgment Debtor** and who does not appear in the public, the Bailiff shall give notice to her that she is at liberty to withdraw and after allowing a reasonable time and facility may enter the room for the purpose of making arrest and that where the execution is of decree for payment of money and the Judgment Debtor pays the amount and costs of the arrest to the Officer, he shall be released at once (**Section 55 CPC**).

Note: The Court shall hear the Decree Holder and take into account the evidence produced by Decree Holder and give an opportunity to Judgment Debtor to show cause why he should not be committed to civil prison. **(Order XXI Rule 40 sub rule 1 CPC)** During pendency of the said inquiry, the Court may order Judgment Debtor to be detained in custody of officer of Court or release him on furnishing of the security to the satisfaction of the Court for his appearance when required. **(Order XXI Rule 40 sub rule 2 CPC)**

On the order of keeping JD in custody of Officer of Court, **Ahlmad/Execution Clerk** shall issue it on **Proforma No.14A Appendix E CPC** to **Bailiff** which is as follows:

No. 14A
ORDER OF ENTRUSTMENT OF JUDGMENT-DEBTOR TO THE CUSTODY OF AN OFFICER OF COURT

[Order XXI, rule 40, sub rule (2) and the proviso to sub-rule (3)]

In the Court of the …… of …….

To

The Bailiff of the Court.

WHEREAS…… who has been brought before this Court, …. …… this …….. day of ……19…./20…., under warrant in execution of a decree which was made and pronounced by said Court on the …….. day of…… 19…./20…, and by which decree, it was ordered that the said judgment-debtor should pay Rs……..

And whereas the judgment-debtor has been ordered to be kept in the custody of an officer of the Court pending the enquiry under Order XXI, rule 40, sub-rule (2).

And whereas the said judgment-debtor has to be given an opportunity of satisfying the decree and for this end this Court is of opinion that the said judgment-debtor may be left in the custody of an officer of Court.

You are hereby, commanded and required to take and receive the said judgment-debtor into your custody and keep him in that custody for period of…… days or until further orders of this Court. You are hereby further informed that he is not to be allowed to go anywhere except in your company. You are further required to produce the said judgment-debtor before this Court at the expiration of the period specified, if the decree be no sooner satisfied.

GIVEN under my hand and the seal of the Court this…….. day of ……..19 …/20…. .

(By Order)
Central Nazir

Ahlmad/Execution Clerk shall enter it in dispatch register and hand it over to **Nazir** against proper receipt. **Nazir** shall hand it over to **Bailiff** who will further get it executed by adopting appropriate mode of service and return the same to the Court concerned through Nazir.

Note: After final hearing, where the Court comes to the conclusion to detain and send the JD to civil prison for satisfaction of the decree subject to proviso to Section 51 CPC and passes the order of arrest and detention in civil prison, **Ahlmad/Execution Clerk** shall prepare custody warrant as per **Proforma No. 14 Appendix E CPC** which is as follows:

No. 14
Warrant of Committal of Judgment-Debtor to Jail
(O. 21, R. 40)
(Title)

To

The Officer in charge of the Jail at

Whereas . . . . . who has been brought before this Court this . . . . . day of . . . . . 20 . . . ., under a warrant in execution of a decree which was made and pronounced by the said Court on the . . . . . day of . . . . . 20 . . . ., and by which decree it was ordered that the said . . . . . should pay . . . . . ; And whereas the said . . . . . has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby commanded and required to take and receive the said . . . . . into the civil prison and keep him imprisoned therein for a period not exceeding . . . . . or until the said decree shall be fully satisfied, or the said . . . . . shall be otherwise entitled to be released according to terms and provisions of Section 58 of the Code of Civil

Procedure, 1908; and the Court does hereby fix [478] * * per diem as the rate of the monthly allowance for the subsistence of the said . . . . . during his confinement under this warrant of committal.*

Given under my hand and the seal of the Court, this . . .. . day of . . . . . 20 .. .

Judge.

Ahlmad/Execution Clerk shall make entry in Register No. XVI and fill Columns No.1 to 10.

No. XVI

Register of Judgment-Debtors Imprisoned in Execution of Decrees

1	*2*	*3*	*4*	*5*	*6*	*7*
Serial No.	*Number and year of the execution application*	*Name of parties to the execution application*	*Brief particulars of the decree under execution with the date of the decree*	*Balance due on the decree*	*Name of person applying for imprisonment of the Judgment-debtor*	*Name of Judgment – debtor imprisoned*

8	*9*	*10*	*11*	*12*	*13*	*14*
Date of commitment	*Period for which committed*	*Amount of diet money deposited with the period for which it is deposited and the rate at which it is calculated*	*Application for discharge under section 58, C.P. Code*	*Order of the Court upon the application*	*Date of release with reason*	*REMARKS*

4.3.5 Release of Judgment Debtor before Expiry of the Period of Detention: On Fulfilment of Following Conditions (Section 58 CPC)

(i) On payment of the amount mentioned in the warrant for his detention to the Officer In Charge of the civil prison, or

(ii) On the decree against him being otherwise fully satisfied, or

(iii) On the request of the person on whose application, he has been so detained, or

(iv) On the omission by the person, on whose application, he has been so detained, to pay subsistence allowance.**(Section 58 CPC)**

Note : If JD makes the payment as stated above, while in jail, he shall be released in jail. If he is produced before Court and Court orders the release of JD on payment of decretal amount or otherwise, **Ahlmad/Execution Clerk** shall prepare release warrant according to **Proforma No.15 Appendix E CPC** which is as follows-

No. 15
(ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE
(Sections 58, 59)
(Title)

To

The Officer in charge of the Jail at ……

UNDER orders passed this day, you are hereby directed to set free…….judgment-debtor now in your custody.

Dated …….

Judge.

After release of JD, **Ahlmad/ Execution Clerk** shall make the entries in Column Nos. 11 to 14 in Register No. XVI.

On the order of the Presiding Officer regarding satisfaction of decree and consignment of file, the file shall be consigned to the Record Room and **Ahlmad/Execution Clerk** shall make entries in remaining columns of Register No. X.

4.4 EXECUTION OF DECREE BY WAY OF ATTACHMENT

4.4.1 Attachment of Salary or Allowances of Servant of the Government or Servant of Railway Company or Local Authority (Order XXI Rule 48 CPC)

On the order of the attachment of the salary or allowances of a Government Employee or an employee of a Railway Company or local authority or an employee of a Corporation engaged in any trade or industry established by a Central or State Government, the salary or allowances have to be attached subject to provisions of **section 60 CPC**. In pursuance of the said order, **Ahlmad/Execution Clerk** shall issue warrant of attachment of salary addressing the authority in case of Government Employee as per following table on **Proforma No.19 Appendix E CPC**. (**Order XXI Rule 48 CPC)**

No. 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY

(O. 21, r. 48.)

(Title)

To

…….

……

*WHEREAS……, judgment-debtor in the above-named case; is a (describe office of, judgment-debtor) receiving his salary (or allowances) at your hands; and whereas……, decree holder in the said case, has applied in this Court for the attachment of the salary (or allowances**)** of the said……to the extent of……due to him under the decree; You are hereby required to withhold the said sum of…….from the salary of the said……..in monthly installments of**……**and to remit the said sum (or monthly instalments) to this Court.*

GIVEN under my hand and the seal of the Court, this…….day of……19…./20….

Judge.

The Central Government has appointed that following Officers to whom notices of orders attaching the salaries and allowances of the Officers specified in the corresponding entries in column 2 of the table shall be sent.

Officers to whom Notice should be sent	***Officers whose salaries and Allowances are attached***
Accountant General Central, Revenues, New Delhi	*(1) Ministry of Finance (Defence) Gazetted Officers*
Assistant Financial Advisor (Establishment) Ministry of Finance (Defence), New Delhi	*Non Gazetted officers*
Controller General of Defence Accounts, New Delhi	*(2) Office of the Controller General of Defence Accounts, New Delhi Gazetted and Non-Gazetted Officers.*
Controller of Defence Accounts, Eastern Command, Meerut.	*(3) Organisation of the Controller of Defence Accounts, Eastern Command, Meerut. Gazetted and Non-Gazetted Officers.*
Controller of Defence Accounts, Western Command, Meerut.	*(4) Organisation of the Controller of Defence Accounts, Western Command, Meerut. Gazetted and Non-Gazetted Officers.*

Controller of Defence Accounts, Southern Command, Poona.	*(5) Organisation of the Controller of Defence Accounts (Officers), Southern Command, Poona. Gazetted or Non-Gazetted Officers.*
Joint Controller of Defence Accounts, Patna.	*(6) Organisation of the Joint Controller of Defence Accounts, Patna. Gazetted or non-Gazetted Officers.*
Controller, of Defence Accounts, (Other ranks) Secunderabad	*(7) Organisation of the Controller of Defence Accounts (Other Ranks), Gazetted or non-Gazetted Officers.*
Controller of Defence Accounts (officers) Poona.	*(8) Organisation of the Controller of Defence Accounts (Officers) Poona. Gazetted or Non-Gazetted Officers.*
Controller of Defence Accounts (Pensions) Allahabad.	*(9) Organisation of the Controller of Defence Accounts (Pensions) Allahabad. Gazetted or Non-Gazetted Officers.*
Controller of Defence Accounts (Factories) Calcutta	*(10) Organisation of the Controller of Defence Accounts (Factories) Calcutta. Gazetted or Non-Gazetted Officers.*
Controller of Defence Accounts (Air Force) Dehra Dun.	*(11)Organisation of the Controller of Defence Accounts (Air Force) Dehra Dun. Gazetted or Non-Gazetted Officers.*
Controller of Defence Accounts (Navy) Bombay	*(12)Organisation of the Controller of Defence Accounts (Navy) Bombay. Gazetted or Non-Gazetted Officers.*

Ahlmad/Execution Clerk shall enter it in dispatch register and hand it over to **Nazir** against proper receipt. **Nazir** shall hand it over to **Bailiff** who will further get it executed and return the same.

4.4.2 Attachment of Property

Attachment (Sections 60-64 and Order XXI Rules 41 to 57 CPC, Section 141, Punjab Land Revenue Act and Volume I Chapter 12 Part H of Rules & Orders)

The property liable to attachment/attachment and sale :

a. houses or
b. other buildings
c. goods
d. money
e. bank notes
f. cheques
g. bills of exchange
h. hundies
i. promissory notes, Government securities
j. bonds or
k. other securities for money
l. debts
m. shares in corporation
n. all other saleable property, movable or immovable, belonging to the judgment debtor or over which he has a disposing power

The properties not liable for attachment or sale :

(a) 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;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as

may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to (an agriculturist or a labourer or a domestic servant) and [not proved by the decree holder to have been let out on rent or lent to persons other than his father, mother, wife, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more;

(cc) milch animals, whether in milk or in calf, kids, animals used for the purposes of transport of draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure;

(ccc) one main residential-house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a Judgment Debtor, other than an agriculturist and occupied by him: Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.]

Amended in the States of Punjab and Haryana vide Punjab Relief of Indebtedness Act, Act 07 of 1934, Section 35 as amended by Punjab Acts 12 of 1940, 06 of 1942 and 14 of 1960 w.e.f. 30.12.1960.

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;

(h) the wages of laborers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and one –half of the remainder in execution of any decree other than a decree for maintenance;

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempted from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the Judgment Debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the

time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Vide Notification No. 8298-J-42/489 dated 05.01.1943, Punjab Government has declared that the "dearness allowance" payable to any public officer serving the government in connection with the affairs of the state shall be exempted from the attachment of a decree.

As per Notification No.186/37 dated 02.10.1940, Central Government, in pursuance of Clause (L) of the Proviso to sub section (1) of section 60 CPC has declared the following allowances payable to any public officer in the service of the said government or any servant of a federal railways or of a cantonment authority or of the port authority of a major port **to be exempted from attachment by order of a Court :**

(1) all kinds of travelling allowances

(2) all kinds of conveyance allowances

(3) all allowances granted for meeting the cost of :-

a. Uniforms and
b. Rations

(4) all allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.

(5) all house rent allowances

(6) all allowances granted to provide relief against the increased cost of living.

(7) a foreign allowance or, in the case of heads Diplomatic missions, frais de representations, assigned to officers serving in posts abroad.

Volume 1 Chapter 12 Part N Rule 1 of Rules & Orders further specifies the property of agriculturists exempted from attachment and sale which is as follows:

(a) the necessary wearing apparel, cooking vessels, beds and beddings 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. (Section - 60 (1) (a) of the Code.);

(b) implements of husbandry, and such cattle and seed-grain as may, in the opinion of the Court be necessary to enable him to earn his livelihood as an agriculturist and such portion of agriculturist produce or any class of agricultural produce as may have been declared by the State Government to be free from liability under section 61. (vide also clause (b) of the proviso to Section 60(1) of the Code);

(c) where the judgment debtor is liable to pay land revenue, so much of the produce of the land as the Collector thinks necessary for seedgrain and the subsistence until the harvest next following, of the judgment-debtor, his family and cattle exempted under head (b) (Section 70 of the Punjab Land Revenue Act read with Section 88 of the Punjab Tenancy Act and Section 60(1) (p) of the CPC). Under Section 61 of the Civil Procedure Code, the Punjab Government has declared that in the case of agriculturists, the judgment-debtor's entire fodder crops, including gram, oats chari, maize and guara, one third or 20 maunds, whichever is greater, of foodgrains, and one third of all other crops shall, subject to the provisions of clauses (b) and (p) of sub-section (1) of Section 60 of the CPC and of the proviso to Section 70 of the Land Revenue Act, be exempted from liability to attachment or sale in the

execution of a decree for the purpose of providing, until the next harvest for the cultivation of land and for the support of the judgment-debtor and his family.

(d) houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment belonging to an agriculturist and not proved by the decree holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more. (section 60 (1) (c) of the Code and section 35 of Punjab Relief of Indebtedness Act as amended by Punjab Act XII of 1940).

(e) milch animals, whether in milk or in calf, kids, animals, used for the purpose of transport or draught cart or open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure (clause deemed to be added to the Proviso to section 60(1) of the Code, by P:Act XII of 1940)

(f) standing crops except cotton and sugarcane. **[Section 10(1) of the Punjab Debtors' Protection Act].**

(g) standing trees apart from the land on which they stand cannot be sold **[Section 10(2) of the Punjab Debtors' Protection Act.]**

Note : If an execution application for executing a decree by way of attachment or attachment and sale is made after more than two years of the decree or against the legal representatives of a party to the decree or against the assignee or receiver in insolvency

where party has been declared as an insolvent, the Court shall issue notice to Judgment debtor to show cause why execution should not be issued against him.

4.4.2.1 Where the **property to be attached is movable property in a decree for money, warrant of attachment** has been ordered to be issued, **Ahlmad/Execution Clerk** shall issue warrant of attachment of movable property in a decree for money on **Proforma No.8 Appendix E CPC** which is as follows:

No. 8
WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY
(O. XXI. r. 30.)
(Title)

To

The Bailiff of the Court.

WHEREAS …….. was ordered by decree of this Court passed on the…….day of ……. 19…./20…. in Suit No. …… of …….19…./20…. to pay to the plaintiff the sum of Rs. ……. .as noted in the margin; and whereas the said sum of Rs……..has not been paid; These are to command you to attach the movable property of the said ……as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said …….. , and unless the said …….. shall pay to you the said sum of Rs. …… together with Rs. ……., the cost of this attachment, to hold the same until further orders from this Court.

Decree			
Principal *Interest* *Costs* *Cost of execution* *Further interest* *Total*			

You are further commanded to return this warrant on or before the……day of……19…./20…., with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this……day of…….19…./20…..

Schedule

Judge

4.4.2.2 Where the **property to be attached is movable other than agricultural produce, in the possession of JD**, the attachment shall be made by actual seizure. **Ahlmad/Execution Clerk** shall issue warrant for seizure of specific movable property adjudged by decree on **Proforma No.9 Appendix E CPC** which is as follows:

No. 9
WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY ADJUDGED BY DECREE
(O. 21, r. 31.)
(Title)

To

The Bailiff of the Court.

WHEREAS…….was ordered by decree of this Court passed on the…… day of…….....19…./20…., in Suit No……of 19…./20….., to deliver to the plaintiff the movable property (or a …….share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered.

These are to command you to seize the said movable property (or a……share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this…….day of…….19…./20….

Schedule

Judge

4.4.2.3 Where the **property to be attached**

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

(b) a **share** in the capital of the Corporation,

(c) **other movable property** not in possession of Judgment Debtor, order of attachment has been passed prohibiting :

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

(ii) in the case of 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 other movable property, the person in possession of the same from giving it over to the Judgment Debtor, **Ahlmad/Execution Clerk** shall issue order of attachment on **Proforma Nos. 16, 17 and 18 Appendix E CPC** respectively. **Proforma Nos. 16, 17 and 18 Appendix E CPC** are as follows:

No. 16

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF

(O. 21, r. 46.)

(Title)

To

WHEREAS……..has failed to satisfy a decree passed against …… on the……..day of…….19……., in Suit No.……of 19…,in favour of…….for Rs. ……..;

It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from……the following property in the possession of the said.....that is to say……..,to which the defendant is entitled, subject to any claim ofthe said……, and the said…… is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of Court, this…….day of…….19/20……

Judge.

No.17
ATTACHMENT IN EXECUTION
PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS
(O. 21, r. 46.)
(Title)

To

……
……

WHEREAS…….....has failed to satisfy a decree passed against…….....on the…….day of……19…./20…., in Suit No…….of 19…./20…., in favour of…… ……for Rs……; it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,…… and that you, the said……..., be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this……..day of…….19…./20….

Judge.

No. 18

ATTACHMENT IN EXECUTION OF PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION

(O. 21, r. 46.)

(Title)

To

……

……

Defendant and to……., Secretary of Corporation.

WHEREAS…….has failed to satisfy a decree passed against……..on the…….day of……19…./20…., in Suit No……of. 19…./20…., in favour of……., for Rs…….; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of……..shares in the aforesaid corporation, namely,……., or from receiving payment of any dividends thereon; and you,……,the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this……day of……19…./20….

Judge.

Ahlmad/Execution Clerk shall hand over the concerned attachment order in duplicate to the Nazir. It shall be executed by affixing one copy on some conspicuous part of the Court house and by sending another copy in case of debt to debtors, in case of share to the proper officer of the Corporation and in case of other movable property to the person in possession of the same.

4.4.2.4 Where the property is a **Negotiable Instrument (cheque, pronote etc.) and neither deposited in a Court** nor in the custody of a Public Officer, the attachment shall be made by actual seizure and in case of such an order, **Ahlmad/Execution Clerk** shall issue order of attachment on **Proforma No.20 Appendix E CPC** which is as follows:

No. 20
ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT
(O. 21, r. 51.)
(Title)

To

The Bailiff of the Court,

WHEREAS an order has been passed by this Court on the……..day of…….19…./20…., for the attachment of……; You are hereby directed to seize the said……and bring the same into Court.

GIVEN under my hand and the seal of the Court, this…….day of……19…./20….

Judge.

4.4.2.5 Where the **property to be attached is property consisting of money or of any security in the custody of a Court of Justice or Public Officer**, order of attachment shall be made by a notice through such Court or Officer requesting that such property and any interest or dividend payable thereon may be held subject to further orders of the Court. In case of such order, **Ahlmad/Execution Clerk** shall issue order of attachment on **Proforma No.21 Appendix E CPC** which is as follows:

No. 21

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR [PUBLIC OFFICER](O. 21, r. 52.)

(Title)

To

……
……

Sir,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in yours hands (here state how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
Sir,
Your most obedient Servant.

Dated the…….day of……19…./20….

Judge.

4.4.2.6 Where the **property to be attached is a decree passed by some other Court**, on order of attachment (**Order XXI Rule 53 CPC**), **Ahlmad/Execution Clerk** shall issue notice of attachment of a decree to the Court which passed it and notice of attachment of a decree to the holder of the decree as ordered on **Proforma Nos. 22 and 23 Appendix E CPC** which are as follows:

No. 22
NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT (O. 21, r. 53.)
(Title)

To

The Judge of the Court of .....

Sir,

I have the honour to inform you that the decree obtained in your Court on the …… day of ……. 19……., by…… in Suit No……of 19/20....., in which he was……and …….was……has been attached by this Court on the application of ……., the…… in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.

Judge.

Dated the…….day of…….19/20……..

No. 23
NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE (O. 21, r. 53.)
(Title)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the……..day of …….. 19, in the Court of ……. in Suit No……..of 19, in which ……. was……..and …….was ……; It is ordered that you, the said……., be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this…….day of…….19/20….

Judge.

4.5 CUSTODY AND DISPOSAL OF ATTACHED MOVABLE PROPERTY PENDING SALE (Order XXI Rules 43, 43 A-D CPC and Volume 1 Chapter 12 Part K of High Court Rules & Orders)

Where the property to be attached is movable property other than agriculture produce in the possession of the Judgement Debtor, the attachment shall be made by actual seizure and the property shall be kept by attaching officer **(Bailiff)** either in his own custody or in the custody of one of his subordinates who shall be responsible for due custody. Provided if 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 with orders of the Court.

Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and have not been sold by attaching officer then he either at the instance of the Judgement Debtor or Decree Holder or any other person having interest in such property, leave it in the village or place where it had been attached

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in **Form No. 15A of Appendix E** to the schedule with one or more sufficient sureties for its production when called for, or

(b) in the charge of an Officer of the Court, if suitable place for its safe custody be provided and the remuneration of the Officer for a period of 15 days at such rate as may be fixed by the High Court from time to time be paid in advance;

(c) in the charge of a village Lambardar or such other respectable person as will undertake to keep such property, subject to orders of the Court, if such person enters into a bond in **Form No. 15B of Appendix E** with one or more sureties for its production**.**

No. 15A

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

(Order XXI, Rule 43)

In The Court of ……at ……. Civil Suit

No…… of A.B. of ……

against

C.D. of ……

Know all men by these presents that we, I. J. of……., etc., and K. L. of... ……,etc., and M.N. of …….etc., are jointly and severally bound to the Judge of the Court of.....in Rupees ……to be paid, to the said Judge for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators jointly and severally, by these presents.

Date this …….day of…….19…….

And whereas the movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the …….. day of……..19…… in execution of a decree in favour of…….. in suit No..... of..... 19……on the file of……and the said property has been left in the charge of the said I. J.

Now the condition of this obligation is that, if the above bounden I. J. shall duly account for and produce when required before the said Court all and every

the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void; otherwise it shall remain in full force.

1. J.

K. L.

M. N.

Signed and delivered by the above bounden……. in the presence of.....

No. 15B

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES

[Order XXI, rule 43(1)(c)]

In the Court of ..... at .....Civil suit No. ..... of A. B of .....

against

C. D. of .....

Know all men by these presents that we, I.J. of …… etc., and K. L. of ……. etc., and M. N. of ....., etc., are jointly and severally bound to the Judge of the Court of …… in Rupees …… to be paid to the said Judge for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators jointly and severally, by these presents.

Dated this ……. day of …… 19…….. and whereas the movable property specified in the Schedule hereunto annexed has been attached under a warrant from the said Court, dated the …… day of……19…….in execution of a decree in favour of ……. in suit No …… of …….. 19 ……. on the file of …… and the said property has been left in the charge of the said I. J.

Now the condition of this obligation is that, if the above bounden I. J. shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void :—otherwise it shall remain in full force and be enforceable against the above bounden I. J. in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I. J. were a surety for the restoration of property taken in execution of a decree. 1. J. K. L. M. N. Signed and delivered by me above bounden.....in the presence of.....

Whenever an attachment made under the provisions of this Rule ceases for any of the reasons as specified in **Order XXI Rule 55 or Rule 57 or Rule 60 CPC**, the Court may order the restitution of the attached property to the person in whose possession it was before attachment. When property is made over to custodian, the schedule of property annexed to the bond shall be drawn up by the attaching officer (**Bailiff**) in **triplicate**, and dated and signed by

(a) the custodian and his sureties;

(b) the officer of the court (**Bailiff**) made the attachment;

(c) the person whose property is attached and made over

(d) two respectable witnesses.

One copy will be sent to **the Court**, by the attaching officer and placed on the record of the proceeding under which attachment was ordered, **one copy** will be made over to the **person whose property is attached** and **one copy** will be made over to the **custodian**. (**Order XXI Rule 43 CPC as amended)** The Proforma of the schedule of property is as follows:

Schedule of property attached

Schedule of property attached and made over

to ……..... son of …….. of ……. as custodian on the …… of …….. 19 ……..

Detail of Property *Estimated Value*

Total…….

Sd/…… *Sd/- .....*

Witness. *Custodian*

Sd/…… *Sd/- .....*

Witness. *Attaching Officer*

Sd/- .....

Judgment-debtor

References.Jewels and portable property to be brought to Court. Bulky Property and live stock Form of schedule of property. Vol. I. 2 Ch. 12-K.

(To BE PRINTED ON THE REVERSE OF THE FORM)

Directions in regard to attached property.

I. *No person can be compelled by the Court or attaching officer thereof to take charge of attached property as a custodian.*

II. *A custodian may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust, and delivering to the proper officer of the Court the property made over to him.*

III. *When any property is taken back from a custodian he should be granted a receipt for the same.*

IV. *When property is made over to a custodian a schedule of property should be drawn up by the attaching officer in triplicate, dated and signed by*

   a) *the custodian and his sureties;*

   b) *the officer or the Court who made the attachment;*

   c) *the person whose property is attached and made over; and*

   d) *two respectable witnesses,*

One copy will be transmitted to the Court by the attaching officer and placed on the record ; one copy will be made over to the person whose property is attached and one copy will be made over to the custodian.

V. *In regard to livestock the following directions apply :*

(a) *The custodian is bound to take all reasonable and proper care of any live-stock entrusted to him.*

(b) *The custodian is responsible for the value of any live- stock which he fails to deliver to the Court or its authorized officer, when required so to do. If any live-stock is lost or stolen or dies while in the hands of a custodian, such custodian is bound to satisfy the Court that its loss or death was not due to his fault or neglect.*

(c) *If the judgment-debtor or any person claiming to be interested in any attached animal has been permitted to make arrangements for feeding the same (not being inconsistent with its safe custody, while it is under attachment), Vol.I. 3 Ch. 12-K. he may, in the case of poultry, mulch cows, etc., take the eggs, milk, etc.*

Light and readily portable articles of all kinds including jewels shall after seizure be taken to the executing Court and hand over to Officer as directed by the Court.

Note: Such property when placed in the custody of the Nazir may be placed by him in his cash chest and lodged in the outer room of Treasury, if it is open, as provided in Order 4(2) of the Punjab Treasury Manual, if it is closed, the Presiding Officer of the Court must make other suitable arrangement for its safe custody.

In case, the attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court alongwith list of the property seized.

If attached property is neither sold nor retained in the village or place where it is attached, it shall be brought to the Court house and delivered to the proper officer of the Court.

A custodian may at any time terminate his responsibilities by giving notice to the Court and delivering the property to the proper officer of the Court against proper receipt.(**Order XXI Rule 43A CPC as amended)**

If the Court directs to release the property, the articles released shall be made over to the person to whom the Court orders in the presence of the custodian, JD and the witnesses.

In case attached property kept in the village or place where it is attached is live-stock, **the person at whose instance it is so retained shall provide for its maintenance** and in case of his failure to do so, it shall be removed to the Court house. **Judgement Debtor or any interested person in such stock may make arrangements for feeding the same as may not be inconsistent with its safe custody.**

It can also be directed by the Court that any sums which have been expended by the attaching officer or care if not duly deposited or paid, be recovered from the proceeds of property, if sold, or be paid by the person who is declared as entitled to delivery before he receives the same.

It can also be ordered by the Court that any sums deposited or paid under these Rules be recovered as costs of the attachment from any party to the proceedings.(**Order XXI Rule 43B CPC as amended)**

A note shall be added on the Schedule to show what arrangements have been made for its upkeep.

If the value of the property is deteriorating, the necessary arrangement shall be made and note be given at the foot of the Schedule. However, if JD and DH agree in writing to the immediate sale of the property, the Officer shall proceed to sell it by auction forthwith after giving notice to intending purchasers as per order of the Court.

A note shall also be given in Schedule of modification of arrangements, if any.

The Decree Holder alongwith the application for attachment of live-stock or other movable property shall pay into Court, a sum covering the costs of maintenance and custody of the property for 15 days in cash. If before the expiry of 15 days, the amount of such costs for further period as directed by the Court has not been paid, on furnishing of report from the proper office, the Court may issue an order for withdrawal of attachment and issue direction by whom the costs of the attachment are to be paid.(**Order XXI Rule 43 C CPC as amended)**

Any person who undertook to keep the attached property shall be liable to be proceeded against as a surety u/s 145 of CPC and shall be liable to pay in execution proceedings, the value of any such property wilfully lost by him. (**Order XXI Rule 43D CPC as amended)**

4.6 ATTACHMENT OF AGRICULTURAL PRODUCE

If the property to be attached is agricultural produce, the attachment shall be made by **Bailiff** by affixing :

(1) **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 of grain or the like or fodder-stack or on which it is deposited.

(2) **Second copy** on the **outer door or on some other conspicuous part of the house in which the Judgement 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**.

Thereupon, the produce shall be deemed to have passed into the possession of the Court. (**Order XXI Rule 44 CPC)**

The State Government by general or special order published in the official gazette, declare that such portion of agricultural produce or any class of agricultural produce as may appear to the State Government to be necessary for the purpose of produce until the next harvest for the due cultivation of the land and for support of the Judgement Debtor and his family shall, in the case of all agriculturists or of any class of agriculturists be exempted from liability to attachment or sale of execution of a decree.

The standing crops except cotton and sugarcane are now not liable to be attached or sale for execution of a decree **(Section 10(1) of Punjab Debtors' Protection Act, 1936)**. Standing trees apart from land on which they stand are also exempted from sale **(Section 10(2) of Punjab Debtors' Protection Act, 1936).**

The Court has to make arrangements which are sufficient in nature for custody of the agricultural produce which is attached. To enable the Court to do so, every application for attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and with every such application such charges as may be necessary for the custody of the crop until the time at which it is likely to be fit to be out or gathered shall be paid to the Court.(**Order XXI Rule 45 CPC as amended)**

The Judgement Debtor may tend, cut, gather and store the produce and do any other act necessary for preserving it, subject to the conditions as imposed by the Court regarding this either in the order of attachment or in any subsequent order. If the Judgement Debtor fails to do all or any of such acts, the Decree Holder may with the permission of Court and subject to the like conditions, do all or any of them either by himself or through agent and the costs incurred by the Decree Holder shall be recoverable from the Judgement Debtor as if they were included in or forms part of the decree. If the order of attachment of a growing crop has been made at a time when 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 make a further order prohibiting the removal of the crop pending the execution of the order of attachment. A growing crop which owing to its nature cannot be stored shall not be attached for a period less than 20 days before the time it is likely to be fit to be cut or gathered.(**Order XXI Rule 45 CPC)**

4.7 ATTACHMENT OF IMMOVABLE PROPERTY (Order XXI Rule 54 CPC)

Where the Court orders with regard to attachment of immovable property by 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, it shall

also require the Judgment Debtor to attend Court on a specified date to note the date fixed for settling the term of the proclamation of sale. In such case, **Ahlmad/Execution Clerk** shall prepare three copies of the prohibitory order in case the property is land paying revenue to Government. In case of other immovable property, only two copies shall be prepared by the **Ahlmad/Execution Clerk.** He shall also take care that schedule of the property annexed to the Court be identical to schedule of the property given in the warrant to make attachment valid. **Ahlmad/Execution Clerk** shall issue warrant on **Proforma No.24 Appendix E CPC** and notice to JD to attend the Court on the specified date**. Performa No. 24 Appendix E CPC is as follows:**

No. 24
ATTACHMENT IN EXECUTION
PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY (O. 21, r. 54.)
(Title)

To

……
……

…… Defendant

WHEREAS you have failed to satisfy a decree passed against you on the……..... day of……..19…./20…., in Suit No……..of……19…./20…., in favour of……for Rs……; It is ordered that you, the said……..., be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the Schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

It is also ordered that you should attend Court on the ……day of ……..19…./20…., to take notice of the date fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and seal of the Court, this……day of……19…./20….

Schedule

Judge.

Nazir who has been handed over the warrant shall himself or through his subordinate proclaim order at some place on or adjacent to such property by beat of drum and affix a copy of the order on conspicuous part of the property and then upon conspicuous part of the Court house. Thereafter, he shall himself make endorsement upon the warrant and return it duly endorsed within specified time to the Court. **If any person has been deputed by Nazir** then he shall submit a separate return stating the manner in which and the day and hour at which, he did such act. This return will be attached with the warrant. The copy of attachment is to be affixed firstly on the property and then upon the Court house. Reader should record a note on the warrant of attachment or on file that the specific formalities required by law in the case, have been actually complied with. Where the order is for the attachment of the property which is land paying revenue to the Government, the warrant should be in accordance with the provisions of **section 141 of Punjab Land Revenue Act, XVII of 1887**, be addressed to the Collector and be sent through him for execution along with necessary copies of the prohibitory order. The Collector and his office will then be responsible for executing it in accordance with the specified legal formalities and to affix the order firstly on the property and then on the Court house of the Judge issuing the attachment and in his own office. The Collector will then return the warrant to the Court concerned when it has been

duly executed with an endorsement under his signatures certifying that all the legal formalities required have actually been complied. Payment of drum beating charges may be allowed to be made at the discretion of the District Judge either – (a) in cash at the spot ; or (b) by postal stamp attached to the warrant ; or (c) by Indian Postal Orders. **Volume I Chapter 12-H of Rules & Orders**

Where the property is land situated in a village, a copy of order shall be affixed in the office of the Gram Panchayat of that village. Where the property is land situated in a cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estate Officer in whose area that Cantonment is situated. This order shall also take effect against persons claiming under a gratuitous transfer from the JD, from the date of the order of attachment and as against others from the time they had knowledge of passing of the order of attachment or from the date of the proclamation, whichever is earlier. (**Order XXI Rule 54 CPC as amended)**

4.8 EXECUTION BY WAY OF DELIVERY OF POSSESSION (Order XXI Rule 35 CPC and Volume 1 Chapter 12 Part G of Rules & Orders)

A decree for delivery of any immovable property may be executed by delivery of possession to the Decree Holder or person appointed by him to receive delivery on his behalf if such property is in possession of any person bound by the decree. If necessary, it can be executed by removing any person bound by the decree who refuses to vacate the property.(**Order XXI Rule 35 (1) CPC**) In such a case, **Ahlmad/Execution Clerk** shall issue warrant to give possession on **Proforma No. 11 Appendix E CPC.** In such case, the endorsement on warrant must state that the property was found in the possession of A (naming the person) and that he was one of the persons bound by the decree or held on behalf of one of those persons; that he was required to vacate the property and that, on his doing so,

the person entitled under the decree was put in possession; or that, on his refusal to do so, he was removed from the property and the person entitled under the decree was put in possession **Volume 1 Chapter 12 Part G of Rules & Orders. Proforma No.11 Appendix E CPC** is as follows:

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.
(O. 21, r. 35.)
(Title)

To

The Bailiff of the Court.

WHEREAS the under mentioned property in the occupancy of……..has been decreed to…… the plaintiff in this suit; you are hereby directed to put the said……in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

Given under my hand and the seal of the Court, this …. Day of …… 19/20…..

Schedule

Judge

Where a decree is for the joint possession of immovable property, constructive possession (malkana kabza) shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum (Munadi) at some convenient place, the substance of the decree. Here, the **Bailiff** shall make an endorsement on warrant that on what part of the property, the copy of the process was affixed and at what place the substance of decree was proclaimed.(**Order XXI Rule 35 (2) CPC and Volume 1 Chapter 12 Part G of Rules & Orders)**

Further, it is mandate that possession of any building or enclosure is to be delivered and person in possession being bound by the decree does not afford free access, the **Bailiff** may after giving the reasonable warning and facility to woman not appearing in public according to the customs of the Country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the Decree Holder in possession. The endorsement should describe briefly the action taken by naming the person who was in possession and was afforded and was given reasonable warning and facility to withdraw.(**Order XXI Rule 35 (3) CPC and Volume 1 Chapter 12 Part G of Rules & Orders)**

Where the delivery of any immovable property has to be executed which is **in the occupancy of a tenant or other person who is entitled to occupy the same and is not bound by the decree**, the Court shall order the delivery by affixing a copy of the warrant in some conspicuous place on the property and proclaiming to the occupant by beat of drum (Munadi) at some convenient place, the substance of the decree with regard to the property. Here, the endorsement should state that a copy of the warrant had been put up (stating where it was affixed) and that the substance of the decree had been proclaimed. (**Order XXI Rule 36 CPC and Volume 1 Chapter 12 Part G of Rules & Orders)**

Note: Before issuing a warrant for the delivery of immovable property, the Court should ascertain from the Decree Holder, or his agent, the name of the person whom he believes to be in possession of such property, to guide it in selecting the particular mode of delivery suitable to the case.

When decree is passed giving possession of agricultural land, the date on which the possession delivered should be specified in the decree and orders passed as to any standing crops that may be on the land. If this has not been done, it should be done in the order which is sent to the Collector by the Court executing

the decree. If, however, no date is specified in either the decree or the order and the land of which possession is to be delivered is in cultivating possession of the debtor, the Collector should at once refer to the Civil Court for instructions as to whether or not he is to delay execution of the decree, until any crop which may have been sown by the Judgement Debtor and is standing on the land, has been removed.(**Volume 1 Chapter 12 Part G of Rules & Orders)**

On return of warrant of attachment/possession served, **Ahlmad/Execution Clerk** shall place the same on concerned file and report on left hand side under the order of previous date.

On the order of the Presiding Officer regarding satisfaction of decree and consignment of file, the file shall be consigned to the Record Room and **Ahlmad/Execution Clerk** shall make entries in remaining columns of Register No. X.

Note: All the miscellaneous applications like an application for deposit of subsistence allowance or objection or an application u/s 58 CPC etc. shall be entered in **Register No.XI (**Register of Miscellaneous Applications in Execution Proceedings) to be maintained by the **Ahlmad/Execution Clerk.**

4.9 EXECUTION BY WAY OF SALE

Any Court executing a decree may order that the property attached be sold:

a. Entirely or

b. Such portion thereof as may be necessary to satisfy the decree

(**Order XXI Rule 64 CPC**)

Any Court can order the sale of the property of the Judgment Debtor in execution of the decree.

Every sale in execution of a decree shall be conducted by an Officer of the Court appointed by the Court and shall be made by public auction.(**Order XXI Rule 65 CPC**)

4.9.1 COURT OFFICIALS FOR CONDUCTING SALE

(Volume I Chapter 12 Part L Rule 20 of Rules & Orders): Sales in execution of Decrees shall ordinarily be conducted by the Court Auctioneer. The District Judge may direct, by special order, that the sale in a particular case or cases shall be conducted by the Nazarat Staff.

(a) SALE BY COURT AUCTIONEER: The District Judge of each District shall, with the prior approval of the High Court, appoint a Court Auctioneer to conduct sale in execution of decrees within the limits of sub division. The official Receiver shall ordinarily be appointed as the ex-officio Court Auctioneer for the sub-division which has its Headquarters at the place where the Headquarters of the District are located (**substituted by correction slip No. 26 dated 17.09.1976**.)

(b) SALE BY AGENTS OF COURT AUCTIONEERS (Volume I Chapter 12 Part L Rule 21(ii) of Rules & Orders) : The Court Auctioneer may employ his agent for conducting the sale of the property of which estimated value is Rs.500/- or less. Such sales shall be conducted under the general supervision of the Court Auctioneer and he shall be responsible for the proper compliance with all legal requirements.

The Court Auctioneer shall each morning, supply to each Court, a date-sheet showing the sales already filed by all Courts in order that sales,

which he has to attend may not be fixed at different places on the same day.

(c) SALE BY NAZARAT STAFF (Volume I Chapter 12 Part L Rule 24 (i) of Rules & Orders): The proper officer to conduct the sale in such cases will be :

a. **Where the sale is ordered by the Court of Small Causes**, any officer appointed by the Court who could be from department.

b. **When the sale is ordered to be conducted by a Court other than a Court of Small Causes**:

i. **THE CIVIL NAZIR**,

- for all sales ordered by Courts located at District Headquarters and
- for all other sales in which the value of the property to be sold is estimated to exceed Rs.5,000/-.

ii. **THE NAIB NAZIR,**

- for other sales and
- in every case in which the Civil Nazir is not required to conduct the sale in person.

Such sale may be conducted under the orders and upon the responsibility of the Civil Nazir by a Naib Nazir deputed by him.

iii. **EXECUTION BAILIFF :** In cases where :

a. Property is of small value,

b. Nazir or Naib Nazir is not available and

c. Sale is to be conducted at the place where the attached property is situated.

iv. **PROCESS SERVER :** in cases where **:**

a. No other officer as aforesaid is available and

b. When value of the property to be sold is estimated to be Rs.100/- or less.

4.9.2 PROCEDURE TO BE ADOPTED

Step 1 Issuance of notice for settlement of proclamation (Volume I Chapter 12 Part L Rule 2 of Rules & Orders)

Whenever sale in execution is ordered by the Court, it shall further cause a proclamation of sale to be made.(**Order XXI Rule 66 (1) CPC**) Before issuing such proclamation, a notice to the parties be given. (**Order XXI Rule 66 (2) CPC**) However, when a notice under **rule 54 of Order XXI CPC** has already been given for the date for settling the terms of the proclamation, it shall not be necessary to give notice under this Rule, unless the Court otherwise directs. Under **Order XXI Rule 54 (1-A) CPC,** the Court shall, along with the attachment order direct the Judgment Debtor to attend Court on a specified day to take notice of the date to be fixed for settling the terms of proclamation. If the property ordered to be sold by the Court is not the land assessed to land revenue paying or revenue free land, or any interest in such land, then the Court shall fix a convenient day, not being distant **more than 15 days,** for ascertaining the particulars specified in **Order XXI Rule 66 (2) CPC**. Notice of the said day shall be given to the parties or their pleaders.

Where the property to be sold is movable property which has been made over to the custodian under **sub clauses (a) or (c) of clause (1) of Rule 43 of this order,** the Court shall issue a process by way of a notice to custodian, directing him to produce the property at the place of sale, at a time to be specified therein with a warning that if he fails to comply with the directions, he shall be liable to action under Section 145 of CPC. (**Order XXI Rule 66 (**3) **CPC as amended**)

a. **Ahlmad** shall, on receiving the order from the Court, issue notice to the JD on **Proforma No.28 Appendix E CPC** which is as follows:

NO. 28
NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION
(O. 21, R. 66.)
(TITLE)

To

Judgment-Debtor.

WHEREAS in the above-named suit……..., the decree-holder, has applied for the sale of……,You are hereby informed……that the…….day of……19, has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this ..... day of……19/20……

Judge.

b. When the Judgment Debtor has already died, then as per order of the Court, Ahlmad shall issue notice to the legal heir or his representative on **Proforma No.99 Appendix E CPC** which is as follows :

NO.99

NOTICE TO THE HEIR OR REPRESENTATIVE OF THIS JUDGMENT DEBTOR (ORDER XXI, RULE 22(1), OF THE CODE OF CIVIL PROCEDURE, FORM PRESCRIBED BY THE HIGH COURT)

In the Court of ……. At ……

Civil Suit No. ……. of 19……..

Miscellaneous No. …….. of 19 ……..

…….. of ……. Decree-holder,

Against

…….. of …….. Judgment-Debtor

To

Whereas ……..

Decree holder, on the …….. of 19……., presented an application to this Court for the execution of a decree of the Court of …….. dated the …….. day of …….. 19 ……., praying for …….. mentioned in the said decree; and WHEREAS on enquiry it appeared that the said Decree holder has applied for the enforcement of the decree against you, naming you as the heir or representative of …….. deceased judgment debtor; and it being necessary, agreeably to Rule 22(1) of Order XXI of the Code of Civil Procedure, 1908, before issuing a warrant for the execution of the decree, to give you notice, you are accordingly required to show cause before this Court on the ……. day of …….. why the said decree should not be executed against you, in default whereof the said decree will be enforced against you according to law.

Given under my hand and the seal of the Court, this …….. day of ..... 19/20.....

(Seal)

Step 2 Inquiry into Encumbrances (Volume I Chapter 12 Part L Rule 3 of Rules & Orders)

Before issuing the order for service of proclamation of sale, the Court may hold an inquiry as to the encumbrances over the property to be sold from the Sub Registrar's office. The expenses of the said inquiry shall be recovered by **Ahlmad/Execution Clerk** from the Decree Holder as per the rates prescribed in the **second proviso to Article II of the table of registration fees published with Punjab Government notification No. 22850, dated the 25th September, 1923 as amended by Punjab Government notification No. 23759, dated the 15th June, 1932,** which are as follows:

(a) For the first year in the books of which search is to be made for each entry or document Rs. 1-00

(b) For every other year in the books of which search is continued for each entry or document Rs. 0-25

The fee in each case is subject to a maximum of Rs.5-00

1) The amount recovered in this behalf by **Ahlmad/Execution Clerk** will first be placed in deposit and will then be paid to the Registration Department, by means of repayment vouchers endorsed in their favour.

2) The report of the Sub-Registrar shall be open to the inspection of the parties, of their pleaders, free of charge, between the time of its receipt by the court and the settlement of the proclamation of sale.

Step 3 Settlement of Proclamation of Sale (Volume I Chapter 12 Part L Rule 4 of Rules & Orders):

The Court shall, after perusing the documents, if any, filed by the parties and the report referred to in Rule 3 of the Sub-Registrar and after examining the parties settle the proclamation of sale.

Step 4 Settling Four Dates

As a matter of practice, after conducting the above said inquiry, the Court settles the terms of proclamation and grants four dates as follows:

i. Notice at the spot
ii. Pasting the notice at the Court House
iii. Date of auction sale
iv. Report

Note: There should be a gap of at least 15 days in the case of immovable property and of at least 7 days in the case of movable property between the date on which the copy of the proclamation is affixed on the Court House of the Judge ordering the sale and the date fixed for auction. **(High Court Notification No.125-Gaz/XI-Y-14, dated the 7th April, 1932) (Rule 68 Order XXI CPC, Substituted by the Code of Civil Procedure (Amendment) Act, 1976)**

Step 5 Issuing Order on Nazir

On receiving the orders of the Court after the settlement of proclamation, **Ahlmad/Execution Clerk** shall issue the order on the Nazir as per **Proforma No.30 Appendix E CPC** which is as follows:

No. 30
ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE (O. 21, r. 66.)
(Title)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the…….day of……20 , has been fixed for the sale of the said property,……. copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the……. day of……19/20…….

Schedule

Judge

Step 6 Issuance of Proclamation of Sales

Thereafter, the proclamation of sale shall be issued by **Nazir** on **Proforma No.29 Appendix E CPC** which is as follows :

No. 29
PROCLAMATION OF SALE
(O. 21, r. 66)
(Title)

(1) Suit No…….of 19/20……..., decided by the……..of……in which ..... was plaintiff and ..... was defendant*. — Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure,*

1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest upto date of sale to the sum of…….

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by …….. at the monthly sale commencing at…..O'clock on the …… at …….. In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

Conditions of sale

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the Officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the Purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the

discretion of the Court or Officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the Officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the Officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the Purchaser shall pay immediately after such declaration a deposit of 25 per cent on the amount of his purchase-money to the Officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re sold.

7. The full amount of the purchase-money shall be paid by the Purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting Purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Given under my hand and the seal of the Court, this…….day of…….19/20……..

Judge.

Schedule of Property

Number of lot	*Description of property to be sold, with the name of each owner where there are more Judgment-debtors than one*	*The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government*	*Detail of any encumbrances to which the property is liable*	*Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value*	*The value of the property as stated by the decree holder*	*The value of the property as stated by the judgment debtor*

Points to be noted before issuing a proclamation of sale

- The proclamation of sale shall be in the language of the Court
- The date, time and place of the sale shall be clearly stated.
- Specific description of the property or part of it which is ordered to be sold, shall be given.
- The **revenue assessed**, where the property to be sold is an **interest in an estate or in part of an estate paying revenue** to the Government shall also be mentioned.
- Any encumbrance to which property is liable, shall be mentioned.
- The amount for the recovery of which the sale is ordered, shall be mentioned.
- Any other thing which is material for purchaser to know to judge the nature and value of the property, shall be mentioned.
- The particulars to be entered in the proclamation for sale shall be entered carefully in order to remove any objection to the sale at a later stage.

- It is not necessary to mention the Court's estimate of the value of the property. It is sufficient to include in it the estimate, if any, given by either or both the parties (**Proviso added to Order XXI Rule 66(2)(e) by the Punjab High Court**).(**High Court Notification No. 567-Gaz, dated the 4rth of Nov,1929, and No. 150-R/XI-Y-14, dated 16th May,1939**.)

Note: Ahlmad/Execution Clerk shall obtain the signature of the Judge over the proclamation after it is prepared. Ahlmad/Execution Clerk shall prepare four copies of the proclamation.

Step 7 Mode of Making Proclamation (Order XXI Rule 67 read with Rule 54 sub Rule (2) CPC)

The **Bailiff,** on receiving the proclamation, shall serve it in the following manner:

a. Announce the proclamation at some place on or adjacent to the property by beat of drum,

b. affix copy of the proclamation on a conspicuous part of the property to be sold,

c. paste upon a conspicuous part of Court House, a copy of the proclamation,

d. where the property is land paying revenue to the Government, the affixation is to be effected in the office of the Collector of the District in which the land is situate, and

e. when the property is land, situated in a village, affixation is also to be effected in the office of the Gram Panchayat, if any, having jurisdiction over that village. (**Inserted by the Code of Civil Procedure (Amendment) Act, 1976**)

f. Where the property is land situated in Cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Officer in whose area that Cantonment is situated. (**Volume 1 Chapter 21 Rule 63 of Rules & Orders as amended**)

The order shall take effect as against persons claiming under a gratuitous transfer from the Judgment Debtor, from the date of the order of attachment or from the date of Proclamation, whichever is earlier (state amendment by the Hon'ble High Court of Punjab and Haryana) (**Volume 1 Chapter 21 Rule 63(2) of Rules & Orders) (High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932. No.109-R-XI-Y-14, dated 21st April, 1939, No. 273-R-XI-Y-14, dated the 30th July, 1941.**

Note 1: If the Court orders for publication of the proclamation in the official gazette or in a local newspaper, or in both, **Ahlmad/Execution Clerk** shall ensure the publication as ordered.

Note 2: The cost of publication of proclamation of sale shall be deemed to be costs of the sale to be firstly recovered from Decree holder and then to be included in the costs of execution.

Step 8 Conducting of Sale by Auction: Duties/Role of Officer conducting sale.

A warrant of sale shall be delivered to the Court Auctioneer by the Court through the Process Serving Agency. The Auctioneer or any official of the Court who is appointed to conduct the auction shall visit the site on the appointed day. He shall formally announce the auction, shall state the details of the property to be sold and also the reserve price fixed by the Court, if any. The bidding shall then be opened to the Public. The last bid shall be made final at the count of three and drop of the hammer. Following important points are to be taken into account at the time of Auction:

i. Private Sale by Judgment Debtor (Volume 1 Chapter 12 Part L Rule 7 of Rules and Orders & Order XXI Rule 66 CPC.)

When the Court postpones the sale on the application of the Judgment Debtor and enables the Judgment Debtor to pay the decretal amount, after raising such money by mortgage, lease or sale of the property, **Ahlmad/Execution Clerk** shall issue the certificate on **Proforma No.35 Appendix E CPC** to the JD, which is as follows:

No. 35
CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE OR SELL PROPERTY (O. 21, r. 83.)
(Title)

To

WHEREAS in execution of the decree passed in the above suit an order was made on the……day of……..19……., for the sale of the under-mentioned property of the judgment-debtor....., and whereas the Court has, on

the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or Sale within a period of……. from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment debtor.

Description of property

Given under my hand and the seal of the Court, this …. Day of …. 19/20

Judge.

The Auction shall have to be stopped if the Judgment Debtor produces such certificate before the Auctioneer.

ii. Adjournment of Sale (Order XXI Rule 69 CPC)

The Court may adjourn the sale to a specified date and hour. However, when such adjournment is granted by the official conducting the sale, the reasons for such adjournment are to be recorded. Where the sale is made in the Court premises, adjournment can be granted by the Officer conducting the sale only after obtaining permission of the Court.**(Proviso to Order XXI Rule 69 (1) CPC)**

If such adjournment is for a period more than 30 days, (**Period of 30 days substituted for 15 days by High Court Notification No. 125-Gaz/XI-Y-14, Dated the 7th April, 1932 and later substituted by Code of Civil**

Procedure (Amendment) Act, 1976) a fresh proclamation under Rule 67 shall be made unless the Judgment Debtor consents to waive it.

iii. Stoppage of Sale (**Order XXI Rule 69 (3) CPC**)

The sale can be stopped if before **the lot is knocked down, the debt and the costs** (including the costs of the sale) are tendered to the Officer conducting the sale or the Judgment Debtor produces the proof of payment of the decretal amount made in the Court.

iv. General Rules to be followed during Bidding

(a) Bid by Decree Holder

The Decree Holder shall not bid for or purchase the property without the express permission of the Court. **(Order XXI Rule 72 CPC)**

If the Decree Holder is granted permission to purchase the property, he shall not be required to pay the purchase money. But he shall adjust the decretal amount with the same.

(b) Bid by Mortgagee

The mortgagee of immovable property shall also not bid for purchase of property except with the permission of the Court. **(Order XXI Rule 72A CPC)**

When the Court grants permission to the mortgagee, the Court will also fix a reserve price which is to be taken into account during the sale proceedings.

(c) Bid by Co-sharer

Where the property sold is a share in undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid

the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer. Meaning thereby that the bid of the co-sharer shall be considered and not of the outsider. **(Order XXI Rule 88 CPC)**

(d) Restriction on Bidding or Purchase by Officer

No Officer or any person having any duty to perform in connection with any sale shall be allowed to bid or acquire or attempt to acquire any interest in the property sold, directly or indirectly. **(Order XXI Rule 73 CPC)**

Step 9 Receiving of Sale Amount (Order XXI Rules 84 to 86 CPC)

a) In sale of immovable property

1. The person declared as successful in the bid, shall pay immediately 25% of the purchase money (either in cash or cheque) (**Chief Court Notification No. 2212-G, dated 12th May 1909 and High Court Notification No. 123-R/XI-Y-14, dated 28th April 1938**) to the Officer conducting the sale.
2. In case, the purchaser fails to pay immediately 25% of the purchase money, the Officer conducting the sale shall forthwith issue a certificate of resale in **Proforma No.31 Appendix E CPC** which is as follows:

No. 31
CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER 'S DEFAULT
(O. 21, r. 71.)
(Title)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, inconsequence of default on the part of…, Purchaser, there was a deficiency in the price of the said property amounting to Rs……., and that the expenses attending such re-sale amounted to Rs……., making a total of Rs……, which sum is recoverable from the defaulter.

Dated the……. day of……19/20…….

Officers holding the sale.

3. The full amount of the purchase money shall be paid by the purchaser in the Court within 15 days from the sale of the property. If the purchaser is Decree Holder, he may set off any amount to which he is entitled to.
4. When the Purchaser fails to pay the full amount of the purchase money within a period of 15 days, the amount already deposited shall be forfeited to the Government after deducting the expenses of the sale. The property shall then be re-sold after issuing fresh proclamation.

(b) In sale of movable property

i. The purchase price shall be paid either at the time of sale or as soon thereafter as the officer of sale directs.
ii. On payment of the purchase money, the officer shall issue a receipt in the name of the purchaser where after the sale shall become absolute.
iii. In default of payment by the Judgment Debtor as directed by the officer, the property shall be forthwith resold.

Step 10 Deposit of the Purchase Money – Sale Proceeds (Volume 1 Chapter 12, Part L Rule 21 (iii) of Rules & Orders)

The Court Auctioneer shall himself deposit into the treasury all sums realised at auction sales conducted by him or his staff. All sums realised at sales conducted at places where there is a treasury shall be deposited into the treasury or the State Bank of India, as the case may be, on the first working day after the sale. The District Judge shall prescribe periods, within which the proceeds of sales conducted at other places shall be deposited. The periods so prescribed shall be reported to the High Court and shall be as short as possible.

When the sale is conducted by the Nazarat Branch, the purchase money shall be deposited in the Court.

Step 11 Disbursement of the Purchase Money (Volume 1 Chapter 12 Part L Rule 12 of Rules & Orders)

i. The purchase money deposited upon the sale of the property shall be retained in the treasury till the expiration of 15 days from the date of order confirming the sale.

ii. If the notice of appeal is received within the prescribed period, the purchase money shall be retained in deposit until the appeal is decided or unless the Decree Holder gives security to the satisfaction of the Court to repay it at any time when he may be required by the Court, to do so.

iii. If no notice of an appeal is presented by the party within the said period, and the Court directs to pay the purchase money to the Decree Holder,

the Ahlmad shall ensure the payment to the Decree Holder from the treasury where the purchase money is lying deposited after the sale.

iv. The following deductions shall be made from the amount to be paid to the Decree Holder.

a. **Government Commission (Volume 1 Chapter 12 Part L Rule 22 of Rules & Orders)**

(i) Commission at the following rates shall be deducted from the proceeds of sales under this Chapter:

a) If the sale proceeds do not exceed Rupees five thousand at five per centum.

b) If the sale proceeds exceed Rupees five thousand at five per centum on Rupees five thousand and two and a half per centum on the remainder.

Note: (i) If the sale is conducted by the Court Auctioneer, 80% of the Commission will be paid to him and 20 per cent will be paid into the Treasury to the credit of Government. All incidental expenditure shall be met by the Auctioneer. The amount of commission of the Court Auctioneer shall not, however, exceed Rs. 5000/- in respect of any one sale.

(ii) If the sale is conducted by the Nazarat staff, whole of the commission shall be credited to Government and nothing shall be paid to the Officer conducting the sale. In such cases, the expenses incurred in conducting the sale, including the cost of advertisement, must not exceed the amount of commission.

b. **Expenses of Custody etc. (Volume 1 Chapter 12 Part L Rule 22(iv) of Rules & Orders)**

The expenses incurred in the care, custody and keep of attached property (as taxed by the Court) shall be a first charge on the sale proceeds thereof, after deduction of the commission mentioned above.

4.9.3 CONFIRMATION OF SALE (Volume 1 Chapter 12 Part L Rule 16 of Rules & Orders)

When no application is moved under **Order XXI Rule 89, 90 or 91 CPC** within a period of 30 days or if made is disallowed, the Court shall make an order confirming the sale. After the sale is confirmed and the direction of the Court is received to issue certificate to the purchaser under **Rule 94**, the **Ahlmad/Execution Clerk** shall prepare a draft certificate and get it signed by the Judge**.** Thereafter, the certificate, in exact conformity with the draft shall be prepared in the prescribed form on the stamp paper at the expenses of the purchaser. The date when the sale becomes absolute shall also be clearly mentioned. It shall be as per provisions of Chapter 2 Part-B of Rules & Orders and Article 18 of Schedule 1A of Indian Stamp Act II of 1899 as amended by Punjab Act VIII of 1922. **(Volume 1 Chapter L Rule 18 of Rules & Orders). Sale Certificate has to be on Proforma No.38 Appendix E CPC,** which is as follows:

No.38
CERTIFICATE OF SALE OF LAND
(O. 21, r. 94.)
(Title)

This is to certify that……..has been declared the Purchaser at a sale by public auction on the……day of…….19……,

of……..in execution of decree in this suit and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this……day of……19/20……

Judge

Ahlmad/Execution Clerk shall send the copy of the certificate to the Registering Officer within the local limit of whose jurisdiction the whole or any part of the property is situated. The certificate is to be prepared in vernacular language with permanent black ink or with registration ink obtainable from Central Stationary Officer, Calcutta and on the prescribed form which is obtainable on indent from the Controller of Printing and Stationary Punjab. **(Volume 1 Chapter L Rule 19 of Rules & Orders)**

4.9.4 HANDING OVER OF POSSESSION (IMMOVABLE PROPERTY) – Order XXI Rules 95 to 105 CPC:

Ahlmad/Execution Clerk shall issue warrant of possession for delivery to the certified purchaser of land at a sale in execution, as per the order of the Court and shall give it to the **Bailiff** on **Proforma No.39 Appendix E CPC** on **Proforma No.39 Appendix E CPC** after the Court issues the certificate of sale. **Proforma No.39 Appendix E CPC** is as follows**:**

No. 39
ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION (O. 21, r. 95.)
(Title)

To

The Bailiff of the Court.

WHEREAS……..has become the certified purchaser of……..at a sale in execution of decree in Suit No……of……..19……..; You are hereby ordered to put the said……, the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this……day of……19/20……..

Judge

Bailiff, on receiving the warrant in the above said form from the Court, shall proceed to execute the warrant and obtain the possession of the property. Any person found in the possession of the property shall be asked to vacate the property.

If the person in possession refuses to do so, **Bailiff** shall remove him from the property in order to effect the delivery of the possession. In such eventuality, following endorsement shall be made on the warrant:

> *The property was found in the possession of A (naming the person), and that he was one of the persons bound by the decree or held on behalf of one of those person (naming the persons) ; that he was required to vacate the property and that on his doing so, the person entitled under the decree was put in possession; or that, on his refusal to do so, he was removed from the property, and the person entitled under the decree was put in possession.*

Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not allow the bailiff or the Officer of the Court to enter, the **Officer of the Court** may give

reasonable warning and facility to any woman not appearing in public according to custom, to withdraw, and only after such warning and opportunity remove or open any lock or gold or break open any door or do any other act necessary for putting the Decree Holder in possession. An endorsement in this regard be briefly stated on the warrant, returnable to the Court.

When the property is in the occupancy of the tenant or any other person who is not bound by the decree, **Bailiff** shall affix a copy of the certificate of sale on some conspicuous place on the property and the proclamation shall be made as provided in the **Order XXI Rule 36 CPC**. The endorsement shall be made in this regard stating the place where the copy of the warrant had been affixed and that the substance of the decree had been proclaimed. (**Order XXI Rule 96 CPC)**

Where the decree is for joint possession of immovable property, **Bailiff** shall affix a copy of the certificate of sale in some conspicuous place on the property and proclamation by beat of drum shall be affected at some convenient place. Endorsement in this regard be recorded on the warrant of possession, to be returnable to the Court.

4.9.4.1 RESISTANCE TO EXECUTION (Order XXI Rule 97 CPC AND VOLUME 1 CHAPTER 12 PART Q OF RULES & ORDERS):

Whenever **Bailiff** is resisted from executing the warrant of possession issued by the Court, he shall return the warrant with the endorsement to that effect. The Court shall then order to issue a summon to the obstructer to appear and answer the charge or obstructing execution of decree. On receiving the said order, **Ahlmad/Execution**

Clerk shall issue the summon to the obstructer on **Proforma No.40 Appendix E CPC** which is as follows:

No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE (O. 21, r. 97.)

(Title)

To

WHEREAS……,the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession;

You are hereby summoned to appear in this Court on the ……day of …… 19……..... at …… A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this……day of……19/20…….

Judge.

If after examining the objector/ obstructer, the Court is satisfied that the resistance or the obstruction was caused without any reasonable ground by any person, the Court may direct that the purchaser be put in possession of the property and when he is still resisted or obstructed, the Court may order the objector or obstructer to be detained in civil prison for a term which may extend to 30 days.(**Order XXI Rule 98(3)CPC and Volume 1 Chapter 21 Rule 72 of Rules & Orders) (High Court Notification No.125-Gaz/XI-Y-14, dated 7th April, 1932).**

On receiving the said order from the Court, **Ahlmad/Execution Clerk** shall issue a warrant of committal on **Proforma No.41 Appendix E CPC** which is as follows:-

No. 41
WARRANT OF COMMITTAL
(O. 21, r. 98.)
(Title)

To

The Officer in Charge of the Jail at……..

WHEREAS the under-mentioned property has been decreed to……, the plaintiff in this suit, and whereas the Court is satisfied that……without any just cause resisted (or obstructed) and is still resisting (or obstructing) the said…….. …….in obtaining possession of the property, and whereas the said……..has made application to this Court that the said…….be committed to the Civil prison;

You are hereby commanded and required to take and receive the said…….. into the civil prison and to keep him imprisoned therein for the period of…….days.

GIVEN under my hand and the seal of the Court, this…….day of……19/20……..

Judge.

4.9.4.2 ISSUANCE OF DAKHALNAMA

After the possession is handed over to the Decree Holder or any person authorised by the Court, a dakhalnama or an acknowledgement is taken in this regard. The said dakhalnama or an acknowledgment, not

being an acknowledgement of the receipt of money or other movable property, does not require to be stamped. The said dakhalnama shall then be placed before the Court as a proof of transfer of possession. Thereafter, the Court shall consign the execution file to the record room.

4.9.5 HANDING OVER OF POSSESSION(MOVABLE PROPERTY)

(a) **Movable property of which actual seizure has been made (Order XXI Rule 79 (1) CPC):** It shall be delivered to the purchaser against proper receipt.

(b) **Movable property in possession of person other than the Judgment Debtor (Order XXI Rule 79(2) CPC) :**The delivery to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser. **Ahlmad/Execution Clerk** shall issue notice on **Proforma No.32 Appendix E CPC** which is as follows:

No. 32

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION (O. 21, r, 79.)

(Title)

To

WHEREAS……..has become the Purchaser at a public sale in execution of the decree in the above suit of……..now in your possession, you are hereby prohibited from delivering possession of the said……. to any person except the said……

GIVEN under my hand and the seal of the Court, this……day of……19/20……..

Judge.

(c) **If property sold is a debt not secured by Negotiable Instrument (Order XXI Rule 79(3) CPC):** The delivery shall be made by a written order of the Court and **Ahlmad/Execution Clerk** shall issue it on **Proforma No.33 Appendix E CPC** in the following form :

No.33
PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER (O. 21, R. 79.)
(Title)

To

.....
and to
.....

WHEREAS……has become the Purchaser at a public sale in execution of the decree in the above suit of…….. being debts due from you……to you…….; It is ordered that you … be, and you are hereby, prohibited from receiving, and you……from making payment of, the said debt to any person or persons except the said……..

GIVEN under my hand and the seal of the Court, this……day of…….19/20……..

Judge.

(d) **When the Property Sold is a Share in a Corporation (Order XXI Rule 79(3)):**

A prohibitory order, on receiving a written order of the Court, shall be made by **Ahlmad/Execution Clerk** of **Proforma No.34 Appendix E CPC** which is as follows :

No. 34

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARE SOLD IN EXECUTION

(O. 21, r. 79.)

(Title)

To

..... and .....Secretary of Corporation.

WHEREAS…….has become the Purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of……..standing in the name of you……; It is ordered that you…….be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said……, the Purchaser aforesaid, or from receiving any dividends thereon; and you……, Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said……, the Purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this…….day of ……..19/20……

Judge

(e) **TRANSFER OF NEGOTIABLE INSTRUMENTS AND SHARES (Order XXI Rule 80 CPC):** Judge or such Officer as he may appoint in this behalf, may execute a document or make an *endorsement* in the following form:

i. Such execution or endorsement may be in the following form, namely : *A.B. by C.D. Judge of the Court of*

(or as the case may be), in a suit by E.F. against A.B,

ii. Until the transfer of such Negotiable Instrument or share, the Court may, by order, appoint some person to receive any

interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Such execution or endorsement shall have the same effect as an execution or endorsement by the party.

4.10 MISCELLANEOUS PROVISIONS

4.10.1 Setting Aside of Sale (Volume I Chapter 12 Part L Rule 14 of Rules and Orders) (High Court Notification No.125-Gaz/XI-Y-14, dated the 7th April, 1932.)

When the application for setting aside the sale is filed by a person on any of the grounds mentioned in Rules 90, 91 and 92, the applicant shall deposit the following sum as per **Order XXI Rule 89 CPC**:

a. **For payment to the purchaser**, a sum equal to 5% of the purchase money, and

b. **For payment to the Decree Holder**, the amount for which the sale was ordered. Any amount which has already been received by the Decree Holder since the date of the proclamation shall be deducted from the said amount to be paid by the applicant.

Ahlmad/Execution Clerk on the orders issued by the Court, shall issue a show cause notice on **Proforma No.36 Appendix E CPC** when the application to set aside the sale is filed **on the ground of material**

irregularity or fraud in publishing or conducting the sale. Proforma No.36 Appendix E CPC is as follows:

No. 36
NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE
(O. 21, rr. 90, 92.)
(Title)

To

WHEREAS the under-mentioned property was sold on the…….day of…….. 19……. .....,in execution of the decree passed in the above named suit, and whereas……,the decree-holder [or judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that…….

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the……day of……19....., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this…… day of…….19/20……

Description of property.

Judge.

A show cause notice on **Proforma No. 37 Appendix E CPC** shall be issued by **Ahlmad/Execution Clerk** when the application to set aside the sale is filed **on the ground that the Judgement Debtor had no saleable interest. Proforma No. 37 Appendix E CPC** is as follows:

No. 37
NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE
(O. 21, rr. 91, 92.)
(Title)

To

WHEREAS……the purchaser of the under-mentioned property sold on the…… day of ……19/20……., in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that……., the judgment-debtor, had no saleable interest therein.

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the…… day of……19, when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this……day of ..... 19/20.....

Description of property

Judge.

4.10.2 Sale Not to be Set Aside on the Death of the Judgment Debtor before the Sale but After the Service of the Proclamation of sale: Order XXI R22A CPC (Inserted by the code of Civil Procedure (Amendment) Act, 1976.

No sale is to be set aside merely for the reason of the death of the Judgment Debtor in between the date of issue of the proclamation and the date of sale notwithstanding the failure of the Decree Holder to substitute the legal representative of such deceased Judgment Debtor. However, if the legal

representative could prove that he was prejudiced by such sale, then the Court may set aside the sale.

4.10.3 Refund of Sale Money on Setting Aside of Sale (Volume1 Chapter 12 Part L Rule 17 of Rules & Orders)

When the sale is set aside on any of the grounds mentioned in Rules 90, 91 and 92 by the Court, the sale money shall be returned with or without interest as per the order of the Court to the person by whom it has been paid, against proper receipt.

4.10.4 Charges of Court Auctioneers when Sale Stands Cancelled (Volume 1 Chapter 12 Part L Rule 23 of Rules & Orders)

(i) No commission shall be paid on the proceeds of sales set aside for a material irregularity in publishing or conducting the sale.

(ii) The commission on the proceeds of a sale set aside for any other cause shall be paid by the person at whose instance and for whose benefit the sale is set aside and the Court Auctioneer shall be entitled to his share of such commission.

(iii) Where a sale is set aside after the commission has been paid to the Court Auctioneer, the Court shall recover it from him and shall refund it to the Auction Purchaser if he is entitled to the refund of the whole of the purchase money. In such cases, the Government share of the commission shall also be refunded.

Note: In cases in which auction sales are ordered, but not completed or do not take place at all, the Court Auctioneer shall be paid only his actual expenses. If, however, there has been, in the opinion of the Court, clear negligence on the part of the

Auctioneer (e.g., failure to advertise, leading to absence of bidders) he will not be entitled to any compensation. The amount of actual expenses if held due under this rule will be determined by the Court and shall be paid by the Decree-Holder or the Judgment-Debtor as the Court may direct.

4.10.5 Preparation of Quarterly Return Statement (Volume I Chapter 12 Part M Rules 5 and 6 of Rules & Orders)

i. **Returns to be submitted by Court**: **Ahlmad/Execution Clerk** shall submit quarterly returns in **Form C printed in Volume VI-A Part A-V of Rules and Orders** under the heading **"4.Returns relating to execution of decree in which the Collector is consulted"**, in all cases in which the Collector's advice has been sought under Rule 4 above or an order is sent to the Collector under section 141 of the Punjab Land Revenue Act but execution of the decree remains in the hands of the Civil Court.

ii. **Returns to be submitted by Collector**: Forms A and B in the aforesaid part of Volume VI-A were drawn up by the Judges with the concurrence of the Financial Commissioners for quarterly statements which the Collectors are required to submit to the District Judge in respect of execution proceedings transferred under section 141 of the Punjab Land Revenue Act and section 4 of the Debtors Protection Act respectively.

Returns Relating to Execution of Decrees in Which the Collector is Consulted

A

"To be filled in by Collectors"

Statement showing progress of proceedings on application for execution of decrees when such executions have been transferred to the Collector under Section 141 of the Punjab Land Revenue Act for the quarter ending …….. in the District of ……

No.	*District*	*Number of applications to execute decrees*			*Number of applications disposed of*	*Extent to which each decree has been satisfied*	*Pending at the close of the quarter*	*Pending over three month*
		Pending from the last quarter	*Received during the quarter*	*Total for disposal*				
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*

Note : *Give particulars of applications pending over three months (column 9) on the back of the statement in the following Form:*

Serial No.	*Number and date of decree with the name of case*	*Date of receipt of application*	*Method in which the decree is to be satisfied*	*Brief reasons for delay in execution*

B

"To be filled in by Collectors"

Statement Showing Progress of Proceedings on Application For Execution of Decrees Transferred To Collectors under Section 4 of The Punjab Debtors' Protection Act (Punjab Act No.II of 1936) For The Quarter Ending

The …… in The District of ……

No.	*District*	*Number of applications*			*Number of applications disposed of*	*Extend to which each decree has been satisfied*	*Pending the close of the quarter*	*Pending for over three month*	*Brief reasons for delay in the disposal of application pending for over three months*
		Pending from the last quarter	*Received during the quarter*	*Total for disposal*					
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*

C

"To be filled in by Civil Courts"

Statement showing progress of proceedings in execution of decree against land or against produce of land where the applications have been sent to the Collector for any of the following purposes :

(1) Advice of the Collector as suggested in rule 4 of Chapter 12-M, Rules and Orders, Volume I.

(2) Delivery under section 141 of the Punjab Land Revenue Act or land ordered by the Court to be alienated temporarily in satisfaction of the decree.

(3) Sale under the same section of produce attached and ordered by the Court to be sold in execution of the decree for the quarter ending.

4.11 ISSUANCE OF PRECEPT (SECTION 46 CPC)

The precept aims at preventing alienation of the property of the Judgment Debtor not located within the jurisdiction of the Court which passed the decree. If

the property to be attached is situated outside the jurisdiction of the Court in which the execution application is pending, the Court may order to issue precept to any other Court which would be competent to execute such decree to attach any property belonging to the JD and specified in the precept. On such order, **Ahlmad/Execution Clerk** shall issue Precept on **Proforma No.2 Appendix E CPC** which is as follows:

No. 2
PRECEPT (Section 46)
(*Title*)

Upon hearing the decree-holder it is ordered that this precept be sent to the Court of ……. at …… under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule

Dated the …….. day of …… 19..../20…….

Judge.

The Court through which a precept is sent shall proceed to attach the property in the manner prescribed. However, no attachment under precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment, the decree has been transferred to the Court by which the attachment has been made and the Decree Holder has applied for an order for sale of such property.

4.12 GARNISHEE ORDER (Order XXI Rule 46A CPC)

In a Garnishee order, the Decree Holder seeks to reach money or property of the Judgment Debtor in the hands of third party. Thus, the third party may be ordered by the Court to pay the Judgment Creditor, the debt due to the Judgment Debtor. A garnishee is the debtor of the Judgment Debtor. He is the person who is under obligation to pay debt to Judgment Debtor or to deliver any movable property to him. 'Garnisher' is the person in whose favour, the decree is passed i.e. the Decree Holder. Hence, a garnishee order is an order of the Court to attach money or goods belonging to the Judgment Debtor in the hands of a third person and consequently, the debt due by the debtor of the Judgment Debtor to be available to the Decree Holder without involving him in the suit.

4.13 TRANSFER OF EXECUTION APPLICATION (Order XXI Rule 5 CPC)

The Court where execution is pending but does not have jurisdiction as either the property is not situated there or the Judgment Debtor does not reside there, can transfer the execution to the Court having jurisdiction over the matter for satisfying the decree. Where the Decree Holder requests for transfer of execution application to some other Court and the Court where the execution application is pending, passes the order of transfer of execution application, **Ahlmad/Execution Clerk** shall prepare a certificate (certificate of non-satisfaction of decree) to the effect that the satisfaction of the decree has not been obtained by execution in that Court and in case of part satisfaction, it shall be mentioned as to what part of the decree has been executed and what remains to be executed.

This certificate has to be prepared on a separate sheet of paper and shall be signed by the Presiding Officer or person competent/authorized by Presiding

Officer to sign it. **Ahlmad/Execution Clerk** shall alongwith the execution file send the copy of order, copy of decree and non-satisfaction certificate to the transferee Court on **Proforma Nos. 3, 4 and 5 Appendix E CPC**. **Proforma Nos.3, 4 5 Appendix E CPC** are follows :

No. 3
ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT
(O.21, r. 6.)
(Title)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of …… at …… for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits, for the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is.....

Ordered:

That a copy of this order be sent to .....with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction. Dated the …… day of …… 19..../20……..

Judge.

No. 4
CERTIFICATE OF NON-SATISFACTION OF DECREE
(O. 21, r. 6.)
(Title)

CERTIFIED that no satisfaction of the decree of this Court in suit No ……. of 19 ..., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the ……..day of ……19..../20……..

Judge.

1. If partial strike out "no" and State to what extent.

No. 5
CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT
(O. 21, r. 6.)
(Title)

No. of suit and the court by which the decree was passed	*Names of parties*	*Date of application for execution*	*Number of the execution case*	*Processes issued and dates of service thereof*	*Costs of execution*		*Amount realized*		*How the case is Dispose of*	*Remarks*
1	*2*	*3*	*4*	*5*	*6*		*7*		*8*	*9*
					Rs.	*N.P.*	*Rs.*	*N.P.*		

Signature of Muharrir in charge.

Signature of Judge

Ahlmad/Execution Clerk shall also make entries in Register No.XXXIII (Register of Decrees received from or tranferred to other Courts in the District or other Districts for Execution under Order XXI Rule 6 CPC)

4.14 EXECUTION BY APPOINTMENT OF A RECEIVER (Section 51, Order XL CPC and Volume I Chapter 12C of Rules & Orders)

The Court can order to appoint a Receiver and it is one of the modes of execution **(Section 51 CPC).** The appointment of Receiver may be there where the value of property is sufficient to bear the cost and where such appointment is expected to be conducive to harmonious relations between the Judgment Debtor and Decree Holder and to provide for the discharge of the decree in a satisfactory manner.(**Volume I Chapter 12 C of Rules & Orders)**

On finding it to be just and convenient, the Court can appoint a Receiver before or after passing of the decree; remove any person from the possession or custody of the property; commit the same to the possession, custody or management of the Receiver; and confer upon the Receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit. However, the Court cannot order to remove from the possession or custody of property any person whom any party to the suit does not have a present right so to remove.(**Order XL Rule 1 CPC)**

The Court may by general or special order fix the amount to be paid as remuneration for the services of the Receiver.(**Order XL Rule 2 CPC)**

Every Receiver so appointed shall –

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;

(b) submit his accounts at such periods and in such form as the Court directs;

(c) pay the amount due from him as the Court directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.(**Order XL Rule 3 CPC)**

Where a receiver –

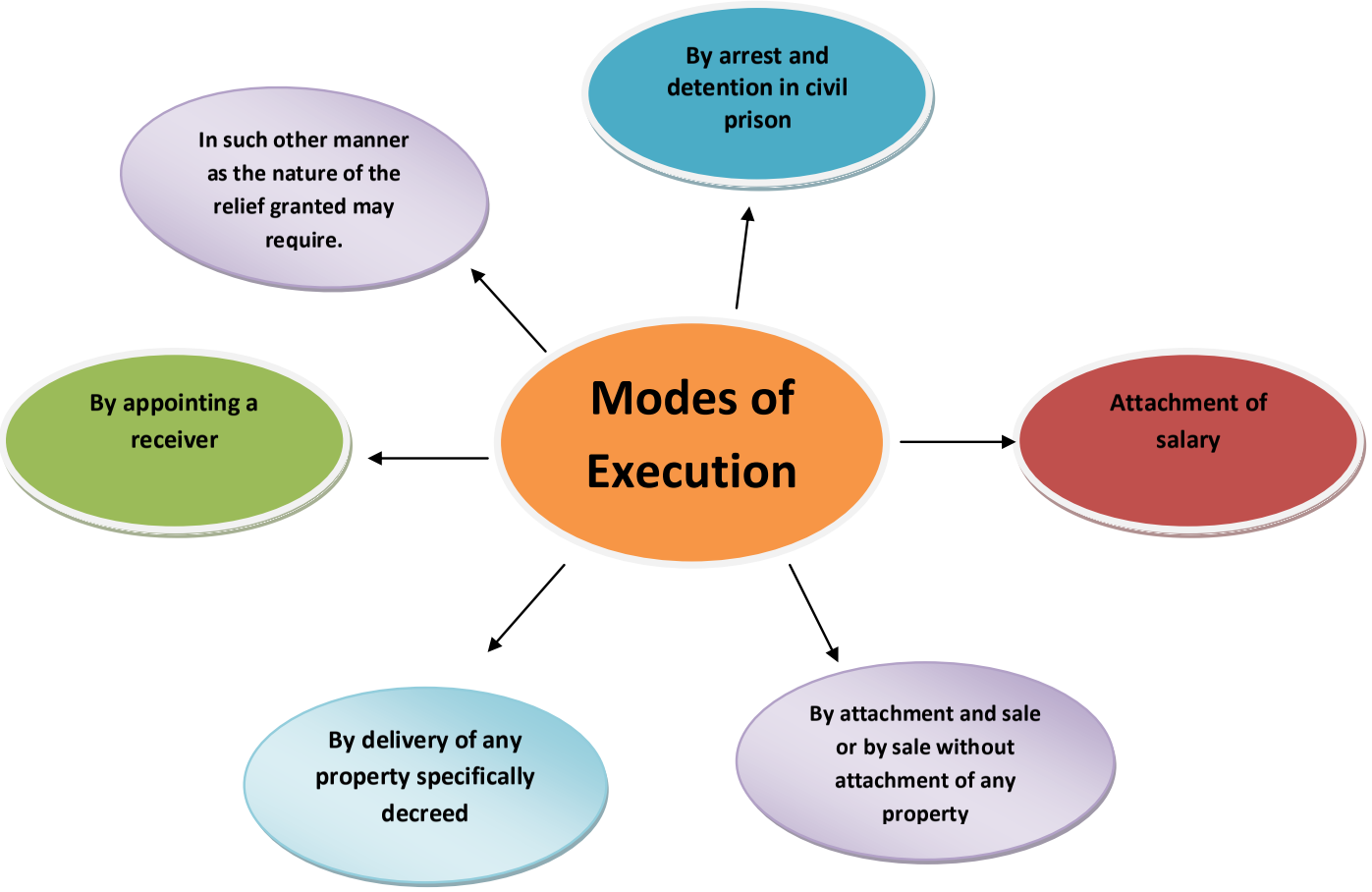
(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

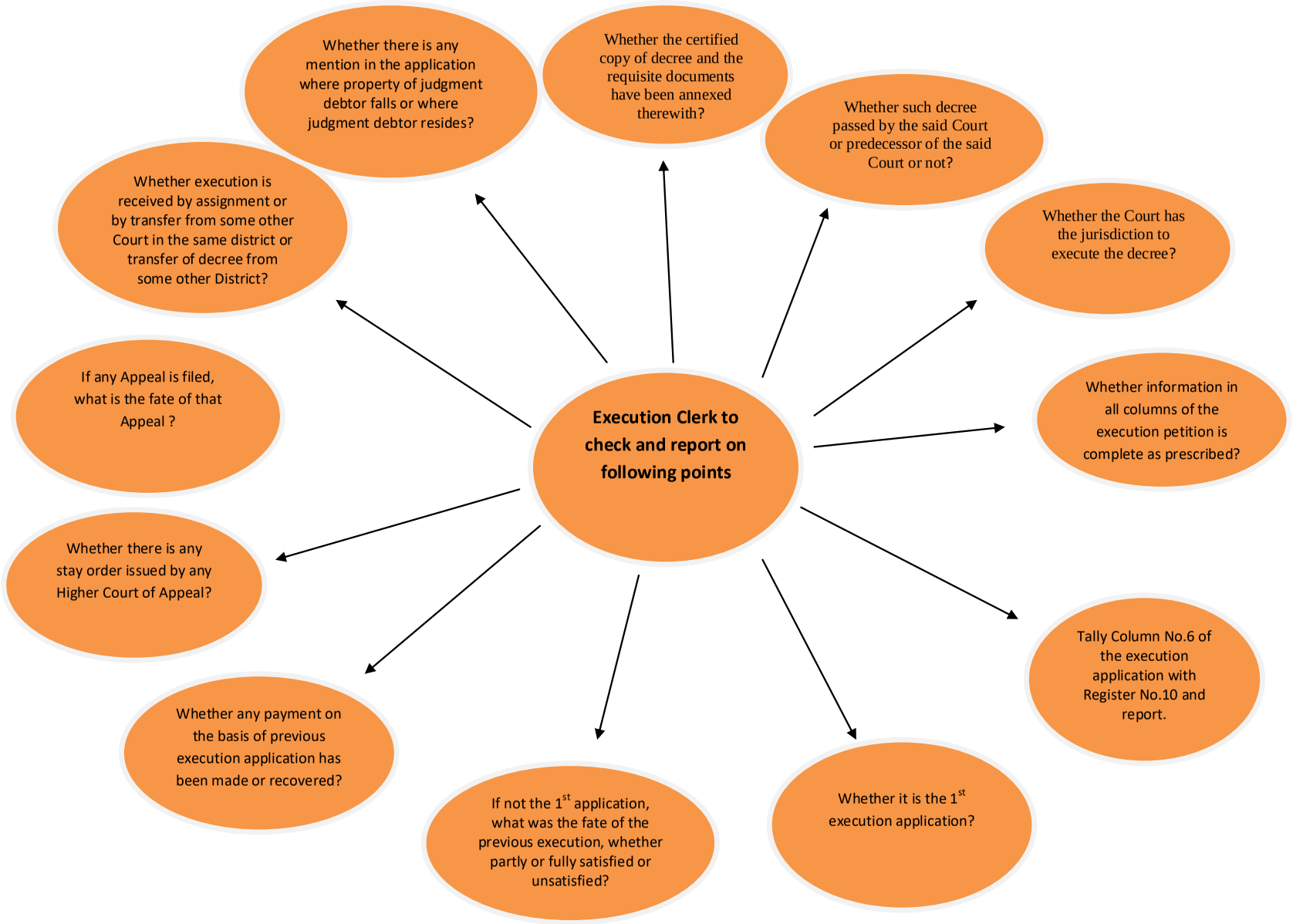
(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the Receiver. (**Order XL Rule 4 CPC)**

FLOW CHARTS

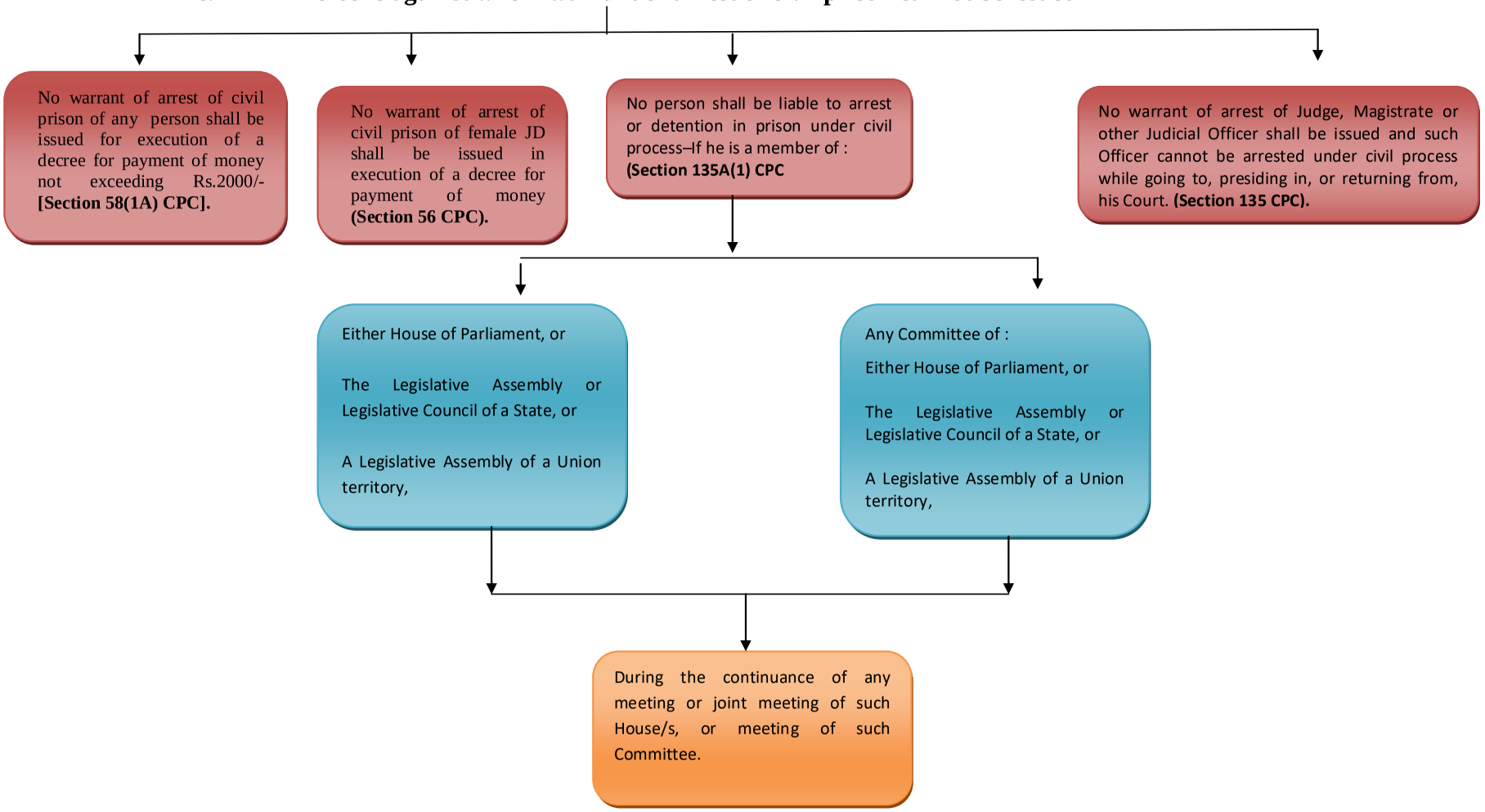
a. Modes of Execution



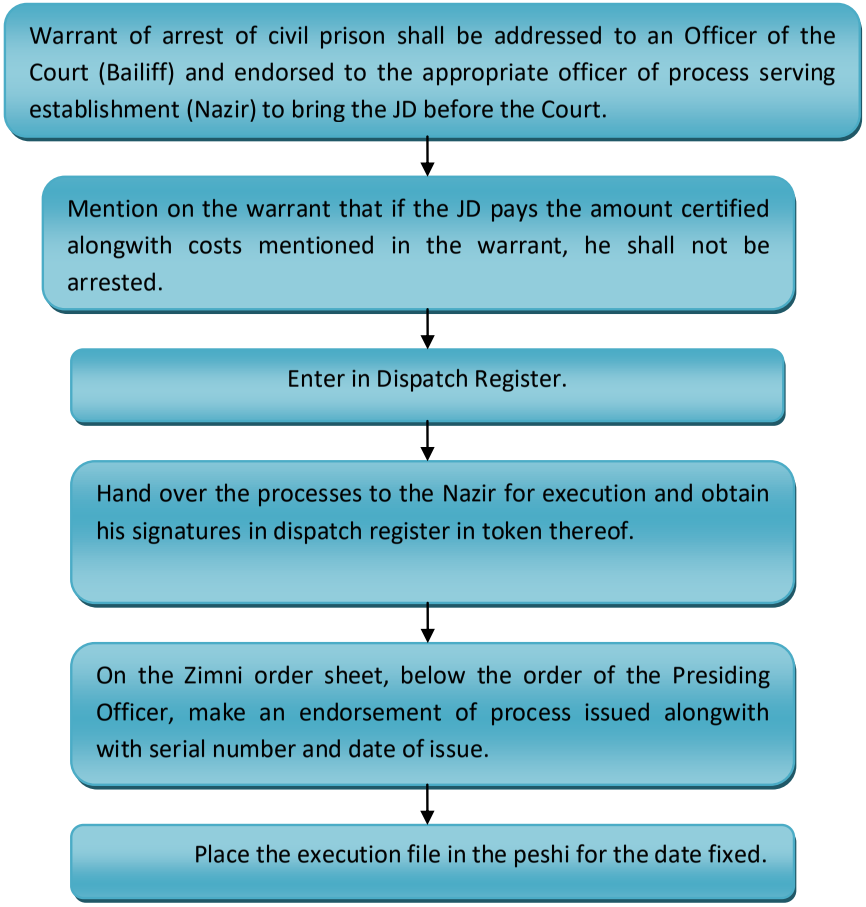
b. Proceedings by Ahlmad / Execution Clerk on Receipt of Execution Application



c. Persons against whom warrant of arrest of civil prison cannot be issued



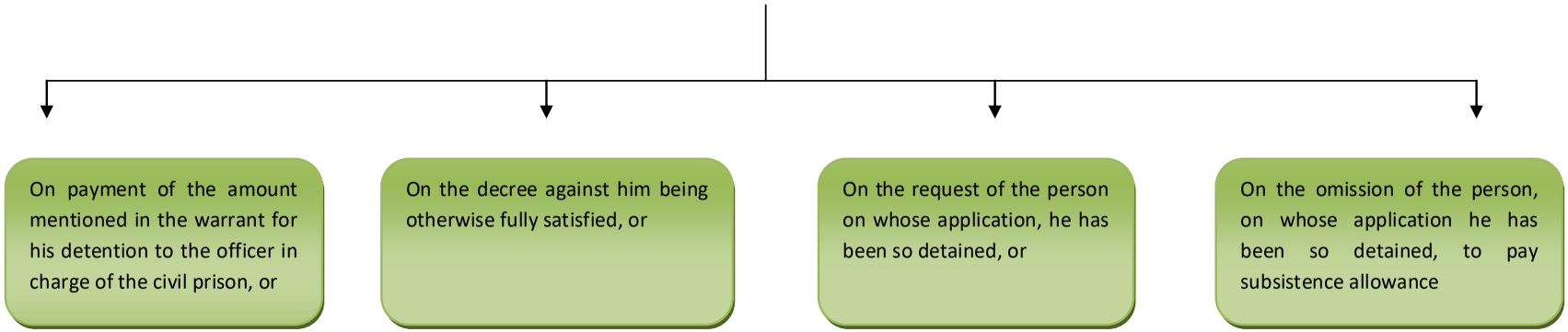
d. Procedure to be followed by Ahlmad/Execution Clerk in Issuance of Warrant of Arrest



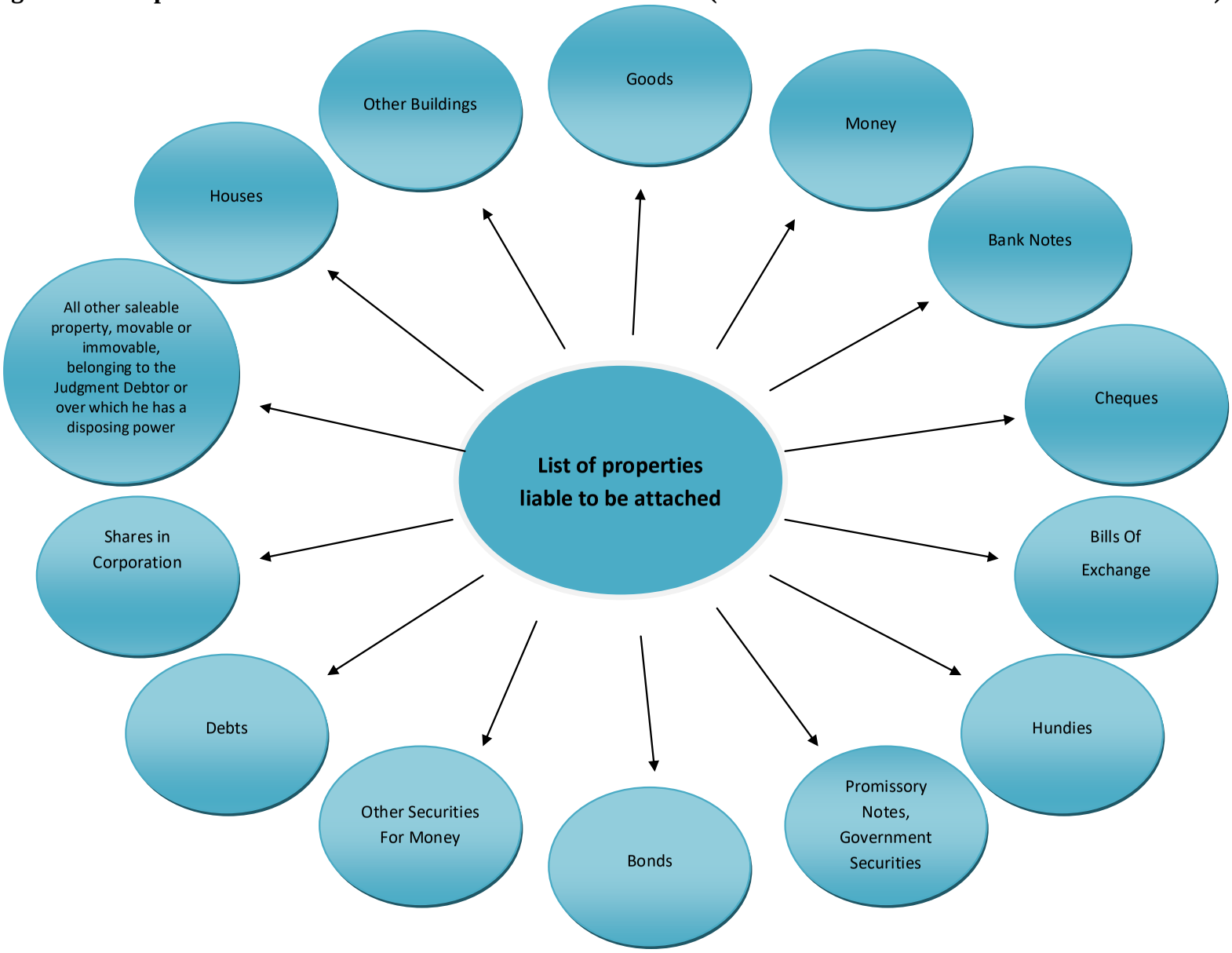
e. Precautions to be taken by Bailiff on receipt of warrants of arrest (Section 55 CPC)

- No dwelling house shall be entered after sunset or before sun rise.
- No outer door shall be broken open unless it is in the occupancy of the Judgment Debtor and he refuses or in any way prevents access thereto.
- If the Bailiff, gains the access to any dwelling house, he may break open any room in which he has reason to believe that the Judgment Debtor can be found.
- If the room is in actual occupancy of a woman who is not the Judgment Debtor and who does not appear in the public, the Bailiff shall give notice to her that she is at liberty to withdraw and after allowing a reasonable time and facility, may enter the room for the purpose of making arrest.

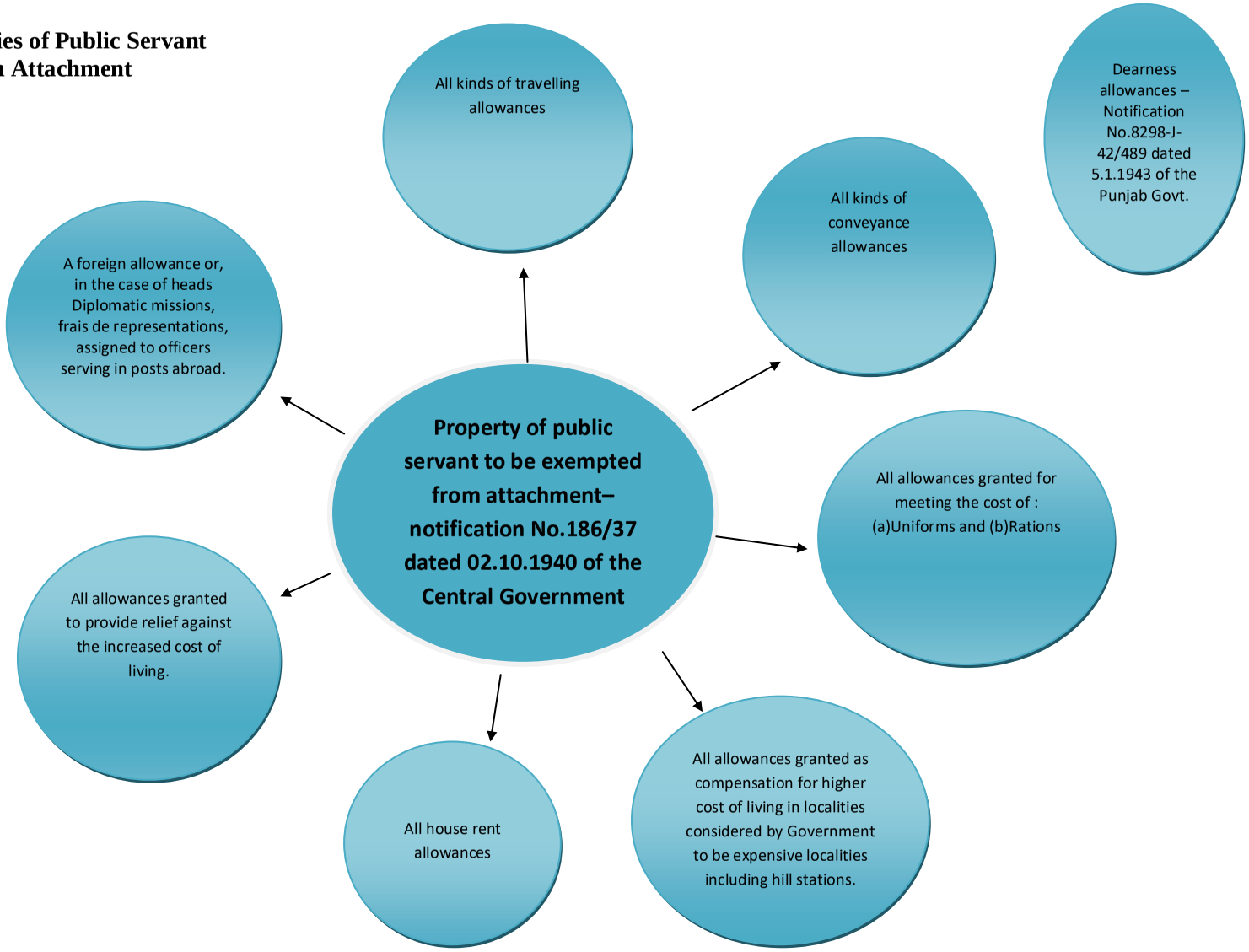
f. Situations when Judgement Debtor shall be released from detention before expiration of the period of detention (Section 58 CPC)



g. Properties liable to Attachment / Attachment and Sale (SECTIONS 60-64 AND OXXI R41 to 57 CPC)



h. List of Properties of Public Servant Exempted from Attachment



i. List of properties not liable to attachment or sale (Proviso to Sec.60 CPC)

(a) 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;

(b) tools of artisans, and, where the Judgment Debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to (an agriculturist or a labourer or a domestic servant) and [not proved by the decree holder to have been let out on rent or lent to persons other than his father, mother, wife, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more;

(cc) milch animals, whether in milk or in calf, kids, animals used for the purposes of transport of draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure ;

(ccc) one main residential-house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment debtor, other than an agriculturist and occupied by him: Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.]

Amended in the States of Punjab and Haryana vide Punjab Relief of Indebtedness Act, Act 07 of 1934, Section 35 as amended by Punjab Acts 12 of 1940, 06 of 1942 and 14 of 1960 w.e.f. 30.12.1960;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance;

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to any such

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance ;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

j. Property of Agriculturists exempted from attachment and sale (Vol.1, Chapter 12, Part N, Rule 1 of High Court Rules and Orders)

(a) the necessary wearing apparel, cooking vessels, beds and beddings 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. (Section - 60 (1) (a) of the Code.);

(b) implements of husbandry, and such cattle and seed-grain as may, in the opinion of the Court be necessary to enable him to earn his livelihood as an agriculturist and such portion of agriculturist produce or any class of agricultural produce as may have been declared by the State Government to be free from liability under section 61. (vide also clause (b) of the proviso to Section 60(1) of the Code);

(c) where the judgment debtor is liable to pay land revenue, so much of the produce of the land as the Collector thinks necessary for seedgrain and the subsistence until the harvest next following, of the judgment-debtor, his family and cattle exempted under head (b) (Section 70 of the Punjab Land Revenue Act read with Section 88 of the Punjab Tenancy Act and Section 60(1) (p) of the Code of Civil Procedure). Under Section 61 of the Civil Procedure Code, the Punjab Government has declared that in the case of agriculturists, the judgment-debtor's entire fodder crops, including gram, oats chari, maize and guara, one third or 20 maunds, whichever is greater, of foodgrains, and one third of all other crops shall, subject to the provisions of clauses (b) and (p) of sub-section (1) of Section 60 of the Civil Procedure Code and of the proviso to Section 70 of the Land Revenue Act, be exempted from liability to attachment or sale in the execution of a decree for the purpose of providing, until the next harvest for the cultivation of land and for the support of the judgment-debtor and his family;

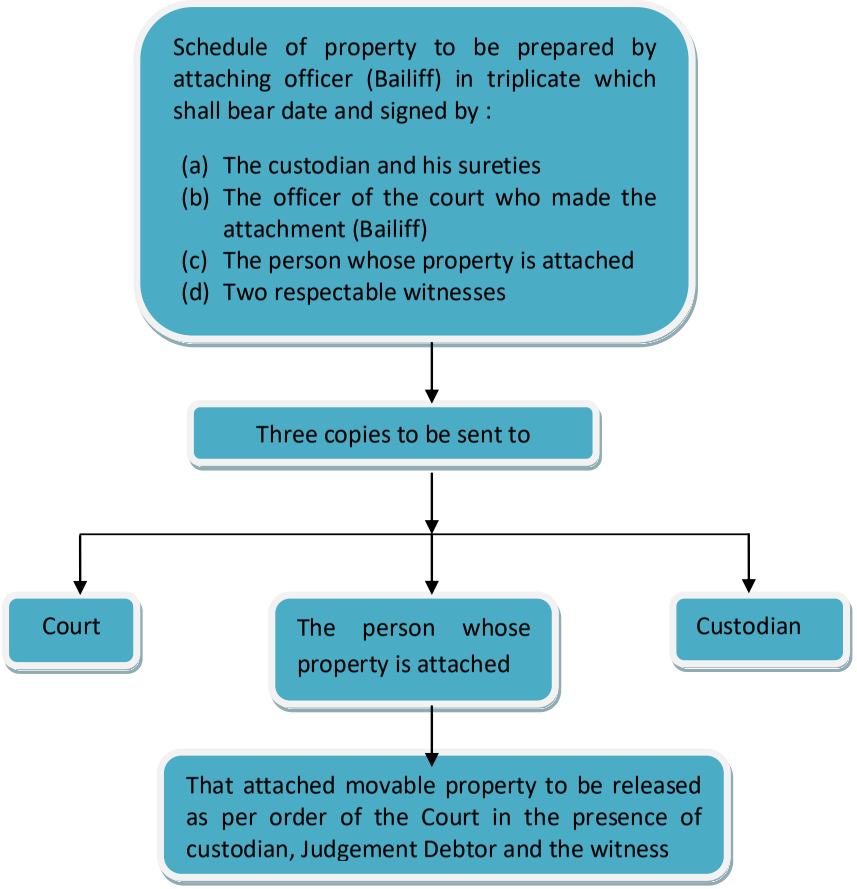
(d) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment belonging to an agriculturist and not proved by the decree holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more. (section 60 (1) (c) of the Code and section 35 of Punjab Relief of Indebtedness Act as amended by Punjab Act XII of 1940);

(e) Milch animals, whether in milk or in calf, kids, animals, used for the purpose of transport or draught cart or open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure (clause deemed to be added to the Proviso to section 60(1) of the Code, by P:Act XII of 1940) ;

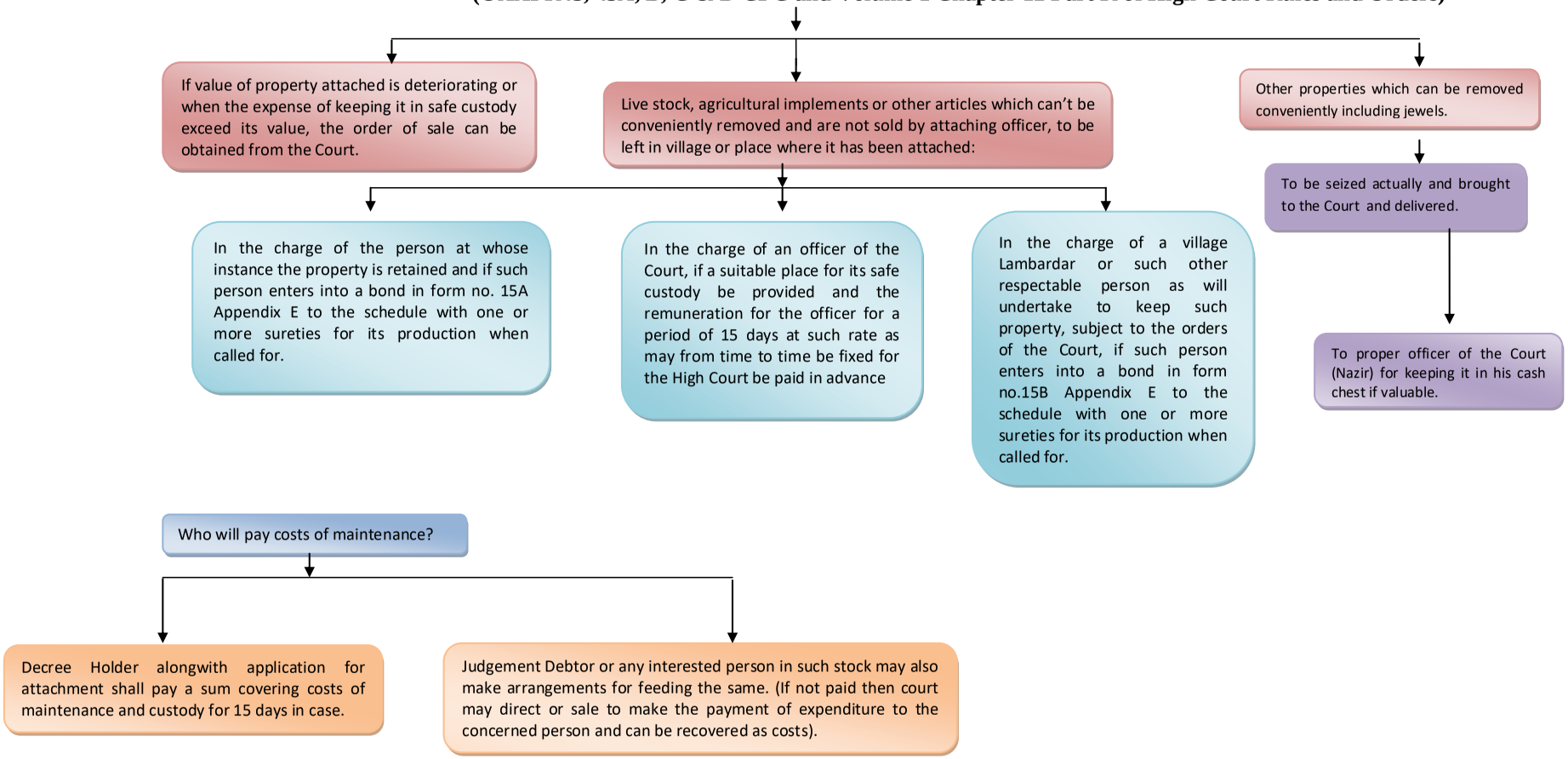
(f) standing crops except cotton and sugarcane. [Section 10(1) of the Punjab Debtors' Protection Act];

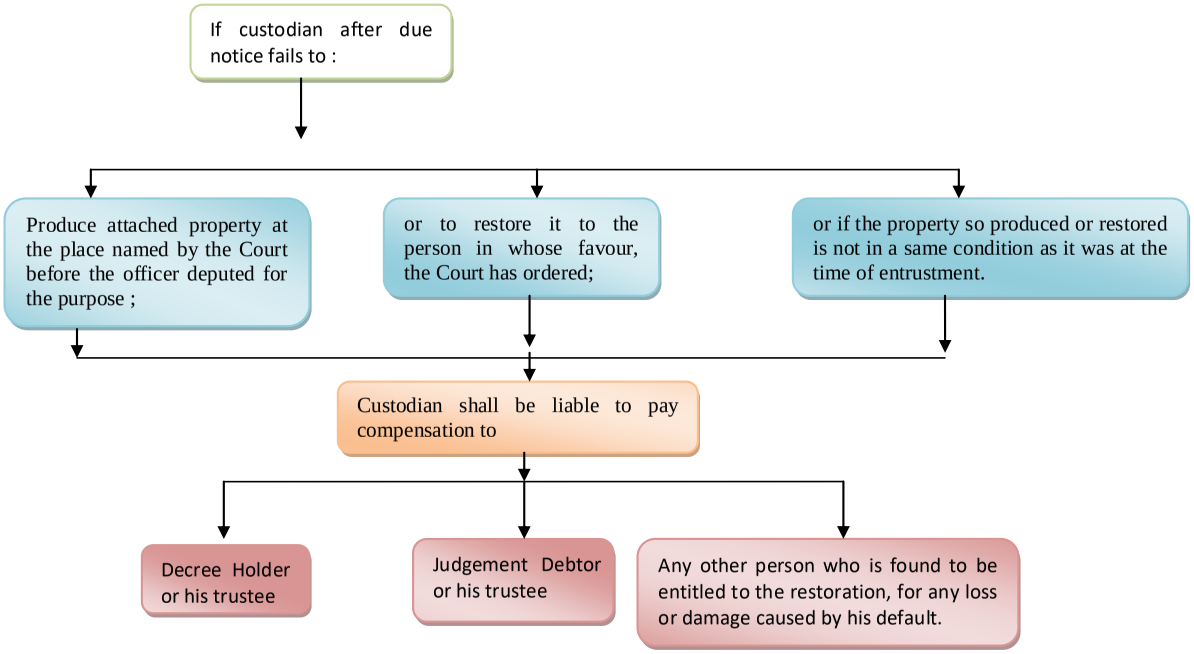
(g) standing trees apart from the land on which they stand cannot be sold [Section 10(2) of the Punjab Debtors' Protection Act]

k. Procedure to be followed by Bailiff at the time of handing over the attached movable property to the custodian

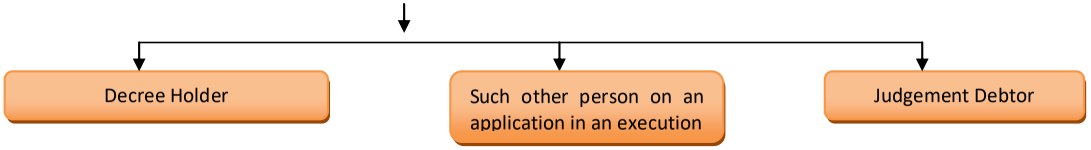


I. Procedure in Attachment of Movable Property
(OXXI R43, 43A, B, C & D CPC and Volume 1 Chapter 12 Part K of High Court Rules and Orders)

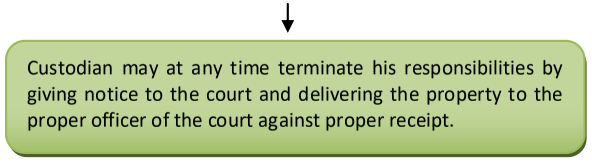




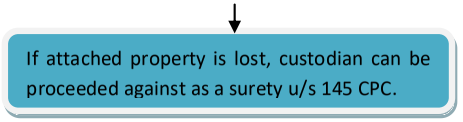
At whose instance such liability to pay compensation can be enforced?



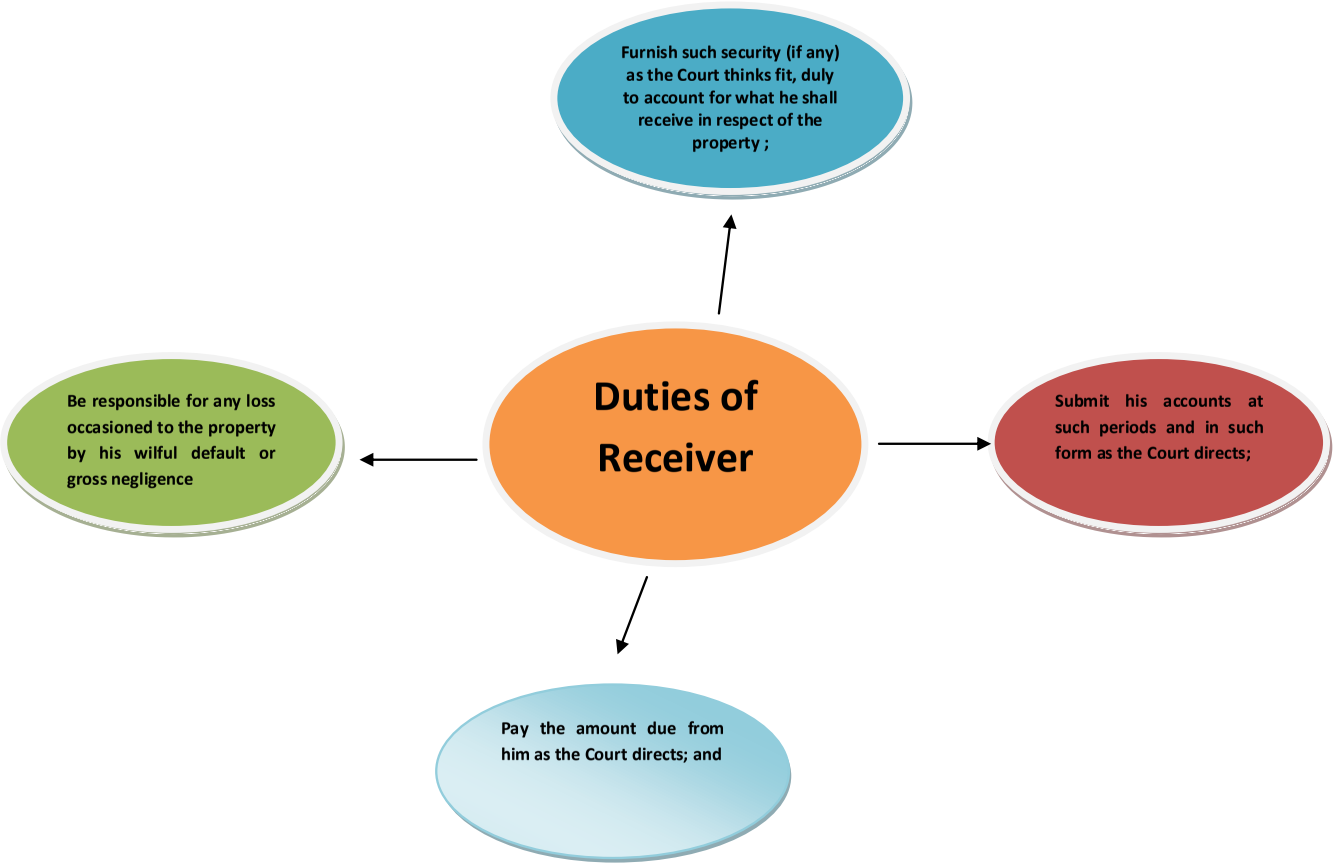
Can custodian terminate his responsibilities ?



What is the remedy available if attached property is lost ?



m. Duties of Receiver (Order Xl Rule 3 CPC)



n. Officials who can Conduct Sale

Court Auctioneer

Agent of Court Auctioneer

Nazarat Staff

Civil Nazir:

- For all sales ordered by Courts located at District Headquarters and
- for all other sales in which the value of the property to be sold is estimated to exceed Rs.5,000/-

Naib Nazir:

- for other sales and
- in every case in which the Civil Nazir is not required to conduct the sale in person.

Execution Bailiff: when

- Property is of small value,
- Nazir or Naib Nazir is not available and
- Sale is to be conducted at the place where the attached property is situated.

Process Server: When

- No other officer as aforesaid is available and
- When value of the property to be sold is estimated to be Rs. 100/- orless.

o. Steps for Issuance of Notice of Proclamation

Giving of notice of not more than 15 days

to the parties or their pleaders in **Form No.28**

Inquiry into Encumbrances

- Notice to Sub Registrar Office
- Obtaining report of Sub Registrar

Settlement of Proclamation of Sale by Court after considering the report of the Registrar and the objections of the parties

Settling Four Dates by Court

- Date of notice at the spot
- Date of notice at the court house
- Date of auction sale
- Date of report of auction in court filing

Issuing Order on Nazir by Ahlmad – Form No. 30

Issuing of Proclamation of Sale by Nazir- Form No. 29

p. Points to be noted before Issuing a Proclamation of Sale

POINTS TO BE NOTED BEFORE ISSUING A PROCLAMATION OF SALE

- The proclamation of sale shall be in the language of the Court
- The date, time and place of the sale shall be clearly stated
- Specific description of the property or part of it which is ordered to be sold shall be specified
- Any other thing which is material for purchaser to know to judge the nature and value of the property shall be stated
- The amount for the recovery of which the sale is ordered to be specified
- The revenue assessed, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government shall also be mentioned
- The particulars to be entered in the proclamation for sale shall be entered carefully in order to remove any objection to the sale at a later stage
- It is not necessary to mention the Court's estimate of the value of the property. It is sufficient to include in it the estimate, if any, given by either or both the parties
- Any encumbrance to which property is liable shall be stated

q. Mode of Service of Proclamation by Bailiff

Announce the proclamation at some place on or adjacent to the property by beat of drum

↓

Affix copy of the proclamation on a conspicuous part of the property to be sold

↓

Paste upon a conspicuous part of Court house, a copy of the proclamation

Where the property is land paying revenue to the government, the affixation is to be effected in the office of the Collector of the District in which the land is situate

When the property is land situated in a village, affixation is also to be effected in the office of the Gram Panchayat, if any, having jurisdiction over that village (Inserted by the Code of Civil Procedure (Amendment) Act, 1976)

Where the property is land situated in cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Officer in whose area that cantonment is situated. (State amendment by the Hon'ble High Court of Punjab and Haryana) (Rule 63, Chapter 21 Volume 1 High Court Rules and Orders)

r. How Auction is Conducted ?

Court Auctioneer to reach at the place specified in the proclamation of sale at the date and time mentioned therein

Court Auctioneer to formally announce the auction and state detail of the property to be sold and also the reserve price fixed by the Court

The last bid shall be made final at the count of three and drop of the hammer

Stoppage of Sale by the Auctioneer (Rule 69(3) Order XXI CPC)

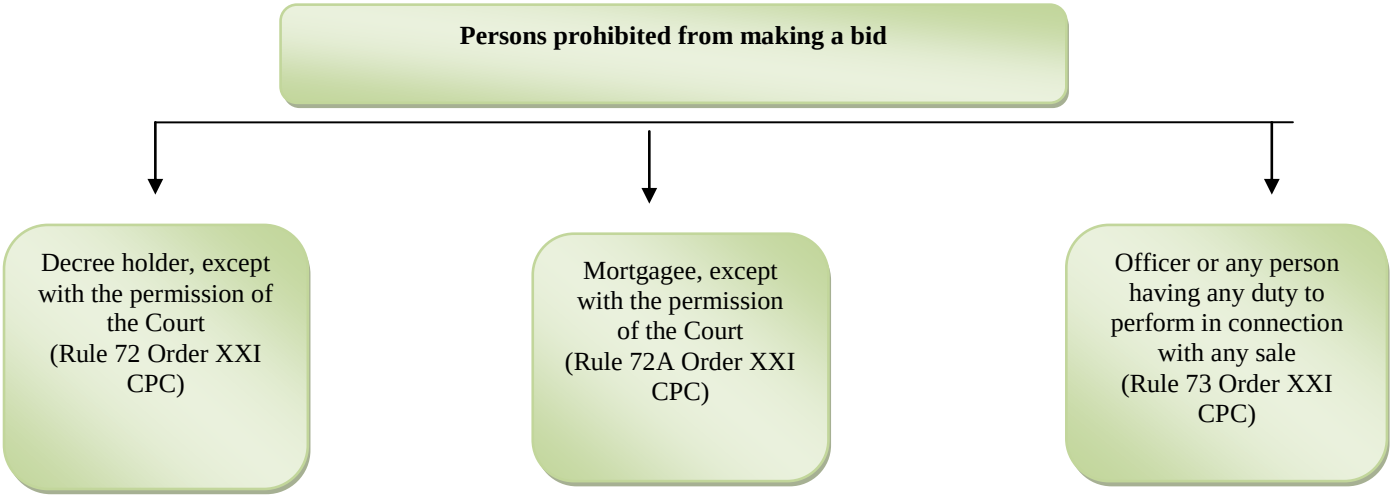
When the Judgment Debtor produces the certificate of payment of the decreetal amount alongwith cost being made in the court

When he makes the payment of the decreetal amount alongwith cost to the auctioneer at the site

Adjournment of Sale by the Auctioneer (Rule 69 Order XXI CPC)

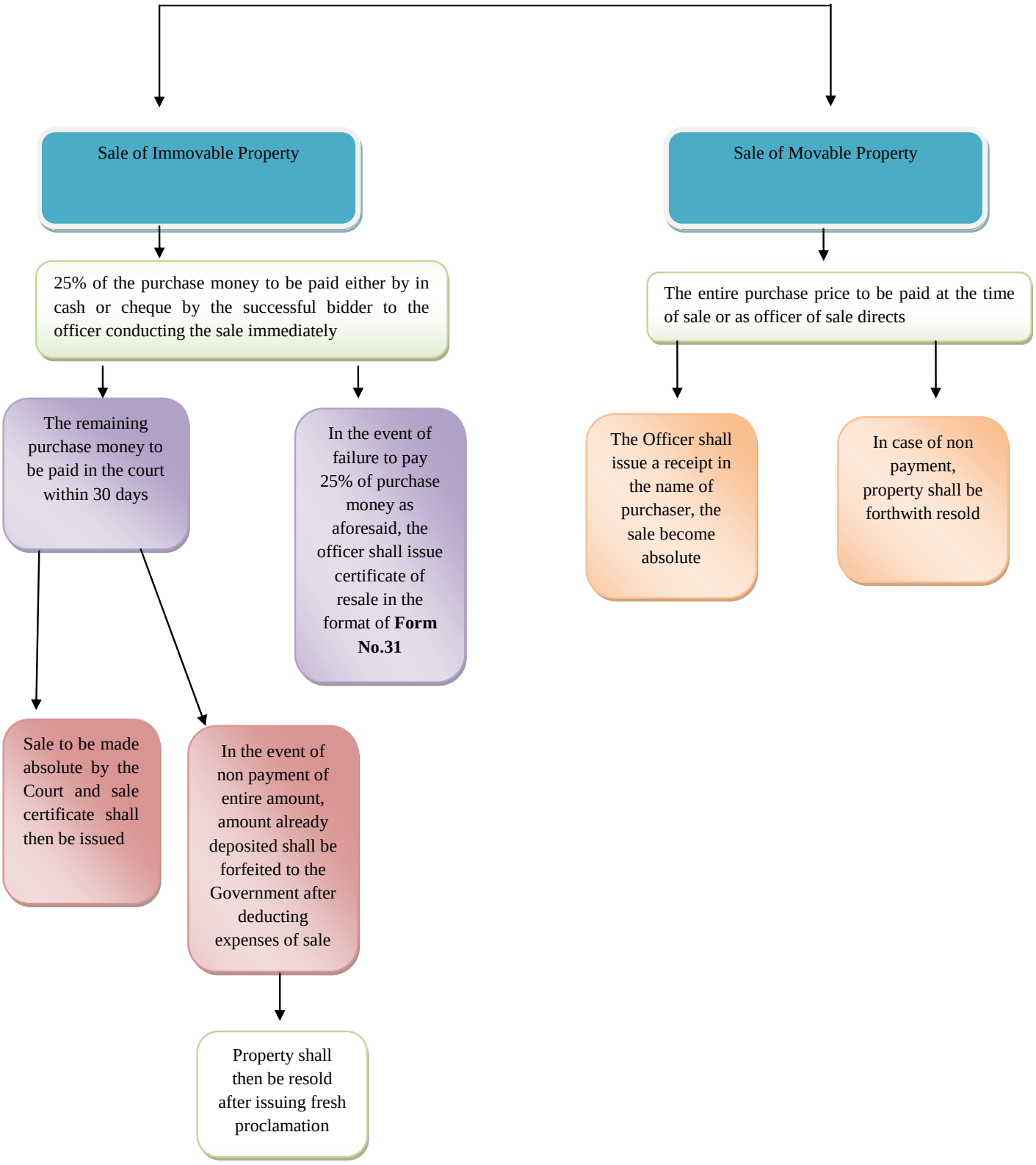
For proper reasons to be recorded in writing and after obtaining permission of the Court

s. Persons prohibited from making a bid



Note: Bid by Co-Sharer shall be given preference over any outsider (Rule 88 Order XXI CPC)

t. Receiving Sale Amount (Rule 84 to 86 Order XXI CPC)



u. Depositing Sale Amount

Sale conducted by Court Auctioneer

Sale proceeds to be deposited in Treasury

Sale conducted by NazaratBranch

Sale proceeds to be deposited in Treasury

Disbursement of Purchase Money

Purchase money deposited upon the sale of the property shall be retained in the treasury till the expiration of 15 days from the date of order confirming the sale

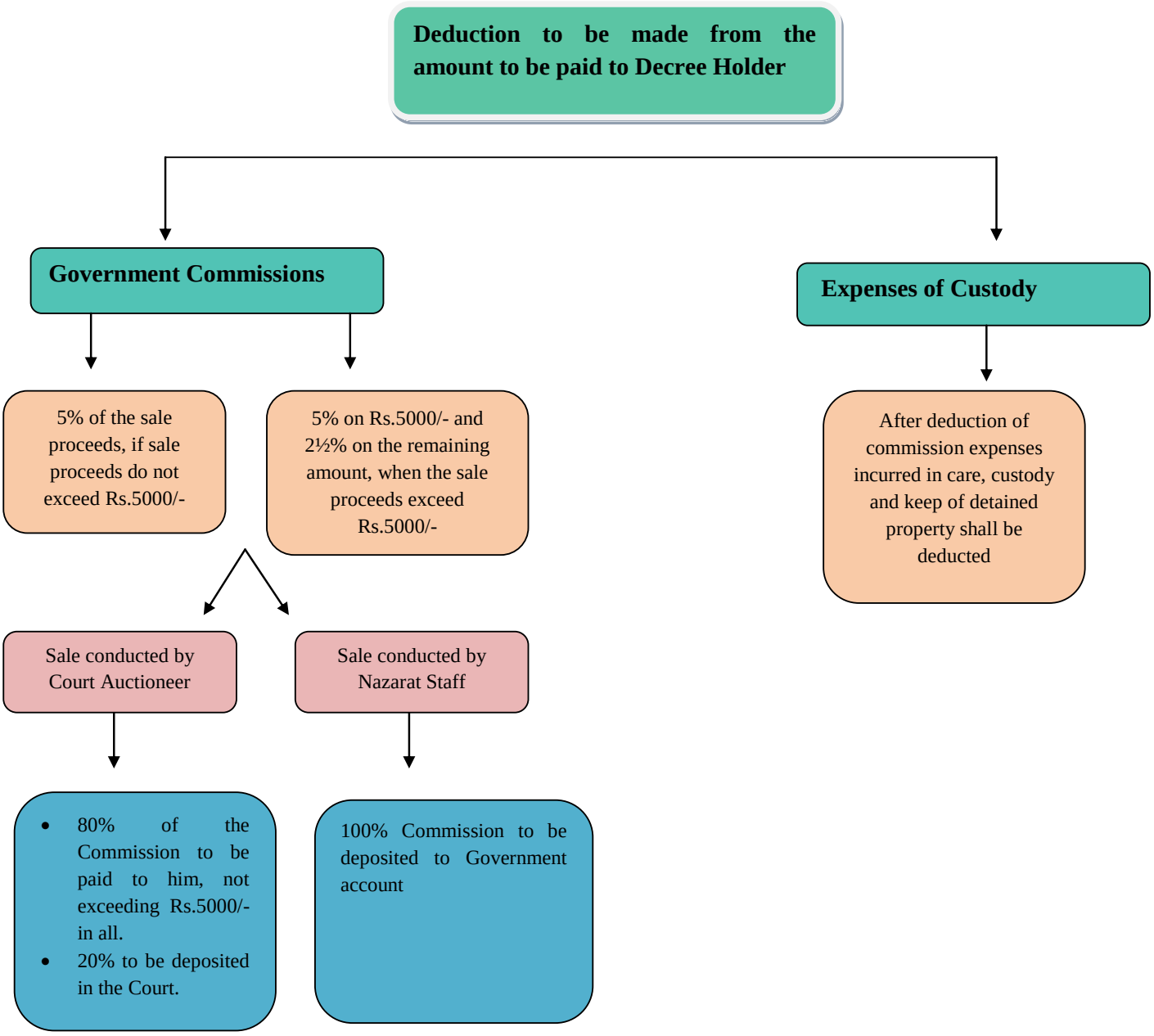
Notice of appeal received during this period

The purchase money shall be retained in deposit until the appeal is decided or decree holder gives security to the satisfaction of the Court to repay it at any time when he may be required by the court, to do so.

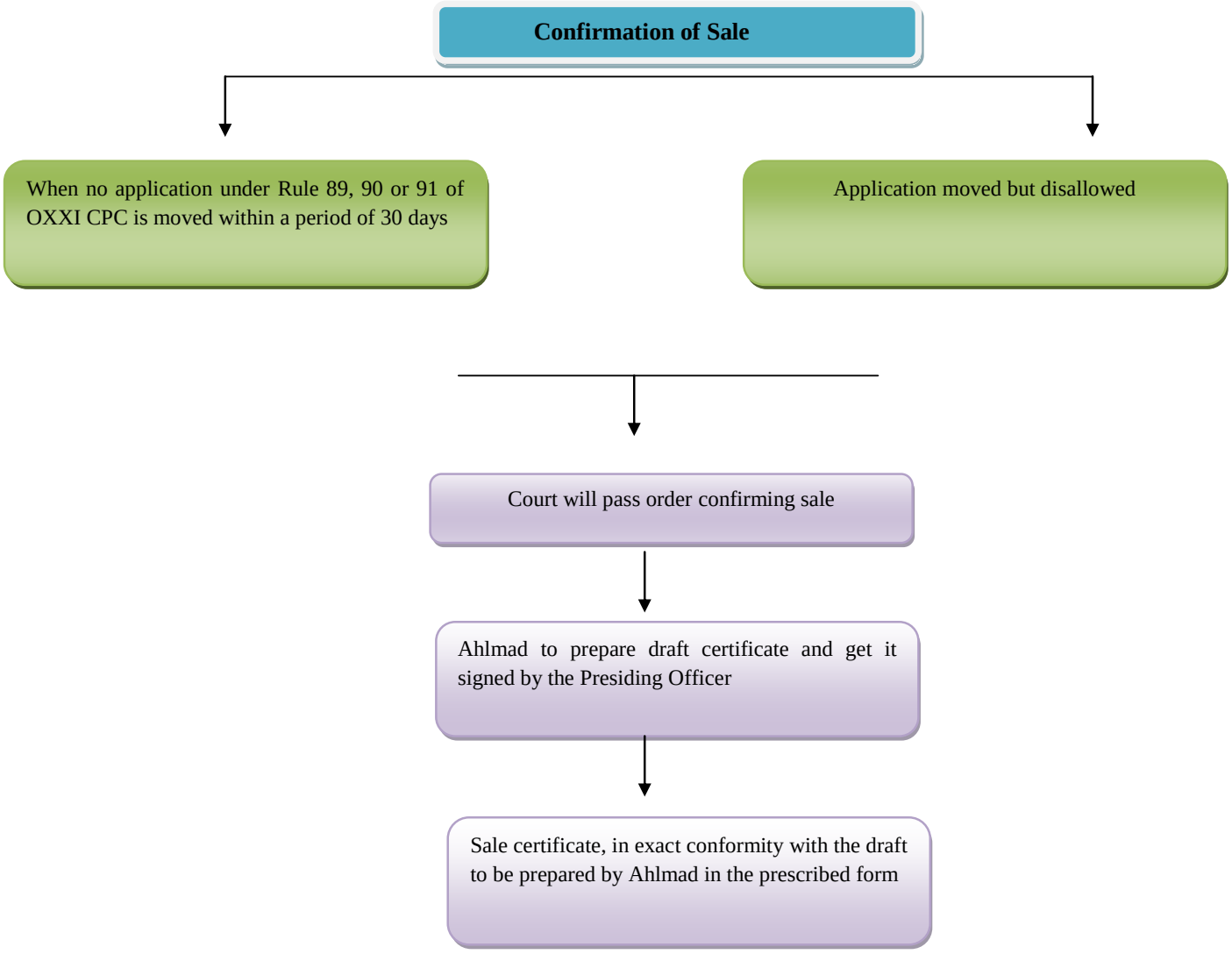
Notice of appeal not received

The court shall direct to pay the purchase money to the decree holder. The Ahlmad shall ensure the payment to the decree holder from the treasury where the purchase money is lying deposited after the sale.

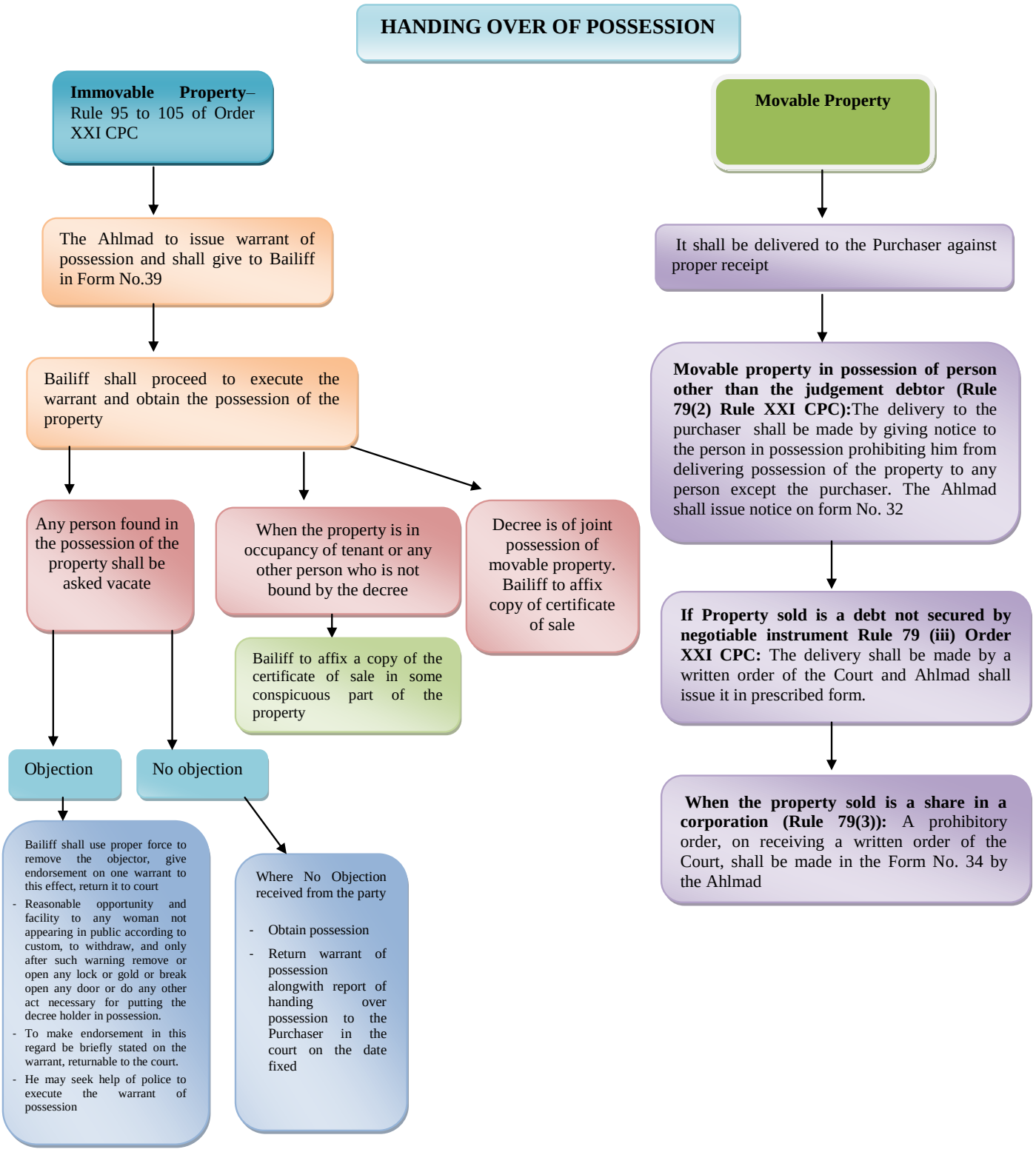
v. Deduction to be made from the amount to be paid to Decree Holder



w. Confirmation of Sale



x. Handing Over of Possession



Excerpt of Chapter in Hindi (खंड)

Execution Application पर Ahlmad/Execution Clerk की कार्यशैली :

(1) Ahlmad/Execution Clerk को execution application आने पर निम्नलिखित बिंदुओं पर अपनी रिपोर्ट देनी चाहिए :

(a) क्या वह Decree उस न्यायालय या पूर्व न्यायालय द्वारा पारित की गयी है?

(b) क्या न्यायालय को Decree execute करने का अधिकार क्षेत्र है या नहीं?

(c) क्या प्रार्थी ने execution application में दिए गए निर्धारित columns में सम्पूर्ण सूचना दी है या नहीं ?

(d) Execution Application के Column No.6 का Register No.10 से मिलान करना ।

(e) क्या यह पहली execution application है ?

(f) यदि वह पहली execution application नहीं है, तो पूर्व execution application का निष्कर्ष : क्या वह satisfied या partly satisfied या unsatisfied थी ?

(g) क्या पूर्व execution application में किसी राशि का भुगतान हुआ है या नहीं, यदि हाँ, तो कितना?

(h) क्या कोई अपील दायर की गयी है ? यदि हाँ, तो उसका वर्तमान स्थिति।

(i) क्या अपीली न्यायालय से कोई stay order है ?

(j) क्या execution application assignment द्वारा या उसी जिले के न्यायालय द्वारा स्थानांतरण या किसी दूसरे जिले से प्राप्त हुई है ?

(k) क्या execution application में निर्णय देनदार की रिहायश अथवा उनकी संपत्ति का उल्लेख है ?

(l) क्या execution application में decree की certified copy और अन्य अनिवार्य कागजात नत्थी हैं ।

(2) विस्तार पूर्वक वर्णन देने के बाद Ahlmad/Execution Clerk को execution application, Court के सम्मुख पेश करके और वहाँ से आदेश पारित होने के बाद, रजिस्टर No.10 "Register of execution of decree" के Column Nos. 1 to 11 भरने चाहिए (देखें Register No.10 पृष्ठ 39 - 40)

(3) Register No.10 का क्रमांक No. उस रजिस्टर और execution application में भरने चाहिए ।

(4) निर्णय देनदार को नोटिस के आदेश पर, Ahlmad/Execution Clerk, Proforma No.7 (Notice to Show Cause) Appendix E CPC को भरकर, Dispatch Register में इंद्राज कर Civil Nazir के हस्ताक्षर लेकर सौंप देना चाहिए । (देखें Proforma No. 7 Appendix E CPC पृष्ठ 41)

(5) Execution Application के पिछले जिमनी आर्डर के नीचे सम्मन भेजने का इंद्राज, क्रमांक No. और भेजने की तिथि लिखनी चाहिए।

(6) Execution Application को अगली तारीख की पेशी में रख देना चाहिए।

(7) Ahlmad/Execution Clerk वारंट ऑफ़ अरेस्ट for civil imprisonment जारी करते हुए निम्नलिखित बिंदुओं का ध्यान दें:

(a) राशि की Decree (Money Decree) की execution में महिला निर्णय देनदार के warrant न भेजे जाएँ;

(b) राशि की Decree की execution में, Rs. २०००/- की राशि के नीचे किसी भी निर्णय देनदारके warrant न भेजे जाएँ;

(c) कोई भी न्यायाधीश, मेजिस्ट्रेट या न्यायिक अधिकारी सिविल आदेशिका (Civil Process) के अधीन गिरफ्तार नहीं किया जा सकता जब वह अपने न्यायालय को जो रहा हो, पीठासीन हो या वहाँ से लौट रहा हो;

(d) किसी भी व्यक्ति को सिविल आदेशिका (Civil Process) के अधीन जो संसद के किसी सदन अथवा राज्य की विधान सभा या विधान परिषद् या किसी संघ राज्य क्षेत्र की विधान सभा या उनकी किसी समिति या संसद के किसी सदन का या किसी राज्य की विधान सभा या विधान परिषद् का जिसमें ऐसे दोनों सदन हैं, का सदस्य है तो उसे किसी सयुंक्त बैठक (joint sitting), अधिवेशन (meeting) सम्मलेन (conference) या सयुंक्त समिति (joint committee) के दौरान और ऐसे अधिवेशन, बैठक, या सम्मेलन के 40 दिन पूर्व और पश्चात्, सिविल आदेशिका (Civil Process) के अधीन गिरफ्तार नहीं किया जा सकता।

(e) Section 34 of the Punjab Relief of Indebtedness Act, 1934 के मुताबिक किसी भी debtor जो कि Act में define है को money decree में न ही arrest किया जा सकता है और न ही बंदीकरण किया जा सकता है। इसलिए इसके warrant of arrest नहीं issue करने चाहिए।

(f) Warrant of Arrest, Bailiff के नाम संबोधित होना चाहिए।

(g) Ahlmad/Execution Clerk को Warrant of Arrest जारी करने के उपरांत, उस प्रोसेस को अपने डिस्पैच रजिस्टर में इंद्राज करके Process, जिला/उपमंडल की नजारत शाखा को तामील हेतु सौंप देना चाहिए। Ahlmad, Nazir को प्रोसेस सौंपते हुए अपने डिस्पैच रजिस्टर में इसकी पावती भी लेनी चाहिए।

(h) Ahlmad/Execution Clerk द्वारा warrant पर यह note दिया जाना चाहिए कि यदि निर्णय देनदार उस वारंट में बताई गई राशि दे देता है, तो उसे गिरफ्तार नहीं किया जाएगा।

(i) यदि न्यायालय, निर्णय देनदार को civil कारागार में रखने का आदेश पारित करता है, तो Ahlmad/Execution Clerk को Proforma No. 14A Appendix E CPC, Bailiff के नाम भरकर नाजिर को सौंप देना चाहिए । (देखें Proforma No. 14A Appendix E CPC पृष्ठ 49)

(j) यदि न्यायालय दोनों पक्षों को सुनने के बाद, निर्णय देनदार को दीवानी कारावास में रखने का आदेश पारित करता है तो Ahlmad/Execution Clerk को Proforma No. 14 Appendix E CPC, Bailiff के नाम भरकर नाजिर को सौंप देना चाहिए। (देखें Proforma No. 14 Appendix E CPC पृष्ठ 50)

(k) निर्णय देनदार को सिविल कारागार से रिहाई के आदेश पर, Ahlmad/Execution Clerk को release warrant, Proforma No.15 Appendix E CPC पर तैयार करना चाहिए । (देखें Proforma No.15 Appendix E CPC पृष्ठ 52)

(l) निर्णय देनदार की रिहाई के बाद, Ahlmad/Execution Clerk को Register No.6 के Column No.11 से 14 में इंद्राज करना चाहिए।

(m) Execution की संतुष्टि (satisfaction) पर Ahlmad/Execution Clerk को Register No.10 के बाकी column भर देने चाहिए।

(8) न्यायालय का Decree को किसी और न्यायालय में transfer के आदेश पर, Ahlmad/Execution Clerk को certificate of non-satisfaction of decree और अगर Decree partly satisfied है तो उसका certificate तैयार करके, न्यायाधीश के हस्ताक्षर लेकर और इसके साथ execution application, copy of order और Decree कि कॉपी, Proforma Nos.3, 4, 5 Appendix E CPC पर तैयार करके, उस न्यायालय में भेज देनी चाहिए। (देखें Proforma Nos.3, 4, 5 Appendix E CPC पृष्ठ 126-127)

(9) संपत्ति कि कुर्की में यदि सम्पति, न्यायालय के अधिकार क्षेत्र के बाहर है और न्यायालय Precept जारी करता है तो Ahlmad/Execution Clerk को Proforma No.2 Appendix E CPC पर Precept जारी करना चाहिए। (देखें Proforma No.2, Appendix E CPC पृष्ठ 124)

Bailiff द्वारा ध्यान देने योग्य बातें :

1. Bailiff किसी भी व्यक्ति को attached संपत्ति लेने पर मजबूर नहीं कर सकता।

2. Attached सम्पति, custodian को रसीद के against दी जानी चाहिए।

3. Bailiff को संरक्षक (custodian) को attached प्रॉपर्टी देते हुए schedule of property की 3 copies बनानी चाहिए जिन पर तिथि और निम्नलिखित लोगो के हस्ताक्षर होने चाहिए :

a. custodian और उसके जमानती ;

b. जिस अधिकारी ने कुर्की की हो;

c. जिस व्यक्ति की संपत्ति कुर्क करके दी गयी हो; अथवा

d. दो सम्मानीय गवाह

इसकी 1 पर्त कोर्ट में, 1 पर्त उस व्यक्ति को जिसकी संपत्ति attach हुई है और 1 पर्त Custodian को दी जानी चाहिए।

4. **अचल संपत्ति की डिक्री की execution जो joint possession** में है, उसका मालकाना कब्जा, warrant की कॉपी किसी भी दृश्य सहज स्थान पर लगा कर और Decree के सार को किसी सुविधाजनक स्थान पर डोंडी पिटवाकर (beat of drums) की जानी चाहिए।

5. **अचल संपत्ति की attachment का warrant (Warrant of Attachment of immovable property)**, Nazir आप या अपने नीचे काम करने वाले कर्मचारी से करवाता है। यह वारंट की पर्त चिपकाकर और आर्डर को पढ़कर की जाती है । इसकी endorsement warrant पर करने के बाद, न्यायालय में अगली तारीख से पहले दी जाती है । यदि Nazir के कहने पर कोई और व्यक्ति इसको execute करवाता है तो उसको दिन और समय के साथ इसके execute करने का तरीका भी बताना पड़ता है । यदि attachment जमीन की है तो Section 141, Punjab Land Revenue Act 1887 के मुताबिक Collector को warrant आर्डर की कॉपी के साथ भेज देना चाहिए । उस वारंट को execute करवाने की जिम्मेदारी Collector और उनके दफ्तर की है । यदि संपत्ति किसी ग्राम में है तो आर्डर की कॉपी उस ग्राम के ग्राम पंचायत के दफ्तर के बाहर लगा देनी चाहिए ।

6. **कृषि उपज की कुर्की में Bailiff की कार्यशैली** :

i. एक Warrant of Attachment की पर्त

(a) उस भूमि पर जिसमे ऐसी फसल उगी हुई है, अथवा

(b) जहां फसल काटी जा चुकी है या इक्क्ठी की जा चुकी है, खलिहान में या अनाज गाहने के स्थान में या चारे के ढेर पर लगाकर और

ii. दूसरे Warrant of Attachment की पर्त उस गृह के बाहरी द्वार पर जहां Judgement Debtor निवास करता है या जहां काम करता है या किसी सहज दृश्य भाग पर लगानी चाहिए ।

उपजी फसल कपास और गन्ने की फसल के अलावा attach नहीं की जा सकती है।

7. **Warrant of Arrest को execute करवाते हुए Bailiff की कार्यशैली:**

1. किसी भी निवास स्थान में सूर्यास्त के बाद और सूर्योदय से पहले प्रवेश नहीं करना चाहिए ।
2. निवास स्थान का कोई भी बाहरी द्वार तब तक तोड़कर नहीं खोला जाये जब तक वह निवास स्थान निर्णय देनदार के कब्जे में है और वह Bailiff को प्रवेश नहीं करने दे रहा।
3. यदि कमरा किसी ऐसी महिला के कब्जे में है जो देश की रूढ़िओं के अनुसार लोगों के सामने नहीं आती है तो गिरफ्तारी करने से पूर्व Bailiff को उसे यह सूचना देनी चाहिए की वह वहां से हट जाने के लिए स्वतंत्र है और उसे हट जाने के लिए समय और सुविधा प्रदान करना चाहिए ।
4. यदि राशि की डिक्री में निर्णय देनदार डिक्री की राशि और गिरफ्तारी का खर्चा उसे दे देता है तो वह उसे तुरंत छोड़ देगा।

8. **Receiver द्वारा ध्यान दी जाने वाली बातें**:

(a) संपत्ति की बाबत जो कुछ प्राप्त करेगा उसका लेखा देने के लिए ऐसी security देगा जो न्यायालय ठीक समझे ;

(b) अपने लेखाओ को ऐसी अवधियों और रूप में देगा जो न्यायालय आदेश दे ;

(c) अपने द्वारा राशि देना जो न्यायालय आदेश करे; तथा

(d) जानबूझ कर या अपनी घोर उपेक्षा से संपत्ति को हुई किसी हानि के लिए उत्तरदायी होगा ।

संपत्ति की विक्रय प्रक्रिया

1. नोटिस जारी करना

विक्रय की प्रक्रिया के दौरान निम्न नोटिस न्यायालय के द्वारा जारी किए जा सकते है ।

(a) पक्षकारों को नोटिस:

इसका उद्देश्य होता है sale proclamation की शर्तें तय करने से पहले पक्षकारों को बुलाकर सुनवाई करना।

- इस नोटिस का Proforma Form No. 28 में दिया है। (देखें पृष्ठ 91)
- अगर डिक्रीकार्ता मर चुका है तो उसके LRs को यह नोटिस Form No.99 में दिया जाएगा।(देखें पृष्ठ 92)

(b) राजस्व (Revenue) विभाग को नोटिस:

यह नोटिस संपत्ति की जाँच के लिए दिया जाता है।

(c) Sale Proclamation का जारी करना :

Proclamation की शर्ते तय होने के बाद न्यायालय के द्वारा विक्रय की तारीख तय की जाएगी ।

न्यायालय से आदेश पाकर अहलमद को Form No. 30, नाज़ीर के नाम जारी करना चाहिए । (देखें पृष्ठ 95)

नोटिस जारी करते समय अहलमद व नाज़िर द्वारा ध्यान देने योग्य बातें।

1. किसी भी तरह की publication का खर्चा पहले डिक्री धारक (decree holder) से प्राप्त किया जाना चाहिए।
2. Sale Proclamation न्यायालय की भाषा में होना चाहिए।
3. विक्रय की तिथि, समय और जगह स्पष्ट लिखा होना चाहिए।
4. संपत्ति पर कोई भार हो तो वह भी लिखना चाहिए ।
5. जिस राशि के लिए नीलामी के आदेश हुए है वह भी लिखा होना चाहिए।
6. अन्य कोई भी तथ्य जिससे संपत्ति के बारे या उसके उचित मूल्य के बारे पता लगे, लिखा होना चाहिए।
7. उपरोक्त सारी बातें स्पष्ट और ध्यानपूर्वक proclamation में लिखना जरुरी है जिससे कि बाद में आने वाले आपत्ति को निपटाया जा सके।
8. Proclamation में न्यायालय द्वारा संपत्ति की कीमत का अंदाजा देना जरुरी नहीं। केवल पक्षकारों द्वारा दी गई कीमत लिख देना ही काफी है।
9. सम्पूर्ण संपत्ति का या जितनी संपत्ति की नीलामी होनी है, स्पष्ट दर्शाया जाना चाहिए।
10. जहां संपत्ति पर कोई कर लगा हो, तो वहां सम्पत्ति कर स्पष्ट लिखा जाना चाहिए।

उपरोक्त बातों का ध्यान रखकर बनाये हुए proclamation पर अहलमद द्वारा न्यायाधीश के हस्ताक्षर लिए जाने चाहिए और proclamation की चार प्रति तैयार की जानी चाहिए जो कि bailiff को दी जाएगी।

Proclamation Notice की service

नाजिर को उपरोक्त form प्राप्त करने के बाद Form No.29 जारी करना चाहिए और क्षेत्र के हिसाब से यह नोटिस बैलिफ को तामील के लिए देना चाहिए। (देखें पृष्ठ 91)

बैलिफ की जिम्मेदारियां

बैलिफ को उचित समय पर नोटिस पर दिए गए पते पर जाना चाहिए और निम्न तरीकों से उसे घोषित करना चाहिए:

(1) जिस संपत्ति को विक्रय करना है, उस जगह पर या उसके आस पास जोर से proclamation को पढ़ कर सुनाना चाहिए या फिर ढोल बजा कर भी बताया जा सकता है जिससे कि सब की जानकारी में यह बात स्पष्ट शब्दों में आ जाये।

(2) Proclamation की एक प्रति को संपत्ति के किसी प्रत्यक्ष जगह पर चस्पानगी करनी चाहिए।

(3) Proclamation की एक प्रति न्यायालय के नोटिस बोर्ड व अन्य प्रत्यक्ष जगह पर चस्पानगी करनी चाहिए।

(4) यदि सम्पत्ति पर भूमिकर दिया जा रहा है तो office of Collector जहाँ संपत्ति स्थित है, में भी एक प्रति चस्पानगी करनी चाहिए।

(5) यदि सम्पत्ति गाँव में हो तो उस गाँव की ग्राम पंचायत के कार्यालय में भी एक प्रति चस्पानगी करनी चाहिए।

(6) यदि सम्पत्ति किसी cantonment area में है, तो एक प्रति Cantonment Board और Military Estates Officer जहाँ वह cantonment स्थित है, में भेजनी चाहिए।

2. नीलामी करने की प्रक्रिया

अहलमद को न्यायालय द्वारा जारी किया गया sale warrant, Process Serving Agency को देना चाहिए।

इसके पश्चात Process Serving Agency द्वारा उस warrant को Court Auctioneer को देना चाहिए।

Court Auctioneer को निर्धारित समय, दिन और जगह पर पहुंच कर:

- नीलामी की उद्घोषणा करनी चाहिए।
- सम्पत्ति का विवरण देना चाहिए।
- न्यायालय द्वारा निर्धारित सम्पत्ति का Reserve Price भी बताना चाहिए।
- उसके बाद नीलामी की प्रक्रिया शुरू की जानी चाहिए।
- आखिरी बोली को तीन तक गिनने और हथोड़े की ठोक के बाद सुनिश्चित किया जाना चाहिए।

Court Auctioneer द्वारा ध्यान देने योग्य बातें:

- न्यायालय द्वारा नीलामी रोकने के आदेश का दस्तावेज पेश करने पर नीलामी तुरंत रोकनी चाहिए।
- यदि बोली सुनिश्चित होने से पहले डिक्री देनदार सारी रकम चुका देता है और इस बारे दस्तावेज पेश कर देता है तो नीलामी को रोकना चाहिए।
- डिक्री धारक को नीलामी में बोली लगाने के लिए न्यायालय की मंजूरी लेनी होगी।
- यदि डिक्री धारक को न्यायालय से नीलामी शुदा सम्पत्ति खरीदने की मंजूरी मिल जाती है तो उसे Purchase money जमा नहीं करना, उसके पैसे adjust कर लिए जाएंगे।

- अचल सम्पत्ति के रहनदार (mortgagee) को भी नीलामी में भाग लेने के लिए न्यायालय की इजाजत लेनी होगी. बिना इजाजत वह बोली नहीं लगा सकता इस बात का ध्यान रखना चाहिए।
- यदि किसी सम्पत्ति का हिस्सेदार उसकी बोली लगाता है तो उसकी बोली बाहरी व्यक्ति के मुकाबले ज्यादा मान्य मानी जानी चाहिए।
- संपत्ति की नीलामी से जुड़े अफसर या अन्य व्यक्ति ना ही बोली लगा सकते है ना ही किसी प्रकार से सम्पत्ति में किसी भी प्रकार से अधिकार हासिल कर सकते है इस बात का धयान रखना चाहिए।

3. नीलामी के बाद खरीदार द्वारा पैसे का जमा कराना (अचल सम्पत्ति)

- जिस व्यक्ति की बोली सुनिश्चित हो जाती है, उसे तुरंत विक्रय राशि का 25% नकद या चैक से Court Auctioneer को देना चाहिए ।
- यदि वह ऐसा नहीं कर पाता तो Court Auctioneer को Certificate of Resale (Form No. 31) तुरंत जारी करना चाहिए । (देखें पृष्ठ 104)
- यदि ख़रीददार 25% जमा करा देता है तो बाकी पूरी रकम 15 दिन के अंदर न्यायालय में जमा करानी चाहिए ।
- यदि पूरी रकम 15 दिन में जमा नहीं होती तो पुरानी जमा की गई राशि नीलामी का खर्चा काट कर, सरकारी खाते में जमा करा दी जानी चाहिए ।

निलामी के बाद खरीदार द्वारा पैसा जमा कराना (चल सम्पत्ति)

- नीलामी के बाद सारा पैसा एक साथ Court Auctioneer की आदेश के अनुसार जमा कराना होगा ।

- पैसा जमा होने के बाद Court Auctioneer को खरीदार के नाम रसीद जारी करनी चाहिए| जिसके बाद विक्रय absolute मानी जाएगी ।
- यदि खरीदार पैसा नहीं जमा कराता तो, सम्पत्ति को तुरंत दूसरे खरीददार को बेच दिया जाना चाहिए ।

4. Court Auctioneer द्वारा पैसे को जमा कराना

Court Auctioneer जो भी पैसे प्राप्त करे उसे कुर्की के बाद पहले working day में ट्रेज़री या State Bank of India में जमा करवाना चाहिए।

जब विक्रय Nazarat Branch द्वारा की जाएगी, तब पैसा न्यायालय में जमा कराया जाना चाहिए।

5. पैसे का वितरण

पैसे का वितरण न्यायालय के आदेश अनुसार निम्न खर्चे निकलने के बाद किया जायेगा ।

- सरकारी कमिशन (देखे Rule 22 Chapter 12 Vol. 1 Part L High Court Rules and Orders)
    1. यदि विक्रय Court Auctioneer द्वारा की गई है, कमिशन का 80% Court Auctioneer को दिया जाना चाहिए और बाकी 20% सरकार के खाते में जमा करना चाहिए।
    2. यदि विक्रय nazarat branch ने की है तब विक्रय पर किया खर्चा recover करना होगा । यह खर्चा कमिशन से ज्यादा नहीं होना चाहिए।
- सम्पत्ति को कस्टडी में रखने और उसके देख रेख पर किया खर्चा।

6. अहलमद द्वारा ड्राफ्ट- सर्टिफिकेट तैयार करना

न्यायालय द्वारा विक्रय की पुष्टि हो जाने के बाद अहलमद को सर्टिफिकेट तैयार करना चाहिए और उस पर जज साहब के हस्ताक्षर कराने चाहिए। (Sale Certificate के form के लिए देखें Form No.38, Appendix E CPC, पृष्ठ 108-109) फिर उस सर्टिफिकेट के अनुसार एक ड्राफ्ट तैयार करना चाहिए। यह ड्राफ्ट खरीददार के द्वारा खरीदे गए stamp paper पर बनाया जाना चाहिए| इस पर वो तारिख जब सेल सम्पूर्ण हुई लिखना अनिवार्य है।

अहलमद द्वारा ध्यान देने योग्य बातें

- ड्राफ्ट की प्रति अहलमद को रजिस्ट्रार के दफ्तर भेजनी चाहिए।
- ड्राफ्ट permanent black ink (स्थायी काली स्याही) से लिखा जाना चाहिए।
- ड्राफ्ट स्थानीय भाषा में लिखा जाना चाहिए।

7. कब्जा देने की प्रक्रिया (अचल सम्पत्ति)

- न्यायालय के आदेश अनुसार अहलमद को warrant of possession जारी करना चाहिए। इसका प्रारूप Form No. 39 Annexure-E में दिया है।
- अहलमद को warrant of possession बैलिफ को देना चाहिए।
- बैलिफ इस वारंट को लेकर मौका पर जाना चाहिए।
- जो भी व्यक्ति कब्जा में हो, उसे जगह खाली करने को कहना चाहिए।
- यदि कब्ज़ा धारक कब्जा देने से मना करे तो बैलिफ द्वारा उचित जोर लगा कर कब्जा लिया जा सकता है । इस बात बारे बैलिफ को वारंट के पीछे endorsement देना चाहिए।

- बैलिफ को उचित चेतावनी और महिलाओं को वहां से हटने का उचित मौका देना चाहिए। किसी भी रुकावट की सूरत में बैलिफ दरवाजा खोल कर, ताला तोड़ कर या कोई भी अन्य तरिका जिससे कब्जा लिया जा सके, अपनाया जा सकता है।
- यदि सम्पत्ति में किराएदार है तब विक्रय certificate की कॉपी घर के किसी प्रत्यक्ष भाग पर चस्पानगी करनी चाहिए और सेल की उद्घोषणा करनी चाहिए। इस बारे वारंट के पीछे endorsement कर न्यायालय में लौटाना चाहिए।
- जब सम्पत्ति पर और भी हकदार हो, तब भी उपरोक्त प्रक्रिया अपनानी चाहिए।
- अगर कोई कब्जा लेने में बाधा डाले तो वारंट के पीछे यह रिपोर्ट लिख कर न्यायालय में वापिस कर देनी चाहिए।
- ऐसे में बैलिफ न्यायालय से पुलिस सहायता की माँग भी कर सकते हैं।

कब्जा देने की प्रक्रिया (चल सम्पत्ति)

न्यायालय के आदेश अनुसार अचल सम्पत्ति खरीदार को सौंप दी जानी चाहिए| इस बारे अहलमद द्वारा रसीद जारी की जानी चाहिए।

यदि सम्पत्ति किसी और के कब्जे में है तो उसे Form No. 32 के प्रारूप नोटिस ज़ारी किया जाना चाहिए।

CHAPTER V

PROCESS SERVING ESTABLISHMENT

Chapter V

PROCESS SERVING ESTABLISHMENT

5.1 Process Serving Establishment (**Volume 4 Chapter 6 Part A of Rules and Orders**) consists of:

1. **Controlling Authority:**

   a. Civil Judge (Senior Division) at the District Head Quarters and Additional Civil Judge (Senior Division) at the Sub Divisional Head Quarters is the Controlling authority of the Process Serving Establishment (**Volume 4 Chapter 6 Part A Rule 3 of Rules and Orders)**;

   b. He is responsible for efficiency of the Process Serving Establishment except that of the District Judge and the Judge, Small Cause Court.

2. **Ministerial Head:**

   a. Civil Nazir/Naib Nazir is the ministerial head of the Process Serving Establishment under the control of Civil Judge (Senior Division) and Additional Civil Judge (Senior Division), as the case may be**;**

   b. His main duty is to maintain the efficiency of the process serving establishment;

   c. He is required to submit reports and make suggestions from time to time to the Civil Judge (Senior Division) or the Additional Civil Judge (Senior Division), as the case may be (**Volume 4 Chapter 6 Part A Rule 4 of Rules and Orders)**;

d. Along with the above-mentioned duties, Civil Nazir/Naib Nazir is also duty bound:

i. to maintain Sherriff Petty Accounts. He also receives cash and makes payments on behalf of the agencies. He is also known as Local Agent (**Volume 2 Chapter 8 Section II Rule 8 of Rules and Orders)**;

ii. to see that the prescribed accounts i.e. Civil Deposit and Repayment account are properly maintained by the staff working under his immediate control;

iii. to manage the execution business;

iv. to prepare correspondence regarding the payment of diet money of witnesses and other similar matters (**Volume 4 Chapter 6 Part A Rule 9 of Rules and Orders)**;

v. in the absence of Decree Holder, the amount deposited by the Judgment Debtor in the Court should be made over to the Civil Nazir who should forthwith deposit it in the treasury at the Sadar Tehsil, as the case may be and notify to the Court, the number, date on which the sum has been entered in the Deposit Register. A Corresponding entry should also be made in the Court Record**(Volume 1 Chapter 12 Part L Rule 4 of Rules and Orders)**;

vi. to conduct sale as directed by the District Judge (**Volume 1 Chapter 12 Part L Rule 24(i) of Rules and Orders)**;

vii. to submit reports relating to the members of the establishment or their duties to the Senior Subordinate Judge; or the

Administrative Subordinate Judge (**Volume 2 Chapter 8 Part D Rule 11(b) (i) of Rules and Orders)**;

viii. to maintain **Register of Processes served by Process Servers (Register No. 23) and Register of Warrants executed by Bailiff (Register No. 22)** month-wise.

Register No. XXIII

Register of Processes Served by Process Servers _____
Name of the process server _____

Month	*Number of Processes entrusted for service*	*Number of processes served according to law and returned within time*	*Number of processes served personally*	*Percentage of personal service*	*Remarks*

Register No. XXII

Month	*Warrants of Arrest*		*Warrants of*		*Warrants of Sale*		*Remarks*
	Served	*Unserved*	*Executed*	*Not Executed*	*Executed*	*Non Executed*	
January February etc.							

Register of Warrants Executed by Bailiff

ix. to watch the return and execution of warrants etc. entrusted to the execution bailiffs and to see on what dates the amounts were realized by them and paid into the treasury. Each **Bailiff** should

maintain a notebook in the **Form No. 1** as mentioned below (**Volume 2 Chapter 8 Part E Section A Rule 3 of Rules and Orders)**;

x. It is the duty of the Civil Nazir that before handing over a warrant to the **Bailiff** for execution, its particulars should be entered in Column Nos. 1 to 9 of his notebook by him as shown in **Form No.1**. **Bailiff/ Nazir**, as the case may be, should complete remaining columns after the execution of the warrant. The same is also applicable to Process Servers who are entrusted with the execution of warrants (**Volume 2 Chapter 8 Part E Section A Rule 4 of Rules and Orders);**

Form No. 1 (vide Rule 3)
Volume 2 Chapter8 Part E
Note Book of ..... Execution Bailiff
Court of ..... for the Month ..... 19 .....

Monthly Serial No.	*Date of Issue of warrant*	*Serial No. in the Register of processes received and disposed of by the local agent*	*Name of the Court Issuing the warrant*	*Name of parties*	*Name of judgement debtor*	*Date of next hearing in the case*	*Date of return of warrant fixed by the Nazir*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*

Nature of execution i.e., attachment of property or arrest of the debtor	*Date of execution*	*Amount And /or No. of articles received*	*Date of Credit of realization*	*Amount*	*Particulars whether exaction was carried out or not*	*Acknowledgment of Nazir with Date and No. of entry in Register of Receipts*	*Remarks*
9	*10*	*11*	*12*	*13*	*14*	*15*	*16*

xi. to distribute the business amongst the process servers (**Volume 2 Part D Chapter 8 Rule 11(b) (ii) of Rules and Orders)**;

1. obtain signatures of the process server in the receipt register; ensure that the process server enters the process in **Register No.XXIII;**

2. keep a rubber stamp on which six columns should exist, i.e. date of entrustment, name of the process server, manner of service, date of return, reason of delay, if any, reason of non - service;

3. ensure that the process is returned by the aforesaid date;

4. report default to the Civil Judge (Senior Division) or Additional Civil Judge (Senior Division), as the case may be, of the Process Serving Establishment for suitable disciplinary action against the process server;

5. to check and sign diary of the process servers in **Register No.XXIX** to ensure that it is properly maintained.

3. Process Servers:

a. Appointment of process servers should be registered in the Court of the Senior Subordinate Judge of the District in which the appointment is made. They shall be known as Registered Process Servers (**Volume 4 Chapter 6 Part Rule 5 of Rules and Orders)**;

b. The process servers should be employed mainly in the work of serving and executing processes, but they may be required to

perform any other public duties as may be assigned to them(**Volume 4 Chapter 6 Part C Rule 4 of Rules and Orders)**;

c. **Bailiff** ordinarily executes the warrants of attachment, arrest and delivery of possession etc. However, this duty can also be entrusted to the process servers by officer-in-charge of the Process Serving Establishment when no other official is available for conduct of sale and value of property to be sold is either Rs 100/- or less. **(Volume I Chapter 12 –L Rule 24 (iv) of Rules and Orders)**

4. Bailiff:

a. Duty of the **Bailiff** is ordinarily to execute the warrants of attachment, arrest and delivery of possession etc. It is the specific duty of the **Bailiff** to execute the processes addressed to him:

i. Warrant of Attachment of movable property in execution of a decree for money;

ii. Warrant for Seizure of specific movable property adjudged by decree;

iii. Warrant to the **Bailiff** to give possession of land, etc.;

iv. Warrant of arrest in execution;

v. Order of attachment of Negotiable Instrument;

vi. Warrant of sale of property in execution of a decree for money;

vii. Order for delivery to certified purchaser of land at a sale in Execution.

b. When there is a realization of credit by the **Bailiff** in the execution of the warrants, for depositing the said amount, the **Bailiff** should put an application to the concerned Court. The application should be verified from the judicial record of the case concerned by the **Ahlmad/Execution Clerk** of the concerned Court and if it is in order, the Court should pass the application to **Nazir**;

c. The **Nazir** should, then, fill in Column Nos.1 to 7 of the "**Register of Receipts" Form No.2** and prepare a receipt on the foil and counterfoil on the prescribed **Form No.6**. He should also note on the application over his initials, a serial number of the entry, in the "Register of Receipts". The **Nazir** should, then, produce the **Bailiff** and the documents before the Presiding Officer and if he (Presiding Officer) approves the deposit, he (Presiding Officer) should initial Column No. 8 of "Register of Receipts", handover the foil of "Receipt" to the depositor and receive the money from him. He should then, pass on the money and the application to the Civil Nazir for further action. If he (Presiding Officer) does not approve the deposit, he (Presiding Officer) should cancel his own signature, the entries which have been made by the Civil Nazir in all these documents including the register. (**Volume 2 Chapter 8 Part E Rule 14 of Rules and Orders**);

Form No.2 (Vide Rule 13)
Volume 2 Chapter 8 Part E

Register of Receipts of Sheriff's Petty Account Deposits at the Agency of the ____ for the Month of ___ 19 ___

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Date of receipt	*Number of deposit book no. and receipt no. of receipt in Form 6*	*No. of file of the case in which deposited*	*Name of the court and of the parties with name and Tahsil number of the village in which the file is to be kept*	*From whom received*	*Nature of deposit*	*Amount of cash deposit*	*Initials of Presiding Officer*	*Daily total*
						Rs.		

DETAIL OF PAYMENTS											
Date	*Amount of each payment*	*Initials of presiding officer*	*Date*	*Amount of each payment*	*Initials of presiding officer*	*Date*	*Amount of payment*	*Initials of presiding officer*	*Total of payments*	*Lapsed and credited to Government*	*REMARKS*

Form No.6 (Vide Rule 14)
Volume 2 Chapter 8 Part E

Receipt for deposit in Civil Court Deposits (Cash System)of the Court of _____ Counterfoil of Receipt *Book No._____* *Receipt No._____*	*ts for Deposit in Civil Court (Cash System) of the Court of _____* *Book No._____* *Receipt No._____*

No. of entry in Register of Receipts		*No. of entry in register of receipt*	
Name of Court		*Name of Agency*	
Name of depositor		*Name of depositor*	
Amount deposited		*Amount deposited*	
Signature of the Presiding Officer		*Signature of the Presiding Officer*	

d. The receipt should be granted to the **Bailiff** but will show the deposit as made on behalf of the Judgment Debtor. **Bailiff** should paste the receipts on his notebook. **(Volume 2 Chapter 8 Part E Rule 15 of Rules and Orders)**

Note: Special Messenger and Special Bailiff (Volume 4 Chapter 6 Part B Rule 12 of Rules and Orders).

Any one of the registered process servers can be spared for employment of special messenger if it is found necessary by the Court to expedite the process. A special fee will be payable by such emergent service except in case of warrant of arrest. There is no need of creation of temporary post for appointment of special

messenger. If so required, a reference should be made to the High Court. The District and Sessions Judge can create the post of **Bailiffs** for execution of work of cooperative societies only and not for others. A special **Bailiff** can also be appointed if service is not affected in the ordinary course and period of such appointment can be determined by the Court concerned in the circumstances in each case but no special fee should be levied.

5.2 JOURNEY OF THE PROCESSES (ALONG WITH MUNADI FEE/ANY OTHER FEE, SO REQUIRED) FROM COURT TO THE PROCESS SERVING ESTABLISHMENT AND BACK TO THE COURT:

a. It is the duty of the **Ahlmad/Execution Clerk** of the Court to issue the process for the execution of the decree/order as per order of the Court where all the preliminary requirements have been fulfilled;

b. The process requires having the date on which it is issued and should be signed by the Judge or such officer as the Court may appoint in this behalf and should be sealed with the seal of the Court and should be delivered to the proper officer for execution;

c. At the time of issuance of the process, it is required that a day should be specified on or before which it should be executed and a day should also be specified on or before which it should be returned to the Court. However, the process will not be void if no day for its return is specified **(Order 21 Rule 24 CPC);**

d. In the case of warrant of attachment, or on file, Reader is duty bound to record a note with regard to compliance of formalities as per law. The Court should carefully scrutinize such note and initial it in token of its correctness;

e. Once the process has been issued by the **Ahlmad/ Execution Clerk** of the Court, it should be handed over to the **Civil Nazir** within the District/ Sub Division as the case may be, for the purpose of service after making relevant entry in the Dispatch Register against proper receipt;

f. The responsibility to distribute the processes is that of **Civil Nazir**;

g. When **Civil Nazir** receives the processes, he should check that it:

   i. bears the name of the issuing Court;

   ii. bears the name and address of the Judgment Debtor/third party upon whom the process is to be served;

   iii. bears the stamp and signatures of the Court/authorized official of the Court;

   iv. is accompanied by the copy of the application of Decree Holder with decree and other documents mentioned in the process;

   v. Warrant of possession contains full description of the property in dispute and copy of the site plan of the property is attached with it.

h. **Civil Nazir** should return the incomplete/deficient process to the Court concerned and get it rectified. For entrustment of a defective process to the Bailiff/Process Server, **Civil Nazir** is responsible and is liable for disciplinary action.

5.3 RECEIPTS OF PROCESSES AND DEPOSITS BY THE PROCESS SERVING AGENCY- SHERIFF PETTY ACCOUNTS

a. Sheriff Petty Accounts relate to the sums received by Officers in charge of Process Serving Establishment and intended for immediate

disbursement (**Volume 2 Chapter 8 Section II Rule 8 of Rules and Orders);**

b. Reader of the Court should note the number of the case on the application involving a deposit in the Sheriff Petty Accounts when presented in Court, for example an application for deposition of Munadi fee, in order to enable the process-serving agent to make the necessary entry in the **"Register of Receipts"**;

c. Applicant should tender the amount of his deposit together with the application to the **Civil Nazir**/local agent after the usual orders have been passed and recorded by the Court;

d. **Civil Nazir** should fill in columns 1 to 7 of the "Register of Receipts" **Form No.1**, prepare a "Receipt" in foil and counterfoil on the prescribed form **Form No.5**, and issue the foil to the depositor as a receipt for the money deposited after it is signed by the Officer-in-charge (**Volume 2 Chapter 8 Section III Rule 13 of Rules and Orders);**

e. **Civil Nazir** should return the application to the Court concerned for record, after the serial number of the "Register of Receipts" has been noted on the application and the usual daily check is exercised by the Officer-in-charge;

f. **Civil Nazir** should retain the receipts of counter foil and produce the same for audit (**Volume 2 Chapter 8 Section III Rule 14 of Rules and Orders)**.

Form No.1 (Vide Rule 3)
Volume 2 Chapter 8 Part D

Register of Receipts of Sheriff's Petty Account Deposits at the Agency of the ____ for the Month of ___ 19 ___

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Date of receipt	*Number of each deposits*	*Name of the court and of the parties with name and Tahsil number of the village in which the file is to be kept*	*No. of file of the case in which deposit ed*	*From whom received*	*Nature of deposit*	*Amount of each deposit*	*Initials of each deposit*	*Daily total*

DETAIL OF PAYMENTS											
	Amount of each payment	*Initials of officer in charge*	*Date*	*Amount of each payment*	*Initials of officer in charge*	*Date*	*Amount of payment*	*Initials of officer in charge*	*Total of payments*	*Lapsed and credited to Government*	*REMARKS*

Form No.5(Vide Rule 13)
Volume 2 Chapter 8 Part D

Receipt for deposit in Sheriffs' Petty Accounts in Agency at ____ Counterfoil of Receipt *Book No._____* *Receipt No._____*	*Receipt for money deposited in Sheriffs' Petty Accounts in Agency at _____* *Book No._____* *Receipt No._____*

No. of entry in Register of Receipts		*No. of entry of register of receipts*	
Name of Agency		*Name of Agency*	
Name of depositor		*Name of depositor*	
Amount deposited		*Amount deposited*	
Signature of officer-in-charge		*Signature of officer-in-charge*	

5.4 DUTIES OF CIVIL NAZIR: WHERE THE PROCESSES ARE TO BE SERVED ALONGWITH MONEY (MUNADI FEES FOR EXECUTION) WITHIN THE DISTRICT OR TEHSIL

a. **Ahlmad/Execution Clerk** of the concerned Court should make a reference on the process of the amount deposited with **Civil Nazir** and send the process for service within the District to the local nazarat branch. (**Volume 2 Chapter 8 Section III Rule 16 of Rules and Orders)**;

b. **Civil Nazir** should arrange for the payment at the time of service of sums due to person to whom the processes were addressed on the receipt of the process from the Court situated at the Headquarters of District of Tehsil (**Volume 2 Chapter 8 Section III Rule 19 of Rules and Orders);**

c. **Civil Nazir** should enter each process in the relevant column Nos. 1 to 11 in the **"**Register of Process received and disposed of by local agent" Form No.6 as shown below;

Form No.6
Volume 2 Chapter 8 Part D

	Serial No.	*1*
Form No.6 *(Vide Rule Nos. 17 and 20)* *Register of processes including warrants, etc., received from ____ Tehsil/District ____ with / without diet money of Munadi-fee by the Process-Serving Agent at ____*	*Date of receipt of process*	*2*
	Name of the Court, Tehsil and District from which received	*3*
	Case No.	*4*
	Name of Parties	*5*
	Description of Process	*6*
	Amount of Process fee (Talbana) levied	*7*
	Amount with detail of diet money or Munadi fee received with the process	*8*
	Reference to correspondence Serial No. and date of Register of receipts (Form No.1 Sheriff's Petty Accounts Rules)	*9*
	Purpose for which received	*10*
	Name of person on whom process is to be served	*11*
	Date fixed by the issuing Court for return of the process	*12*
	No. and name of Process Server or bailiff by whom to be served or Tehsil or district to which sent for service together with abstract of immediate order	*13*
	Date on which made over to Process-Server for service or on which sent to other District and Tehsil	*14*

	Reference to corresponding Serial No. and date of Register of disbursements (Form No.2 Sheriff's Petty Account Rules)	*15*
	Date of return from Process-Sever or other district or Tehsil	*16*
	Whether served or unnerved	*17*
	Amount of diet-money received back in case of unnerved process with Nos. of entry in the Register of Receipts (Form No.1) in which return money accounted for	*18*
	Date of return of undisbursed diet money.	*19*
	Date of submission of process to the issuingCourt with abstract of final orders	*20*
	Remark	*21*

d. **Civil Nazir** should give such sum to the process server together with the processes;

e. **Civil Nazir** should enter payment to process server in the appropriate column of the "Register of Receipts" against each sum;

f. **Civil Nazir** should make entry of the payment in the "**Register of Disbursements**" **Form No.2** and should also take acknowledgment of receipt from the process server in Column No.11;

Form No.2 (Vide Rule 3)
Volume 2 Chapter 8 Part D
Register of Disbursements of Sheriffs' Petty Accounts
Deposits at the Agency of the _____ for the Month of _____ 19 _____

Details of Original Deposit		*Date of present payment*		*Yearly Serial No.*	*To whom paid*	*Amount paid*	*Initials of*		*Daily total carried to Cash Book*	*Payee's receipt*
Date of receipt	*Number as per Register of receipt*	*Amount of balance of deposit*					*Processes serving agent*	*Officer-in-charge*		
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*
		Rs.				*Rs.*			*Rs.*	

g. **Civil Nazir** should also enter the details of each sum in the "Process Server's Note Book" Form No.7 in Column Nos. 1 to 5 at the time of transmitting the process (**Volume 2 Chapter 8 Section IV Rule 20 of Rules and Orders)**;

h. No **Process Server** should have more than Rs 200/-in hand at any given time (**Volume 2 Chapter 8 Section II Rule 11 of Rules and Orders);**

Form No.7 (Vide Rule 20)
Volume 2 Chapter 8 Part D
Note Book of _____ Process Server attached at _____ Agency

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*9A*	*10*	*11*	*12*
	To be filled up by the Agent (Nazir)				*To be filled up by process-server*				*To be filled up by the Agent (Nazir)*			
	Reference to No. of items in Register of Disbursements	*Name of person to whom money is to be disbursed*	*Amount*	*Initials of the process serving agent (Nazir)*	*Date of service*	*Amount paid*	*Acknowledgement*	*Amount undisbursed*	*Signature of the witness in whose presence the amoutn was paid*	*Number of items in Register of Reciepts against which re-deposted*	*Signature of the process serving agent (Nazir)*	*Remarks*
			Rs.			*Rs.*		*Rs.*				

i. **Civil Nazir** should distribute the processes to the Process Servers as well as Bailiffs, as the case may be, according to the areas distributed to them. On the back of each process, **Civil Nazir** should affix the stamp containing:

i. Date of entrustment;
ii. Name of Process Server;
iii. Manner of service;
iv. Date of return;
v. Reason, if any, delay;
vi. Reason of non-service.

j. **Civil Nazir** should fill column nos. **(i)** and **(ii)** at the time of handing over the process to the Process Server or Bailiff;

k. **Civil Nazir** should obtain signature of the Process Server/Bailiff in the appropriate register and transmit the processes to the respective Process Server/Bailiff;

l. At the time of the service, **Process Server** should take the receipt of the payee in column No. 8 of his Note Book as well as on the back of the original copy of the process on which service is endorsed at the time of the payment of the money to the concerned person, for example, munadi fee to the drummer after effecting the munadi for the service of the process. Such service should be verified by one or more respectable witnesses with date and signature of Process Server (**Volume 2 Chapter 8 Section IV Rule 21 of Rules and Orders);**

m. **Civil Nazir**, after receiving of the process, should verify in case the service is effected and the money connected therewith paid to the payee, the service with the acknowledgment of payee given in the column no. 8 of the "Process Server Note Book" as well as on the back of the original copy of process and submit later to the Court with the usual certificate of service (by filling the columns no. iii to vi on the stamp on the back of the process);

n. **Civil Nazir** should complete the formalities and return the process to the concerned Court with a certificate of service after filing up column Nos. 12 and 13 of the "Register of Processes received and disposed of by the local agent" (**Volume 2 Chapter 8 Section IV Rule 22 of Rules and Orders)**;

o. In case of non-service, **Process Server** should make the entry with regard to undisbursed amount in his Notebook in Column No. 9;

p. **Civil Nazir**, after receiving of the process, should make the entry of the amount undisbursed against a new number assigned in the "Register of Receipts" in case of non - service of the process;

q. **Civil Nazir** should quote the new number in the "Register of Receipts" against the original entry in the "Register of Disbursements" and noted in Column No.10 of the Process Server Note Book;

r. **Civil Nazir** should also sign on column no. 11 in acknowledgment of the money having been received back from the Process Server.

s. **Civil Nazir** should complete the formalities and return the process to the Court concerned with a certificate of non-service after filling up column Nos. 12 and 13 of the "Register of Processes received and disposed of by the local agent"(**Volume 2 Chapter 8 Section IV Rule 23 of Rules and Orders)**;

t. **Civil Nazir**, at the time of returning the process with the certificate to the concerned Court, should make the entry in his Dispatch Register and should also take the acknowledgement of receipt from the concerned **Ahlmad/Execution Clerk** of the Court;

u. **Ahlmad/Execution Clerk** of the Court should append the Process with its report on the case file.

5.5 DUTIES OF CIVIL NAZIR: WHERE THE PROCESSES ARE TO BE SERVED ALONGWITH MONEY (MUNADI FEES FOR EXECUTION) IN DIFFERENT TEHSILS WITHIN THE DISTRICT

a. **Ahlmad/Execution Clerk** of the concerned Court should issue and send the process for service in different Tehsils with in the District to the local nazarat branch;

b. **Civil Nazir** of local nazarat branch should transmit the process (duly endorsed with the amount, if any, which is to accompany the process) by post or (where absolutely necessary) by messenger to the agent/**Civil Nazir** of the Tehsil within which service is to be effected after making the necessary entries in column nos. 1 to 11, 14 and 15 of the "Register of Processes Received and Disposed of by the local agent" as shown above as Form No.6 **(Volume 2 Chapter 8 Part D Section V Rule 24 of Rules and Orders)**;

c. **Civil Nazir** of the local nazarat branch should make the usual entries in the "Register of Receipts" and the "Register of Disbursement", and send the amount by the postal money order to the **Civil Nazir** concerned along with the process. The money order commission should be recovered from the party at whose instance the process is issued and the money order should be addressed to the Officer in charge of the Process Serving Establishment in which the agent works;

d. The said Officer in charge should take delivery of the money order under his signature. It is the duty of the **Civil Nazir** to make relevant entry in the receipt column of the "Intermediate Register";

Form No.17 (Vide Rule 10)
Volume 2 Chapter 8 Part E
Intermediate Register of Money Orders, etc., Received in the Court of _____
for the Month of _____ 19 _____

RECEIPT					*DISPOSAL*					
Serial No.	*Date of Receipt*	*If Money Order (i) Name of remitter (ii) No and date of money order, and (iii) Post Office of issue*	*If Cheque (i) name of drawer (ii) No. and date of cheque (iii) What bank, and (iv) No. and date of covering letter*	*If other valuables – (i) Specify them (ii) From whom received (iii) Particulars of case*	*Amount of money order or cheque*	*Initials*	*Serial No. and date in Register of receipts S.P.A. IC.C.*	*Mode of other disposal*	*Signature of Presiding Officer*	*Remarks*

e. **Civil Nazir** should transfer the amount received from the "Intermediate Register" to the "Register of Receipts" on the day of receipt, if possible, or the next morning. It is the duty of the Officer in charge to oversee the same;

f. **Civil Nazir** should also make relevant entry in disposal Column of Intermediate Register;

g. **Civil Nazir** should follow the same procedure as detailed above (**Duties of Civil Nazir -** Where the processes are to be served along with money (Munadi fees for execution) within the District or Tehsil), to cause the process to be served and the amount disbursed to the payee in the same manner as if the process had been issued by one of the Courts of his own

agency **(Volume 2 Chapter 8 Part D Section V Rule 26 of Rules and Orders)**;

h. **Civil Nazir** in the case of non–service of the process should return the amount (less money order commission) by postal money order to the Senior Sub Judge, Officer in charge of the Process Serving Establishment from whom it was received;

i. **Civil Nazir** to whom the process is sent for service should return the same with the certificate of service or non-service, as the case may be, duly endorsed thereon and signed by the Officer in charge, to the agent from whom he received the process;

j. The said Officer in charge to whom the process was sent back, should take delivery of money order under his own signature. He should also see that **Civil Nazir** transmits the amount from the "Intermediate Register" to "Register of Receipts" on the day of the receipt, if possible or the next morning;

k. **Civil Nazir** should enter such amount against a new number in the "Register of Receipts" which number should also be quoted against the original entry in the "Register of Disbursement" **(Volume 2 Chapter 8 Part D Section V Rule 27 of Rules and Orders)**;

l. **Civil Nazir** after receiving the process back, from the Civil Nazir whom it was sent to for service, thereupon, shall also fill in the relevant Column No.16 to 21 of Register, Form No. 6 and should forward the process to the court which issued it. **(Volume 2 Chapter 8 Part D Section V Rule 28 of Rules and Orders)**;

m. **Civil Nazir**, at the time of returning the process with the certificate to the concerned Court, should make the entry in his Dispatch Register and should also take the acknowledgement of receipt from the concerned Ahlmad/Execution Clerk of the Court;

n. **Ahlmad/Execution Clerk** of the Court should append the Process with its report on the case file.

5.6 DUTIES OF CIVIL NAZIR-WHERE THE PROCESSES ARE TO BE SERVED ALONGWITH MONEY (MUNADI FEES FOR EXECUTION) IN ANOTHER DISTRICT

a. **Ahlmad/Execution Clerk** of Court should handover the process issued by the Court for service in another District to local nazarat branch;

b. **Civil Nazir** of local nazarat branch should make the relevant entries in the Register in Form No.6 as referred above and transmit the process to the Senior Subordinate Judge of the District in which the person to be served resides (**Volume 2 Chapter 8 Section III Rule 17 of Rules and Orders)**;

c. **Civil Nazir** of local nazarat branch should transmit the process, endorsed with the amount (subsistence or other expenses as noted on the original and duplicate copy of the process), by postal money order to the agent/**Civil Nazir** of the District in which service is to be effected. The cost of the postal money should be borne by the party at whose instance the process is issued;

d. Same procedure is to be followed for the service of the process alongwith Mundi Fees as mentioned above (**Duties of Civil Nazir -**

where the processes are to be served alongwith money (Munadi fees for execution) in different Tehsils within the District) for effecting the service of the process in another District;

e. **Civil Nazir** of the Process Serving Establishment, after receiving the process back from the **Civil Nazir** to whom it was sent for service, thereupon, should fill in the relevant columns of Register Form No.6 and then, forward the process to the Court which issued it;

f. **Civil Nazir** should make the entry in his Dispatch Register at the time of returning the process with the certificate to the concerned Court, and should also take the acknowledgement of receipt from the concerned **Ahlmad/Execution Clerk** of the Court;

g. **Ahlmad/Execution Clerk** of the Court should append the process with its report on the case file.

5.7 SURVEILLANCE OF PROCESS SERVERS

1. Diaries of Process Servers should be regularly checked and action should be taken against them if they are negligent in giving the prescribed percentage of personal service. Other relevant registers should also be regularly and thoroughly checked;

2. Return of processes by the Process Server in time should be closely monitored and action against the delinquent be taken as per rules;

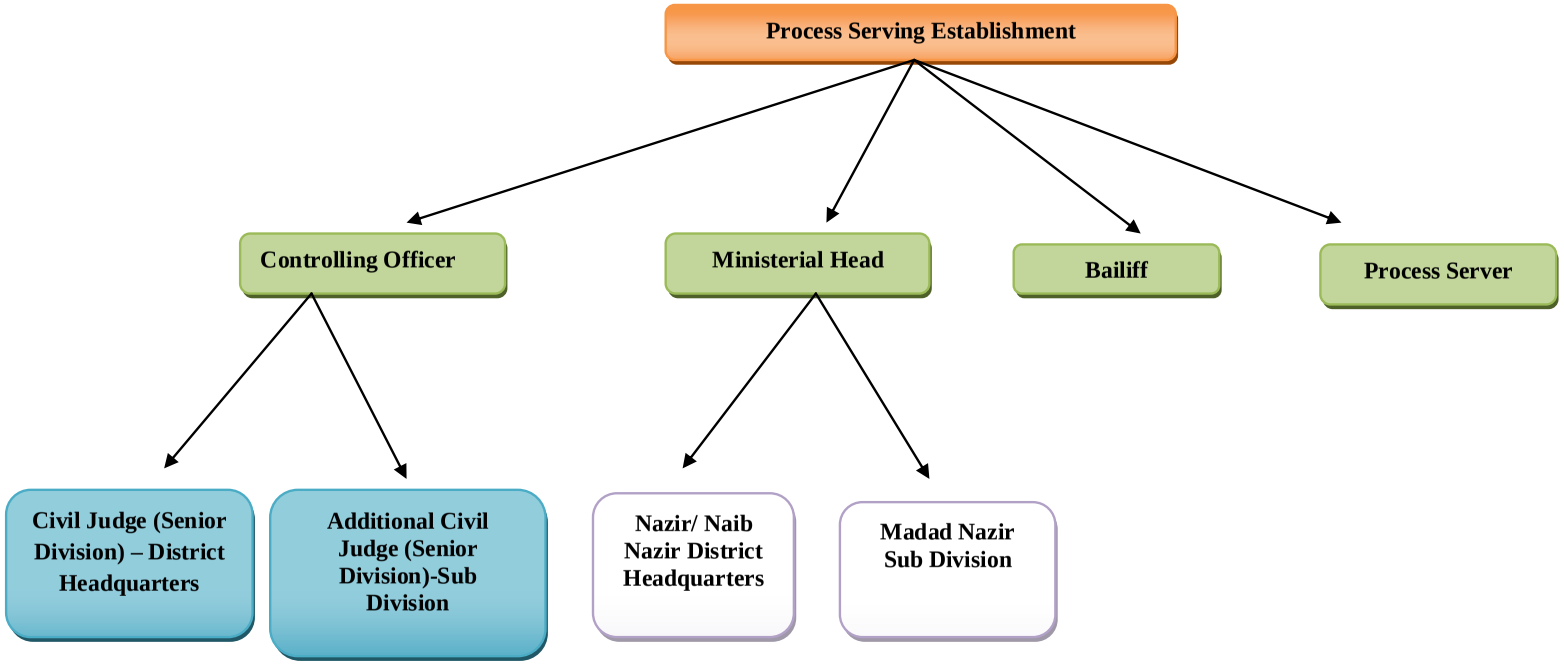
3. Service should be affected within a reasonable time prior to the date fixed. Service affected one day prior to date fixed would mean it has been

effected mechanically by sitting in the office, either through telephone/SMS or through some other messenger;

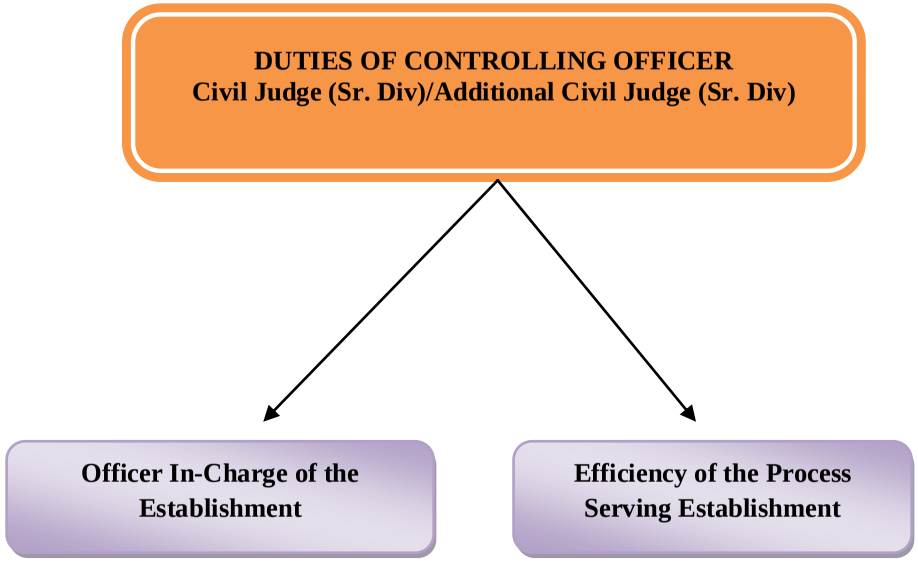
4. Checking Of Process Server's Note Book: The Process Server note book in the Court of Civil Judge (Senior Division) and Small Cause Court should be checked by the Clerk of the Court monthly and all these note books should also be checked quarterly by the Officer in Charge and monthly by the Presiding Officers of the Courts at Tehsil Headquarters. The following certificate should be recorded by the Presiding Officers on the note books:

> "Certified that I have personally checked the accounts for the month of /quarter ending _____ and am satisfied that they are correct and in order".

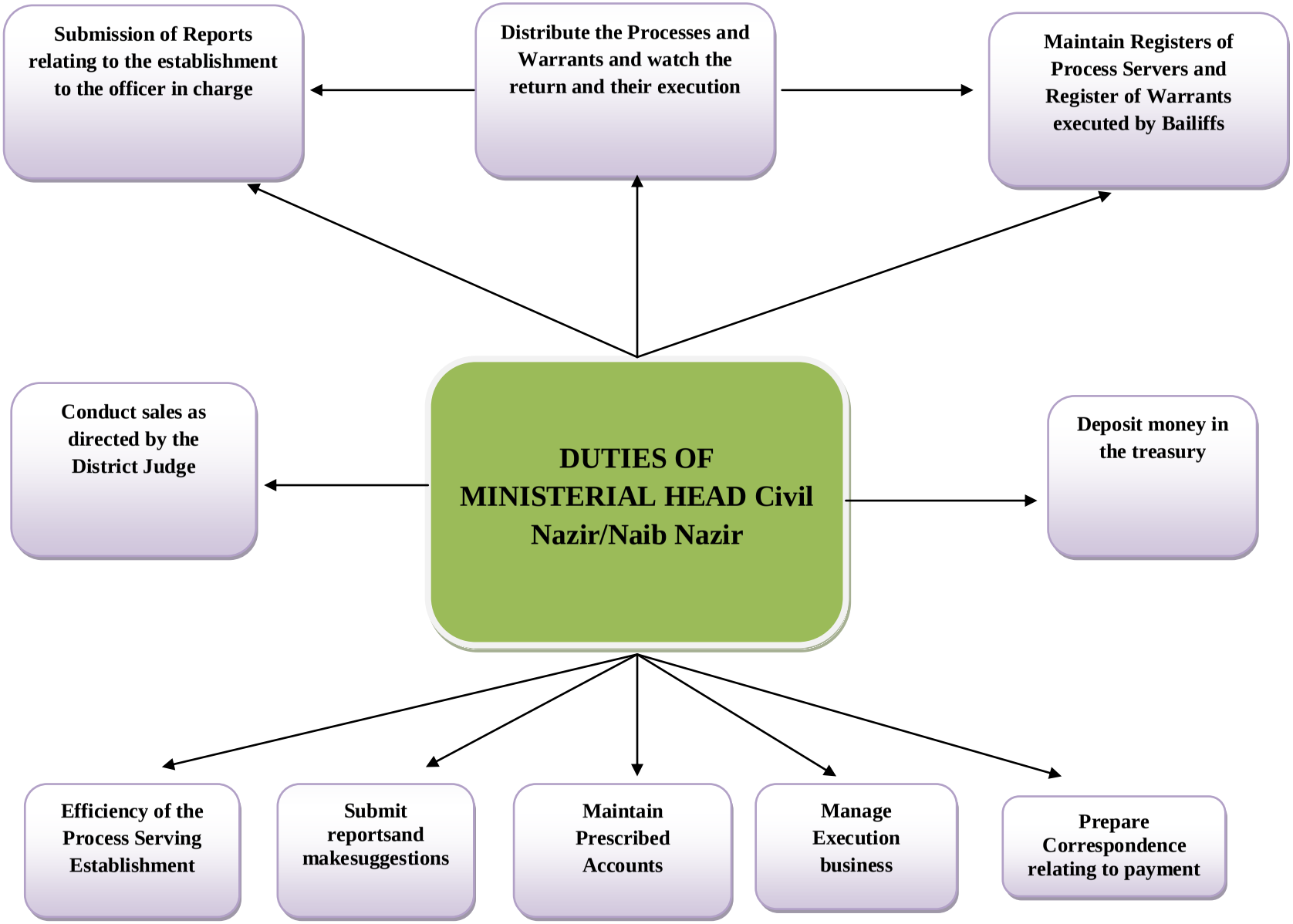
a. Process Serving Establishment



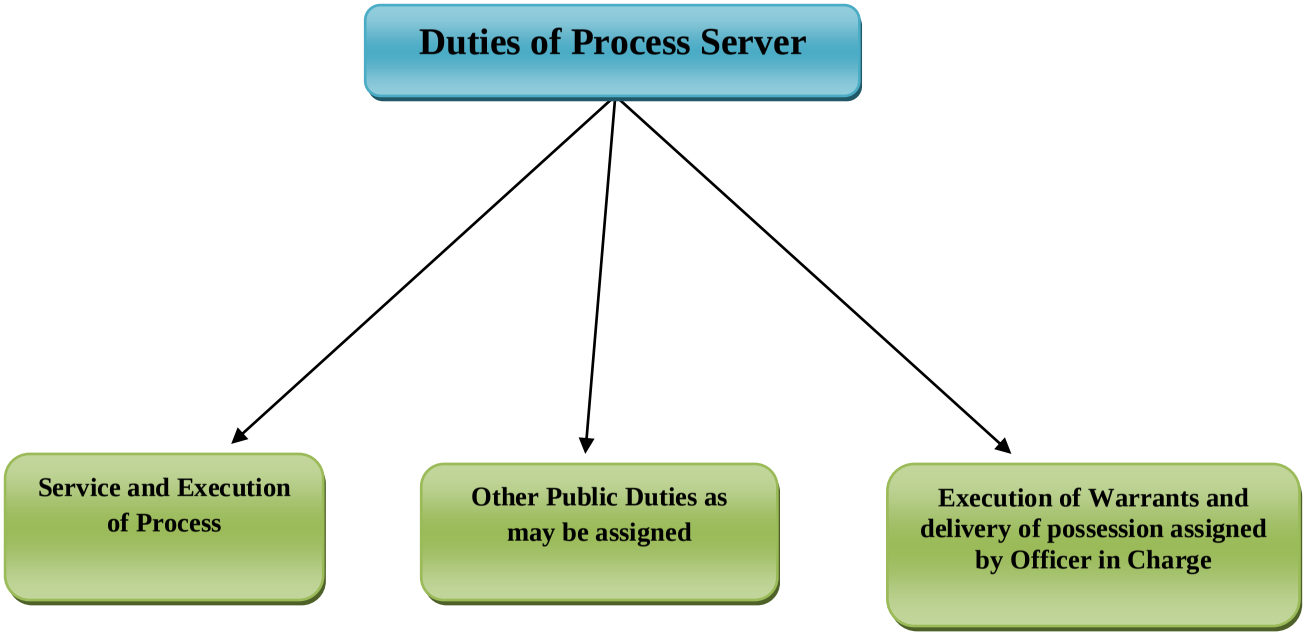
b. Duties of Controlling Officer



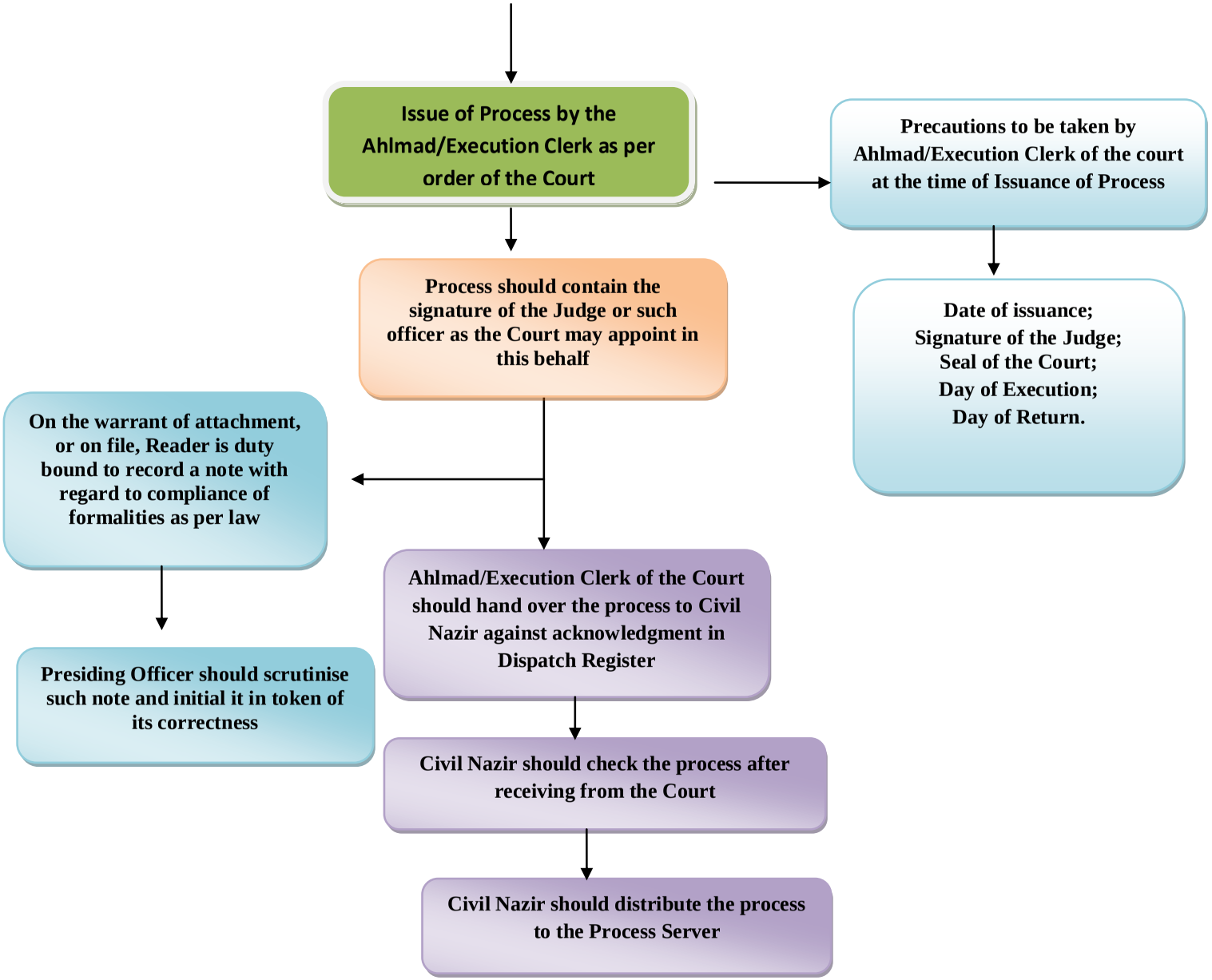
c. Duties of Ministerial Head



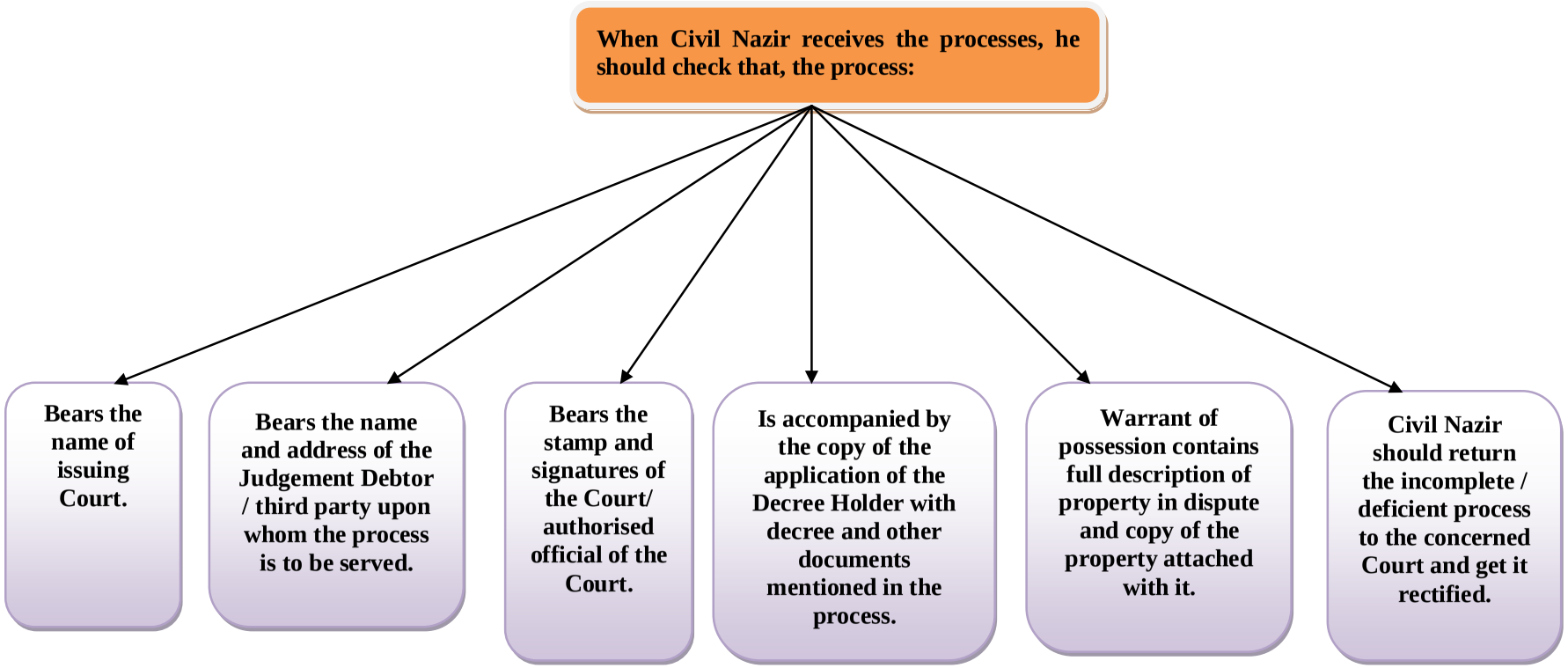
d. Duties of Process Server



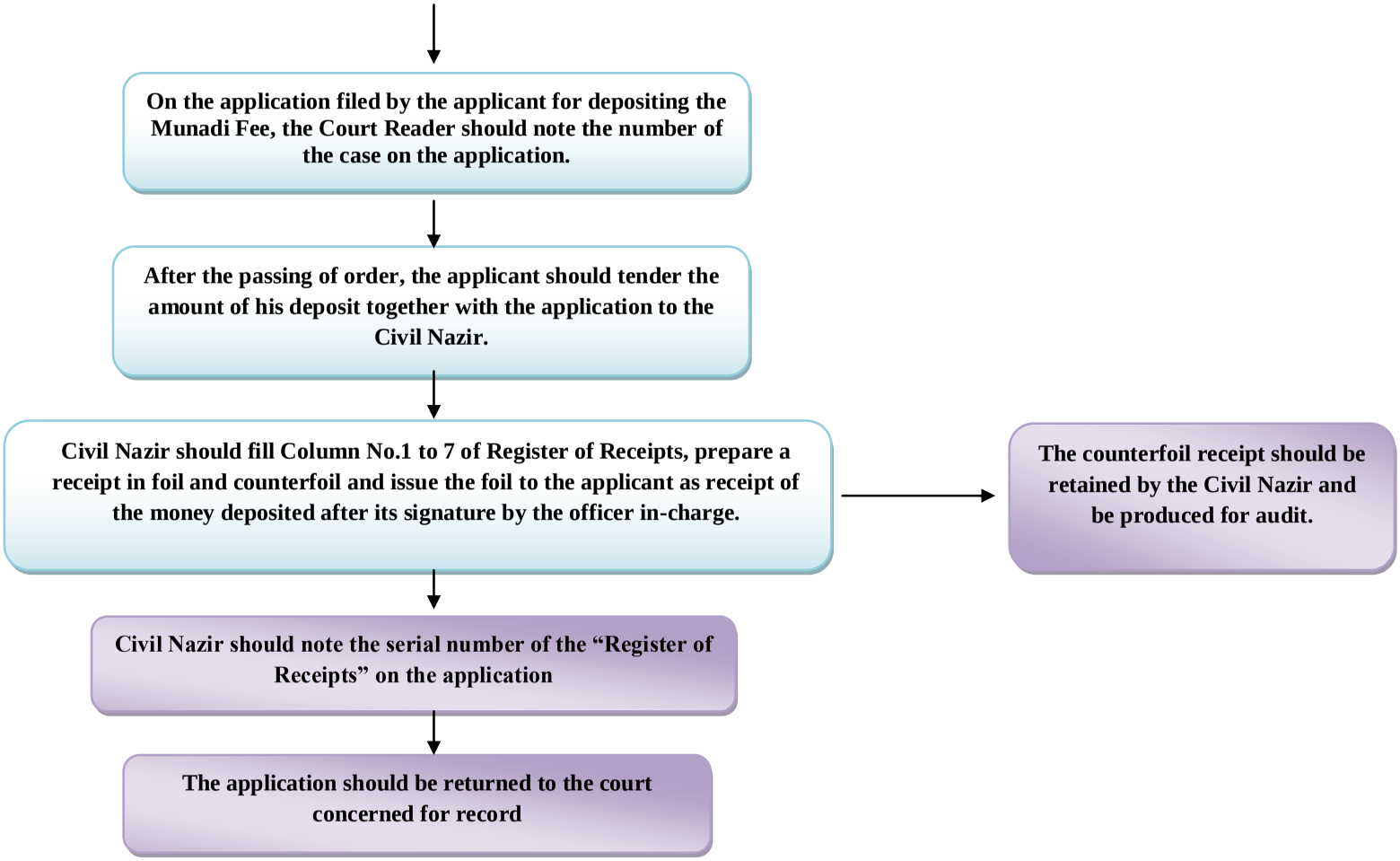
e. Journey of the Processes along with Munadi fee/any other fee from Court to the Process Serving Establishment



f. Procedure to be adopted by Civil Nazir – On Receipt of Process



g. Sheriff Petty Accounts – Receipts of Processes and Deposits by Process Serving Agency.



h. Duties of Civil Nazir- Where the Processes are to be served alongwith Money (Munadi Fee for execution) within District or Tehsil

Ahlmad / Execution Clerk of the Court concerned should issue and send the process for service within the district to Civil Nazir. Process should contain a reference to the amount deposited with the Civil Nazir.

On receipt of the processes, Civil Nazir should arrange the payment at the time of service of sums due to persons to whom the processes were addressed.

Before handing over the process to the Process Server, each process should be entered by Civil Nazir in Column no. 1 to 11 in the "Register of process received and Disposed of by local agent".

Civil Nazir should enter payment to Process Servers in appropriate column of the "Register of Receipts" against each sum.

Civil Nazir should make the entries in the "Register of Disbursement" and the Process Server acknowledgement of receipt in column no.11.

Civil Nazir should enter details of each sum in the Process Server's notebook in column no. 1 to 5 at the time of transmitting the process.

No Process Server should have more than Rs. 200 in hand at one time.

Civil Nazir should distribute the process to the Process Servers at well as Bailiffs in accordance with their areas.

Civil Nazir should affix the stamp containing date of entrustment, name of Process Server, Manner of Service, Date of Return, reason, if any delay, reason of non service.

At the time of handing over the process, Civil Nazir should fill column no. (i) and (ii) and obtain signatures of the Process Server / Bailiff in the appropriate Register and transmit the process to him for service.

At the time of the service, where Process Server pays money to the concerned person, he should take his receipt in column no. 8 of his note book as well as on the back of the original copy of the process on which the service is endorsed, verified by one or more respectable witnesses with date and signature of Process Server.

In case of non service, the Process Server should make entry with regard to undisbursed amount in his notebook in column no. 9.

Whether the processes were served or unserved, they should be returned to the Civil Nazir. In case, the service is effected and money has been paid to the payee, Civil Nazir should verify the service with the acknowledgement of payee given in the column no.8 of the Process Server notebook as well as on the back of the original copy of process.

In case of non service, the Process Server should make entry with regard to the undisbursed amount in his notebook in column no.9 and return the process with the undisbursed money to the Civil Nazir.

Civil Nazir should make the entry of the undisbursed amount against a new number in the "Register of Receipts" which should be quoted against the original entry in the "Register of Disbursement" and should be noted in column no.10 of the Process Server notebook.

Civil Nazir should also sign column no. 11 of Process Server notebook in acknowledgement of money having been received.

Civil Nazir should submit to the Court concerned with the usual certificate of service by filling the column nos. iii to vi on the stamp on the back of the process and at the same time filling of column no. 12 and 13 in the "Register of Process received and disposed of by the local agent"

At the time of returning the process with the certificate to the concerned court, Civil Nazir should make entry in his despatch register and also take acknowledgement of receipt from the concerned Ahlmad/Execution Clerk of the Court.

Ahlmad/Execution Clerk of the Court should append the process with its report on the case file.

i. Duties of Civil Nazir- Where the Processes are to be served alongwith Money (Munadi Fee for execution) in different Tehsils within the District

Ahlmad / Execution Clerk of the court concerned should issue and send the process for service in different tehsil within the district to Civil Nazir. Process should contain a reference to the amount deposited with the Civil Nazir.

Civil Nazir should make the relevant and necessary entries in column no. 1 to 11 of the "Register of Process received and disposed of by the local agent".

Civil Nazir should also make relevant entries in the "Register of Receipts" and the "Register of Disbursement" against each sum.

Civil Nazir should transmit the process, endorsed with the amount, if any, by the Civil Nazir to the agent / Civil Nazir of the tehsil within which service is to be effected.
The amount accompanying the process should be sent by the postal money order or through special messenger as the case may be to the concerned Civil Nazir alongwith the process.

Civil Nazir should make relevant entry in the receipt column of the "Intermediate Register" after taking delivery of the money order by the officer in-charge of the concerned Nazarat Branch.

Civil Nazir should transfer the said amount from the "Intermediate Register" to the "Register of Receipt" on the day or receipt, if possible or the next morning.

It is the duty of the officer in-charge to oversee the same.

Civil Nazir should make relevant entry in disposal column of "Intermediate Register".

Civil Nazir should follow same procedure as in case of service of process alongwith payment of Munadi fee and other fee within the district or tehsil.

Civil Nazir should cause the process to be served and the amount disbursed to the payee in the same manner as if the process had been issued by one of the courts of his own establishment.

Civil Nazir should enter the processes received from other tehsil in relevant column of Register Form No.6.

Civil Nazir in case of non service should return the amount by postal money order to the Senior Sub Judge, officer in-charge of the Process Serving Establishment from whom it was received.

Civil Nazir to whom the process is sent for service should return the same with the certificate of service or non service, as the case may be, duly endorsed thereon and signed by the officer in-charge, to the Civil Nazir from whom he received the process.

Civil Nazir, after taking the delivery of the money order by the officer in-charge of the concerned Nazarat Branch, should make relevant entry in the receipt column of the "Intermediate Register".

Civil Nazir should transfer the said amount from the "Intermediate Register" to the "Register of Receipts" on the day or receipt, if possible or the next morning.
It is the duty of the officer in-charge to oversee the same.
Civil Nazir should enter such amount against a new number in the "Register of Receipts" which number should also be quoted against the original entry in the "Register of Disbursement".

Civil Nazir after receiving the process back from the Civil Nazir to whom it was sent for service, should fill in all the relevant column of Register, Form No. 6 and forward the process to the court which issued it.

At the time of returning the process with the certificate to the concerned court, Civil Nazir should make entry in his dispatch register and also take acknowledgement of receipt from the concerned Ahlmad / Execution Clerk of the Court.
Ahlmad / Execution Clerk of the Court should append the process with its report on the case file.

j. Duties of Civil Nazir- Where the Processes are to be served alongwith Money (Munadi Fee for execution) in another District

Ahlmad/Execution Clerk of Court should handover the process issued by the court for service in another district to local Nazarat branch.

Civil Nazir of local Nazarat Branch should make the relevant entries in the Register in Form No.6 and transmit to the Senior Subordinate Judge of the district in which the person to be served resides.

Civil Nazir should transmit the process, endorsed with the amount, if any, to the agent / Civil Nazir of the district within which service is to be effected.

The amount accompanying the process should be sent by the postal money order to the concerned Civil Nazir alongwith the process.

Same procedure should be followed for the service of the process alongwith Munadi fee where the processes are to be served alongwith money (Munadi Fee for execution) in different tehsil of District for effecting the service in another district.

After receiving the process back from the Civil Nazir to whom it was sent for service, the Civil Nazir of the Process Serving Establishment, thereupon, should fill in the relevant columns of Register Form No.6 and then, forward the process to the court which issued it.

At the time of returning the process with the certificate to the concerned court, Civil Nazir should make entry in his despatch register and also take acknowledgement of receipt from the concerned Ahlmad / Execution Clerk of the Court.

Ahlmad/Execution Clerk of the Court should append the process with its report on the case file.

FLOW CHARTS

Excerpt of Chapter in Hindi (खंड)

नज़ारत ब्रांच (Process Serving Establishment)

नज़ारत ब्रांच (Process Serving Establishment) में चार अधिकारी होते हैं, जो निम्नलिखित हैं:

1. नियंत्रण अधिकारी (Controlling Officer)

a) District Headquarter पर नज़ारत ब्रांच का नियंत्रण, वरिष्ठ न्यायिक अधिकारी(Civil Judge (Senior Division) के पास होता है;

b) Sub Division पर नज़ारत ब्रांच का नियंत्रण,अतिरिक्त वरिष्ठ न्यायिक अधिकारी/Additional Civil Judge (Senior Division) के पास होता है ;

c) यह दोनों अधिकारी नज़ारत ब्रांच की कार्यशैली के लिए जिम्मेदार होते हैं।

2. अनुसचिवीयअधिकारी (Ministerial Head)

a) नज़ारत ब्रांच का Ministerial Head Civil Nazir/Naib Nazir होता है;

b) इनका काम नज़ारत ब्रांच की कार्यशैली को सुचारु रूप से चलाने का होता है;

c) Ministerial Head समय समय पर वरिष्ट न्यायिक अधिकारी/अतिरिक्त वरिष्ठ न्यायिक अधिकारी को रिपोर्टऔर सुझाव देते हैं ;

d) इसके इलावा Civil Nazir/Naib Nazir को निम्नलिखित कार्य भी करवाने होते हैं:

   i. कर्मचारियों में निर्धारित खाता (accounts) नियमानुसार maintain करवाना;

ii. गवाहों की Diet Money देने सम्बंधित पत्राचार और इसी तरह के दूसरे कार्य करवाना;

iii. जिला न्यायाधीश के निर्देश पर Execution में संपत्ति को बिकवाना;

iv. Civil Nazir/Naib Nazir डिक्री धारक की गैर हाजरी में निर्णय देनदार द्वारा न्यायालय में दी गई राशि को तुरंत ही जिला के खज़ाने में जमा करवाना और उसका नंबर और तारीख Deposit Register में दाखिल करना। उस entry के अनुरूप एक entry न्यायालय के रिकॉर्ड में भी की जानी चाहिए;

v. वरिष्ठ न्यायिक अधिकारी को अपने अंतर्गत कर्मचारियों के कार्य के बारे में रिपोर्ट देना;

vi. Register of Process Server by Process Server (Register No.23) और Register of Warrants executed by Bailiff (Register No.22) का मासिक उल्लेख करना और यह देखना कि काम का वितरण सही है;

vii. यह देखना कि किसी भी नज़ारत ब्रांच के कर्मचारी के खिलाफ उस के कार्य के प्रति कोई शिकायतआई हो;

viii. यह देखना कि कर्मचारी अपेक्षित संख्या केअनुसार हैं या न हीं;

ix. Miscellaneous Register C की जाँच करना और सुनिश्चित करना कि दूसरे जिलों की तामीली कार्यवाही इत्यादि की वापसी में कोई विलम्ब न हो;

x. Store Room मे रखे सामान का अपने Miscellaneous Register के साथ मिलान करना;

xi. यह सुनिश्चित करना कि मालखाना में रखे हुए सामान की सुरक्षा पर्याप्त ढंग से हो;

xii. Receipt Register और Repayment of Deposit Register की जाँच करना और यह देखना कि कोई पुरानी जमा राशि लंबित न हो;

xiii. Process Server के बीच Process बाँटना;

xiv. यह सुनिश्चित करना कि Process न्यायालय द्वारा दी गई तारीख से पहले आ जाए;

xv. वरिष्ठ न्यायिक अधिकारी/अतिरिक्त वरिष्ठ न्यायिक अधिकारी को किसी भी Process Server के काम में चूक के बारे में जानकारी देना;

xvi. Process Server की Diary के Register No. 29 की जाँच करना और अपने हस्ताक्षर से तस्दीक करना।

3. प्यादा (Process Server):

a) **Process Server** का प्रमुख काम Process की तामील कराना है। लेकिन उन्हें और भी काम सौंपे जा सकते हैं ;

b) यदि अन्य कोई अधिकारी मौजूद न हो और बिक्री करने वाली वस्तु की कीमत 100 रु या उस से कम हो, तब यह काम नजारत ब्रांच के Officer in Charge द्वारा Process Server को सौंपा जा सकता है ।

4. कारिंदा (Bailiff):

Bailiff का काम Warrant of Attachment, Warrant of Arrest, Delivery इत्यादि की Service करना है। Bailiff अन्य Process की भी तामील करवाते हैं जैसे कि:

a) Money Decree में चल जायदाद के Warrant of Attachment;

b) चल संपत्ति जिस के बाबत Decree पारित हुई है, उसके Warrant of seizure;

c) अचल संपत्ति का कब्ज़ा देने बाबत Warrant ;

d) Execution में Warrant Of Arrest ;

e) Negotiable Instrument की कुर्की करने केआदेश;

f) Money Decree में संपत्ति के Warrant of Sale;

g) Execution में प्रमाणित विक्रेता को अचल संपत्ति सौंपने के आदेश।

नोट : Special Messenger or Special Bailiff

न्यायालय द्वारा Process/Summons को शीघ्रता से तामील करने का काम किसी भी Registered Process Server को दिया जा सकता है। Special Messenger की नियुक्ति के लिए कोई स्थायी पोस्ट बनाने की ज़रूरत नहीं है। यदि आवश्यकता हो तो High Court को Reference भेजा जा सकता है । जिला न्यायाधीश केवल Cooperative Society में Service की तामील के लिए Special Bailiff के पदों पर नियुक्ति कर सकते हैं। Special Bailiff की नियुक्ति Rules के अनुसार की जा सकती है।

<u>Court द्वारा जारी Process की Service एवं Munadi Fees / Other Fees के भुगतान की नजारत ब्रांच तक की यात्रा का सम्पूर्ण विवरण:</u>

a) Ahlmad/Execution Clerk को Court के आदेशानुसार Decree की Execution के लिए, प्रारंभिक Report के बाद Process जारी करना चाहिए;

b) Ahlmad/Execution Clerk को ध्यान देना चाहिए कि Process के ऊपर जारी करने की तारीख, न्यायाधीश या उनके द्वारा नियुक्त अधिकारी के हस्ताक्षर तथा

न्यायलय की सील लगी हो । इस के बाद यह Process सम्बंधित अधिकारी को Service के लिए दिए जाने चाहिए;

c) Process जारी करते समय दो बातों का वर्णन आवश्यक होना चाहिए :

i. Process की तामील की सीमा अवधि/तारीख एवं ;

ii. Process को वापिस न्यायालय में भेजने की सीमा अवधि या तारीख;

उपरोक्त Process में यदि कोई तारीख और अवधि न दर्शायी हो तो वह Process अमान्य नहीं होगा।

d) Process जारी करने के बाद, Ahlmad को उसकी entry अपने Dispatch Register में करनी चाहिए;

e) जहाँ Warrant of Attachment जारी किये गए हों, वहां रीडर का यह कर्त्तव्य है कि वह कोर्ट फाइल में औपचारिकताओं की पूर्ति का नोट अंकित करे । न्यायाधीश को उक्त नोट पर हस्ताक्षर भी करने चाहिए।

f) उसके बाद उक्त Process जिला अथवा उपमंडल की नजारत ब्रांच को तामील करने के लिए सौंप दिया जाना चाहिए। यह ज़रूरी है कि Civil Nazir को Process सौपंते हुए Ahlmad अपने Dispatch Register में इसकी पावती भी ले;

g) Process को वितरित करने की जिम्मेदारी Civil Nazir की होती है । Process प्राप्त होने के बाद Civil Nazir को यह जाँच करनी चाहिए कि Process के ऊपर यह निम्नलिखित बिंदु हों:

i. Process जारी करने की तारीख;

ii. जारीकर्ता न्यायालय का नाम;

iii. डिक्री देनदार या अन्य पार्टी जिन पर प्रोसेस तामील करना है–उनका सही नाम एवं पता;

iv. न्यायालय की मोहर, न्यायाधीश याअधिकृतअधिकारी के हस्ताक्षर;

v. Execution Application, डिक्री एवं Process में वर्णितअन्य दस्तावेज़;

vi. Warrant of Possession जिसमे संपत्ति का सम्पूर्ण विवरण दिया गया हो और स्लंगित नक्शा।

h) Civil Nazir का कर्तव्य है कि अधूरे एवं त्रुटिपूर्ण Process को सम्बंधित न्यायालय से ठीक करवाए;

i) यदि Bailiff/Process Server को अधूरे Process तामील करने के लिए सौंप दिए जाते हैं तो उसकी जिम्मेदारी Civil Nazir की होती है एवं वह अनुशासनिक कार्यवाही के लिए भी बाधित होता है।

Sherrif Petty Accounts :

नज़रात ब्रांच द्वारा Process की रसीदी एवं जमा राशि के बारे में विस्तृत जानकारी–

a) Sherrif Petty Account Civil Nazir को दी गई शीघ्र भुगतान हेतु राशि से सम्बंधित है;

b) Sherrif Petty Account में राशि जमा करने की Application पर Reader को Case Number लिखना चाहिए । यह Number Civil Nazir को Receipts Register में entry करने में सहायता करता है;

c) न्यायालय द्वारा पारित आदेश के बाद प्रार्थी को Application के साथ उपरोक्त राशि नजारत ब्रांच में जमा करवानी चाहिए;

d) Application एवं जमा करवाई गई राशि के आधार पर Civil Nazir को Receipt Register के निर्धारित Columns में entry करनी चाहिए;

e) उसके बाद रसीद के निर्धारित फॉर्म में दो प्रतियां (foil and counterfoil) तैयार करनी चाहिए;

f) इसके बाद Officer In Charge के हस्ताक्षर करवा कर एक प्रति (foil) Applicant को दे देनी चाहिए;

g) Civil Nazir द्वारा Receipt Register में दिए गए Number को Application पर नोट करना चाहिए और Officer In Charge की जांच के बाद उस Application को सम्बंधित न्यायालय में वापिस भेज देना चाहिए;

h) Civil Nazir को प्रति की रसीदें (Counterfoil Receipts)अपने पास रखनी चाहिए और इनको audit के समय प्रस्तुत करना अनिवार्य है।

Civil Nazir के कर्तव्य :

जब Process की Service एवं Munadi Fees/Other Fees का भुगतान जिला/तहसील के अंदर होना है –

a) जब Civil Nazir को जिला/तहसील मुख्यालय में स्थित न्यायालय द्वारा जारी Process तामील के लिए प्राप्त होते है तब उसे सम्बंधित व्यक्तियों (जिनके नाम Process जारी किया गया है) को तामील करवाते समय राशि के भुगतान करने की व्यवस्था करनी चाहिए;

b) Civil Nair को हर Process एवंम राशि की entry अपने निर्धारित Register के Column में करनी चाहिए;

c) Entry करने के बाद उक्त Process एवं सम्बंधित राशि Process Server को Service के लिए सौंप दी जानी चाहिए ;

d) Process Server द्वारा भुगतान की गई राशि की entry निर्धारित Register के उपयुक्त Column में प्रत्येक राशि के सामने की जानी चाहिए;

e) भुगतान की Entry निर्धारित Register में की जानी चाहिए एवं Process Server से इसकी पावती निर्धारित Column में ली जानी चाहिए ;

f) Process Server द्वारा Process देते हुए प्रत्येक राशि का वर्णन Process Server Note Book के निर्धारित Column में भी किया जाना चाहिए;

g) राशि का वितरण हो या न हो, परन्तु इसकी entry Process Server Note Book के निर्धारित Column No में की जानी चाहिए;

h) इसके बाद Civil Nazir, Bailiff एवं Process Server को उनके क्षेत्र के अनुसार Process की Service करने के लिए बाँट देना चाहिए। प्रत्येक Process के पीछे Civil Nazir को अपनी मोहर लगानी चाहिए। इस मोहर में निम्नलिखित बिंदु होंगे:

   i. पुष्टि की तारीख / Date of Endorsement
   ii. प्यादे का नाम / Name of Process Server
   iii. तामील का तरीका / Manner of Service
   iv. वापसी की तारीख / Date of Return
   v. विलम्ब का कारण / Reason of Delay, if any
   vi. तामील न होने का कारण / Reason of Non Service

i) Process Server / Bailiff को Process सौंपते समय Civil Nazir को बिंदु नंबर (i) व (ii) को खुद भरना चाहिए;

j) Civil Nazir को सम्बंधित रजिस्टर में Process Server/Bailiff के हस्ताक्षर भी लेने चाहिए और Process Server/Bailiff को Process की तामील करने के लिए सौंप देना चाहिए;

k) Process Server को तामील करने के समय प्राप्तकर्ता को राशि देते हुए अपनी नोटबुक के निर्धारित कॉलम एवंम असल Process के पीछे पावती के हस्ताक्षर भी लेने चाहिए और Civil Nazir को Process अपनी रिपोर्ट के साथ वापिस कर देने चाहिए ;

l) Civil Nazir को Process की तामील का मिलान Process Server की नोटबुक के निर्धारित Column एवंम असल Process में दी गई रिपोर्ट से भी करना चाहिए;

m) यदि Process की तामील न हुई हो, उस सूरत में Process Server को इसकी Entry अपनी नोट बुक के निर्धारित Column में करनी चाहिए और Civil Nazir को Process अपनी रिपोर्ट के साथ वापिस कर देने चाहिए ;

n) Civil Nazir को Process प्राप्त होने के बाद असंवितरित राशि के बारे में Entry अपने Registers के निर्धारीत Column में करनी चाहिए एवंम Process Server की Note book में इस बारे में निर्धारित कॉलम पर पावती भी देनी चाहिए;

o) Civil Nazir को यह औपचारिकताएं पूरी करने के बाद Process अपने प्रमाण पत्र के साथ न्यायालय में वापिस कर देना चाहिए ;

p) पूरी कार्यवाही होने के बाद Civil Nazir को अपने Dispatch Register में Process की entry करनी चाहिए और सम्बंधित न्यायालय को Process वापिस कर देना चाहिए;

q) Civil Nazir को Process वापिस करते समय न्यायालय के Ahlmad से Dispatch Register में पावती भी लेनी चाहिए।

Civil Nazir के कर्तव्य :

जब Process की तामील एवं Munadi Fee/ other fees का भुगतान जिले की भिन्न- भिन्न तहसीलो में होना है:

a) यदि न्यायालय अपने ज़िले के किसी भी तहसील में रहने वाले व्यक्ति की तामील करवाने के लिए Process जारी करती है, तब वह Process, उस न्यायालय की नजारत ब्रांच में भेजा जाना चाहिए;

b) Civil Nazir को उस Process के ऊपर भुगतान राशि के बारे में लिखना चाहिए और दूसरे तहसील के Nazir को By Post या Messenger द्वारा भेज देना चाहिए;

c) दूसरे तहसील के Civil Nazir को इसकी entry अपने निर्धारित Registers के Columns में भी करनी चाहिए;

d) Entry करने के बाद उक्त Process एवं सम्बंधित राशि Process Server को Service के लिए सौंप दी जानी चाहिए ;

e) Process Server को तामील करने के समय प्राप्तकर्ता को राशि देते हुए अपनी नोटबुक के निर्धारित कॉलम एवंम असल Process के पीछे पावती के हस्ताक्षर भी लेने चाहिए और Civil Nazir को Process अपनी रिपोर्ट के साथ वापिस कर देने चाहिए ;

f) Civil Nazir को Process की तामील का मिलान Process Server की नोटबुक के निर्धारित Column एवंम असल Process में दी गई रिपोर्ट से करना चाहिए;

g) यदि Process की तामील न हुई हो, तो उस सूरत में Process Server को इसकी Entry अपनी नोट बुक के निर्धारित Column में करनी चाहिए और Civil Nazir को Process अपनी रिपोर्ट के साथ वापिस कर देने चाहिए ;

h) Civil Nazir को Process प्राप्त होने के बाद असंवितरित राशि के बारे में Entry अपने Register के निर्धारीत Column में करनी चाहिए एवंम Process Server की Note book में इस बारे में निर्धारित कॉलम पर पावती भी देनी चाहिए;

i) Civil Nazir को औपचारिकता पूरी करने के बाद वह Process और असंवितरित राशि, यदि हो तो, अपने प्रमाणित पत्र के साथ उक्त Civil Nazir जिससे Process प्राप्त हुए थे, को वापिस भेज देने चाहिए ;

j) उक्त Civil Nazir को Process प्राप्त होने के बाद इसकी entry अपने Registers के निर्धारीत Column में भी करनी चाहिए;

k) पूरी कार्यवाही होने के बाद Civil Nazir को अपने Dispatch Register में Process की entry करनी चाहिए और सम्बंधित न्यायालय को Process और रिपोर्ट के साथ वापिस कर देने चाहिए ;

l) Civil Nazir को Process वापिस करते समय न्यायालय के Ahlmad से Dispatch Register में पावती भी लेनी चाहिए।

<u>Civil Nazir के कर्तव्य:</u>

<u>जब Process की तामील एवं Munadi Fees/other fees का भुगतान दूसरे जिले में होनी हो :</u>

a) न्यायालय के Ahlmad को दूसरे जिले के Process को Local नज़रात ब्रांच में भेजना चाहिए;

b) Civil Nazir को इसकी entry निर्धारित Register में करनी चाहिए और तामील के लिए दूसरे जिले के Civil Judge (Senior Division) को भेजनी चाहिए;

c) जो राशि Civil Nazir के पास जमा करवाई जाती है, उस राशि को तामील करवाने के लिए दूसरे जिले के Civil Judge (Senior Division) को Postal Money Order से भेजना चाहिए । Postal Money Order का खर्चा Process जारी करवाने वाली पार्टी को उठाना पड़ता है;

d) Civil Nazir को Process की तामील के लिए वही तरीक़ा अपनाना चाहिए जो उपरोक्त (जब Process की तामील एवं Munadi Fee/ other fees का भुगतान जिले की भिन्न तहसीलो में होना है) बताया गया है;

e) पूरी कार्यवाही होने के बाद, Civil Nazir को अपने Dispatch Register में Process की entry करनी चाहिए और सम्बंधित न्यायालय को Process और रिपोर्ट के साथ वापिस कर देने चाहिए;

f) Civil Nazir को Process वापिस करते समय न्यायालय के Ahlmad से Dispatch Register में पावती भी लेनी चाहिए;

g) Civil Nazir को यह ध्यान रखना चाहिए कि Process Server के पास एक निश्चित समय पर Rs. 200/- से अधिक पूंजी न हो।

CHAPTER VI

FREQUENTLY ASKED QUESTIONS – EXECUTION

Chapter VI

Frequently Asked Questions- Execution

Q.1 Whether there is a time limit to conclude the execution process ?

Ans. Yes, the Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418** has directed the Executing Court to conclude the Execution Cases within a period of six months and in case of any extraordinary circumstances for delay, to record the reasons for the same.

Q.2. What is the recourse available when the address of the respondent/Judgment Debtor is incomplete or incorrect?

Ans. **Order XXI Rule 10 CPC** provides that a holder of Decree who desires to get it executed has to apply to the Court. **Order XXI Rule 11 CPC** deals with the Application. Under **sub rule (2)** of the same **Rule**, in written Application, the requisite particulars, are required to be submitted by the Applicant/Decree Holder, duly verified, including the name of the person against whom execution is sought, which includes complete and correct name alongwith complete and correct address.

In the same provision, the Applicant/Decree Holder is required to state the mode in which he is seeking the assistance of the Court in execution of the Decree.

Under **Order XXI Rule 17 CPC**, on receiving such an Application for execution of the Decree, it is a duty of the Court to scrutinise, to ascertain, whether the said particulars have been provided and if not provided to allow the same to be provided then and there only, otherwise to grant a period of reasonable short time to provide the same.

Under **Sub Rule (1A) of the said Rule 17 CPC,** in case the Applicant /Decree Holder, who has sought the assistance of the Court in execution of the Decree, fails to provide the complete and correct particulars regarding the name and address of the person against whom the execution of the Decree is sought, the Court is to reject such Application.

As per **Volume 1 Chapter 12 Part E Rule 13 of Rules and Orders** dealing with Procedure of Application for Execution, if the Applicant /Decree Holder does not take the necessary steps to prosecute his Application, which includes providing of complete and correct name and address of the party against whom the execution is sought, the Execution Case is to be dismissed.

Under **Order XXI Rule 24 CPC**, the Court is expected to issue process for execution, after complying with the requisite requirements **(Rules 11 to 14)** by the Applicant/Decree Holder, which includes providing of complete and correct name and address of the person against whom execution of Decree is sought.

Under **Order XXI Rule 25 CPC,** the Process Serving Official has to make an endorsement on the process as to the day on which it was executed and as to the manner in which it was executed and the reasons for non execution or delay, if any, in the execution of the process.

Under **Sub Rule (2) of the said Rule 25,** the Court has to satisfy itself as to the said report of the Process Serving Official in the endorsement on the process.

Therefore, as and when Process Serving Official finds the process containing incomplete or incorrect name and address of the person

against whom a process is being issued, he is to make a report in the endorsement to be submitted by him under the said **Rule 25**.

It is expected from the Executing Court or an official entrusted with the process of preparation of the process, i.e. Ahlmad, to ensure that the complete name and address is provided by the party, at the time of preparing the process to be issued, otherwise to bring it into the notice of the Executing Court.

Volume 1 Chapter 12 Part H Rule 4 of Rules and Orders dealing with Attachment, provides that all Executing Courts are required to seek a Note on the Warrant of Attachment or file to be recorded by the Reader of the Court that the specific formalities required by the law to have been actually complied with. The Presiding Officers of the Executing Courts are required to carefully scrutinise such Note and initial it in token of its scrutinising, before putting their signatures on any such process. The same procedure can be applied for ensuring the sending of any other Process with complete or correct name and address of the person against whom a process is being issued.

Q. 3 What is the recourse available when Warrants of Attachment of property cannot be executed for want of proof of ownership?

Ans. The Applicant/Decree Holder seeks the assistance of the Court in execution of Decree by moving a written Application with requisite particulars under **Order XXI Rule 11 (2) CPC**.

Under **Order XXI Rule 12 CPC**, in case attachment of a movable property is sought which is not in the Judgement Debtor's possession, the Applicant/Decree Holder is required to annex with his Application an

Inventory of the property to be attached containing a reasonable, accurate description of the same.

Under **Order XXI Rule 13 CPC,** for seeking an attachment of the immovable property, the requisite particulars as to the description of the property, boundary numbers in record (if any), share of the Judgement Debtor etc., is to be submitted in the Application.

Under **Order XXI Rule 14 CPC**, the Court may require the Applicant/Decree holder to provide the certified Extract from the Register of the office of Collector as to the said land.

Under **Order XXI Rule 11 (2) CPC**, every Application submitted in writing for seeking the assistance of the Court in execution of the Decree is required to be signed and verified by the applicant.

It has been seen that the precious time of the Executing Court gets wasted in case of Warrants of Attachment of property are issued and it gets discovered that the said property is either not owned by the Judgement Debtor or is not capable of attachment under law. In order to successfully conclude an Execution Case within the mandatory period of six months, it would be required at the part of the Executing Court and the official entrusted with process of preparation, i.e. Ahlmad, to ensure the obtaining of the copy of the document as to the ownership, where available, of the Judgement Debtor and to see as to whether the property sought to be attached is capable of attachment under law or not, as provided under **Section 60 CPC**.

Volume 1 Chapter 12 Part H Rule 4 of Rules and Orders, dealing with Attachment, provides that all Executing Courts are required to seek

a Note on the Warrant of Attachment or file to be recorded by the Reader of the Court that the specific formalities required by the law **(including the ownership proof, where available, otherwise an Affidavit in support of the Application and property being capable of attachment under law)** have been actually complied with. The Presiding Officers of the Executing Courts are required to carefully scrutinise such Note and initial it in token of its scrutiny, before putting their signatures on any such process i.e. Warrant of Attachment of the property.

Q.4 What is the remedy available if the concerned police station does not provide the requisite police assistance in execution of process by the Court?

Ans. The procedure to be followed for rendering Police Assistance in execution of Process is provided in **Volume 4 Chapter 7 Part J of Rules and Orders dealing with Police Assistance.**

As per the same, the Police Assistance is to be sought from the Head of the Police Department (Commissioner of Police/Senior Superintendent of Police/Superintendent of Police) through learned District Judge or the learned Civil Judge (Senior Division), of the Sessions Division. This is a little time consuming formality.

The Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418** has passed certain directions, one of which is that Executing Court can direct the concerned Police Station to provide the requisite Police Assistance to the Process Serving Official of the Court to facilitate the same. This means that now an Executing Court

can directly write to the Station House Officer of Police Station for providing the Police Assistance.

The Hon'ble Supreme Court has further directed that if Station House Officer of the said Police Station does not discharge his duties as per directions of the Executing Court, then to take stringent legal action, required in the facts and circumstances of the case, against such officer. The Police Assistance includes the requisite, meaningful and substantial Police Assistance as per the facts and circumstances of the case. In case any difficulty is found in discharge of his duties by the concerned Station House Officer of the said Police Station, the Executing Court should always take the requisite stringent legal action, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance.

Q.5 What is the procedure to be followed for execution of process against Government Officers/Official?

Ans. The Bailiff entrusted with process against the Government Officer/Official is to execute it as per the directions contained in the process. In case of any resistance or non cooperation in the same, it is to be reported in the endorsement required to be submitted under **Order XXI Rule 25 CPC**, by the Process Serving Official.

It is thereafter incumbent upon Executing Court to take suitable legal action in the matter against the Government Officer/Official who has resisted the process of the Court or who has not cooperated in the service

of the process, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 180 IPC** for refusing to sign statement, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

It is expected that the name and particulars in the process should be complete and correct before it being entrusted to the Process Serving Official for its execution, the duty of the Ahlmad and Reader of the Executing Court.

Q.6 How can the custody (superdari) of the attached movable property be dealt with?

Ans. Under **Order XXI Rule 43 A CPC**, where the movable property is attached and it is of such a nature that it cannot be conveniently removed then Bailiff at the instance of the Judgement Debtor or at the instance of the Decree holder or at the instance of any other person claiming interest in such property, can leave it in village or the place where it has been kept, in the custody of any respectable person, who will be custodian and will be liable to produce it in the same condition as per the orders of the Court.

Under **Order XXI Rule 43 CPC**, if movable property is capable of conveniently removed, other than agricultural produce, and is in possession of the Judgement Debtor, such property is required to be

seized by the Bailiff and to be kept in his own custody or in the custody of one of his subordinates.

Therefore, the property which is removable is not to be left in the custody of any respectable person rather is to be taken in his custody by the Bailiff, thereafter to be deposited in the Civil Malkhana through Nazir. It is only in case of a property which cannot be conveniently removed that the custody of the property is to be given to any person, as deemed fit by Bailiff.

There is no specific provision for entrusting the duty to arrange the respectable person to obtain the custody of such a property, however, Executing Court, keeping in view the facts and circumstances of the case, is required to ask the Decree Holder/Applicant to arrange any such respectable person or to obtain its custody himself, as he is seeking the assistance, exercising Inherent Powers provided under **Section 151 CPC,** in case difficulty is faced in non availability of any such person to obtain custody.

Q.7 What are the options available in case the requisite cooperation is not received from the Chaukidars, Municipal Councillors in identifying the person against whom the process is issued and witnessing any execution of process?

Ans. In villages, there is normally a Chaukidar appointed under **The Punjab Chaukidara Rules** and Headmen/**Lambardar** appointed under ***The Punjab Land Revenue Rules*** to perform certain duties which also includes assisting the Process Server of an Executing Court to identify a person and witness the process.

In case, a report under **Rule 25 Order 21 CPC** is received from the Process Server, regarding non providing of the requisite assistance, then the Executing Court is expected to proceed against such **Chaukidar** or Headmen/**Lambardar** not only under the provisions of law including **Section 187 of Indian Penal Code (Omission to assist a Public Servant when bound by law to give assistance)** but also by writing to the Deputy Commissioner to dismiss such a Chaukidar for his misconduct and neglect of duty, under **Rule 11** of **The Punjab Chaukidara Rules** and Headmen/**Lambardar** under **Rule 16** of ***The Punjab Land Revenue Rules.***

Volume IV Chapter 7 PART G Rule 1 of Rules and Orders dealing with Assistance by Village Officers in Process Serving, provides the issuance of directions by the Financial Commissioners to Lambardars to assist the Process Servers in serving processes and Subordinate Courts to bring to the notice of the Collectors case of wilful negligence of duty in this direction on the part of Lambardars and not to hesitate in moving the Hon'ble High Court, through the proper channel, if matters do not improve even then.

Volume IV Chapter 7 PART G Rule 2 of Rules and Orders dealing with Assistance by Village Officers in Process Serving, further provides that in order to reduce the possibility of false reports being made on notices of Sale, it should be attested by a Lambardar and, whenever possible, also by the village Patwari or School Master.

Otherwise in villages, assistance can be sought from any Panch or Sarpanch of the Gram Panchayat, the elected public representatives. Otherwise under **Order V Rule 17 CPC** wording is "if any" person is

available, for identifying the person and witnessing the process. That means in case nobody comes forward to identify a person or to witness a process, the Process Serving Official can execute the process and to submit such facts in his report to be endorsed on the back of the process, under **Order XXI Rule 25 CPC**.

Similarly, if in an Urban Area a Municipal Councillor does not come forward to identify a person or to witness a process, an Ex-Municipal Councillor can be joined or any other respectable person of the area can be joined in identifying a person or witnessing the process. In case none is available, the Process Serving Official is to report in the endorsement on the back of the process, under **Order XXI Rule 25 CPC**.

The Executing Court can always direct the Process Serving Official to take the assistance of the Decree Holder/Applicant for service of process where no Chauwkidar/Panch/Sarpanch of village is available to identify the subject matter of the process.

Under **Order XXI Rule 11 (2) CPC,** the Decree Holder/Applicant is basically seeking assistance of the Court in Execution Process. **Section 151** of the CPC provides Inherent powers to Court to pass any order necessary for the ends of justice.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 176 IPC** for omission to give notice or information to public servant by person legally bound to give it, **Section 186 IPC** for obstructing public servant in discharge of public

functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.8 What is the recourse available when villagers are reluctant to sign the reports as witnesses after the refusal from the party concerned ?

Ans. **Order XXI Rule 25 CPC** requires the making of endorsement on the process issued by the Court as to the day on which it was executed and the manner in which it was executed.

If no villager comes forward to witness the report, the Process Server can always in his endorsement mention the same and he, being a Public Official entrusted with the process of execution, should be believed.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 180 IPC** for refusing to sign statement and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.9 How to deal with the situation where the woman of the village neither opens the door nor receives the processes?

Ans. In case, woman in village does not open the door for receiving the process such a process can be affixed on the outer door with an endorsement to that effect.

Under **Order V Rule 15 CPC**, due to non availability of defendant, service can be affected through any adult member of the family, whether male or female, who is residing with him. Under **Order V Rule 16 CPC**, person served/through served is required to put signatures as an

acknowledgment of service, endorsed on the original summons. Under **Order V Rule 17 CPC**, on refusal to accept service or on non availability of any person, the Serving Officer is to (shall) affix a copy of the summons on the outer door or some other conspicuous part of the house in which the person (to be served) ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person **(if any)** by whom the house was identified and in whose presence the copy was affixed.

However, **Volume IV Chapter 7 PART B (a) - Mode of Service Rule 1 of Rules and Orders** dealing with Service of Process, requires that every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family and further that the Process Server should go again and again for this purpose.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.10 What is to be done when very short dates are given to execute the processes?

Ans. The Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors., (2021) 6 SCC 418** has directed the Courts to conclude the Execution Cases within a period of six months. Therefore, the dates are required to be given accordingly and long dates are otherwise not justifiable. Further a reasonable time must be given requiring the facts and circumstances to execute the process, otherwise it will be a wastage of time. Hence, process is to be executed within the time frame given by the court.

Q.11 In the case of Proclamation (Munadi), mostly, drummers are not available to convey the contents of the proclamation to the general public by rendering their services. How to execute the process in the absence of the drummers?

Ans. The Applicant/Decree Holder can always be asked by the Court to arrange for a drummer for execution of a process through Munadi. At every station, list of the drummers with their contact numbers can always be maintained by the Process Serving Agency and in case of non availability of one of the drummer, the other drummer can be asked to join the execution of the process.

Q.12 Whether the phone number of the addressee should be mentioned on summons so that the addressee may be contacted in case he/she is not found present at the given address?

Ans. The service through phone is not an accepted mode. Once an address has been given, the Applicant/Decree Holder has to ensure that it is complete

and correct and can always be directed to assist the Process Server to locate the said address.

Q.13 What is the remedy when the Process Servers/Bailiffs are not permitted by the Judgment Debtor/family members to affix the copy of the summons outside of the house, in case refusal is made by the addressee?

Ans. In case a Process Server/ Bailiff is not permitted by a party to affix the copy of the same outside the house, the Process Server /Bailiff can make a report in his endorsement under **Rule 25** to that effect and can also affix the said process at any nearest conspicuous public place of the area, with the Orders of the Court.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.14 Prescribed Munadi Fee of the proclamation is Rupees 100/- only and the drummers are reluctant to render their services. Whether this amount can be increased?

Ans. If a drummer is not coming forward to beat the drum for rupees 100/- the extra money which he requires can be got paid through the Decree

Holder/Applicant and can be considered as cost of the execution process, ultimately to be realised from the Judgement Debtor.

Under **Order XXI Rule 11(2) CPC**, the Decree Holder/Applicant is basically seeking assistance of the Court in Execution Process.

Section 151 CPC provides Inherent powers to Court to pass any order necessary for the ends of justice, as there is no specific provision in the Code, and almost similar eventualities are dealt under **Rule 32(5), Rule 45 (2) and Rule 67 (2) Order XXI CPC.**

Q.15 With regard to Warrant of attachment/Conditional Warrant, mostly the Decree-Holder does not make his presence on the spot and on being asked by the Bailiff, Decree-holder is reluctant to accompany him. What is the remedy available?

Ans. **Volume 1 Chapter 12 Part E Rule 13 of Rules and Orders** dealing with Procedure on Application for Execution, provides that the Execution Case is to be dismissed if the Applicant/Decree Holder does not take necessary steps to prosecute his Application (which includes assisting the Execution Process by accompanying the Official).

Q.16 The addressees mentioned in the summons are always reluctant in getting their photographs clicked on the spot. What is the remedy available?

Ans. In case, somebody is reluctant in getting his photograph clicked, the Process Server in his report, to be endorsed on the back of the process under **Order XXI Rule 25 Code**, can always mention so.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter**

X of Indian Penal Code, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.17 In some cases, when the possession of the disputed premises is taken/obtained by the Bailiff pursuant to the Warrant of possession/attachment and thereafter, the JD is requested to vacate the premises, instead of removing his belonging/articles from the disputed premises, he starts arguing and goes away from the spot and his assets continue to be in the demised premises. In this situation, on the assurance of Decree-Holder, an inventory of the lying articles is prepared and all the articles are placed outside the premises, however, after taking the vacant possession of the premises and after applying lock at the doors of the premises, the Decree Holder refuses to shoulder the responsibility with regard to the articles. This situation leaves the Bailiff in a fix as to whom the articles should be handed over. What is the remedy available?

Ans. In case, the Judgement Debtor does not cooperate in vacating the property after the orders of the Court, under **Order XXI Rule 95 CPC**, such a Judgement Debtor along with his articles can be removed from the premises, if need to that effect arises, and in case still resistance is shown then under **Rule 98** such Judgement Debtor can be ordered to be detained in the civil prison for a term which may extend to 30 days.

Therefore, what is required on the part of the Process Serving Official is submit his report in the Endorsement required to be submitted by him under **Order XXI Rule 25 CPC** and obtain orders from the Executing Court.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 183 IPC** for resistance to the taking of property by the lawful authority of a public servant, **Section 186 IPC** for obstructing public servant in discharge of public functions, **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.18 Is there any requirement for paying attention to service of any process?

Ans. Yes. **Volume IV Chapter 7 PART B (b) - Personal attention to service Rules 1 to 10 of Rules and Orders** dealing with Service of Process, requires Presiding Officers to pay personal attention to matters connected with the issue and service of processes, which includes, besides other steps, obtaining of adequate details, reasonably sufficient to secure service, of the persons to be served and further to encourage the parties throughout to take Dasti summons, to accompany the Process Servers and to render all assistance in their power.

Q.19 How to effect service of Government Officer / Official?

Ans. Under **Order V Rule 27 CPC,** service on Public Officer is to be affected through the Head of the Office of the employee. In case any Government Officer / Official shows resistance or does not cooperate with the Process

Serving Official, the remedy is to report so in the endorsement to be submitted by the Process Serving Official, under **Order XXI Rule 25 CPC.**

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 175 IPC** for omission to produce document to public servant by person legally bound to produce it, **Section 176 IPC** for omission to give notice or information to public servant by person legally bound to give it, **Section 177 IPC** for furnishing false information, **Section 180 IPC** for refusing to sign statement, **Section 186 IPC** for obstructing public servant in discharge of public functions, **Section 187 IPC** for omission to assist public servant when bound by law to give assistance and **Section 189 IPC** for threat of injury to public servant, as the case may be.

Q.20 At the time of service of process, if any fight / quarrel takes place, police shows hesitation in recording complaints of Process Serving Official. What is the remedy available?

Ans. In such scenario, the Process Serving Official is expected to report in the endorsement on the process to be given under **Order XXI Rule 25 CPC**, and Complaint, if any, can be moved through Executing Court.

Q.21 In gated private Societies, the Security Guards do not permit the Process Serving Official to enter the Societies and serve the process. What is the remedy available?

Ans. The Process Serving Official in such a scenario is to submit his report in the endorsement to be given by him under **Rule 25 Order XXI CPC**, to the Executing Court, which shall pass the necessary orders, including providing of Police Assistance in serving the process and further to proceed against such a person, under relevant section of **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof and **Section 186 IPC** for obstructing public servant in discharge of public functions, as the case may be.

Q.22 In some cases Process Serving Official face abusive conduct from the party. What is the remedy available?

Ans. Process Serving Official is to submit the report in the endorsement on the process under **Order XXI Rule 25 CPC**, to the Executing Court, which is competent to proceed against such a person, under relevant section of **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 189 IPC** for threat of injury to public servant, as the case may be.

Q.23 While executing process at given address nobody shows Identity Proof and orally states that the person to be served does not reside at the given address and further refuses to give the same in writing or append the signatures. What is the remedy available?

Ans. The Process Serving Official is to take assistance of a respectable person, if available, or the Applicant / Decree Holder in identifying the person

and his address for serving process. Otherwise, he shall endorse whatever has transpired, on the back of the process under **Order XXI Rule 25 CPC**.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 175 IPC** for omission to produce document to public servant by person legally bound to produce it, **Section 176 IPC** for omission to give notice or information to public servant by person legally bound to give it, **Section 177 IPC** for furnishing false information, **Section 180 IPC** for refusing to sign statement, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.24 In places, where cameras are installed, the parties do not open the door. What is the remedy available?

Ans. The Process Serving Official is expected to affix the notice on the outer door of the address and submit said fact of act of not opening the door in report to be submitted as endorsement under **Order XXI Rule 25 CPC**.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons)

or other proceeding, or preventing publication thereof, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.25 Process Serving Official faces restrictions in entry to Defence Area or any other Gated/Protected/Restricted Area due to the security or sensitivity of area. What is the remedy available?

Ans. Process Serving Official is a Government Servant performing his duties as per the directions of the Executing Court. He must make his identity and performance of his official duties known to the security Agency at the gate. In case still any difficulty is faced, the same is to be reported in the endorsement to be submitted under **Order XXI Rule 25 CPC**, upon which Executing Court is competent to take up the matter with the Officer In-charge of the said Area and can work out the solution.

Q.26 Process Serving Official is not familiar with the party as such party generally conceal identity from him to avoid service. What is the remedy available?

Ans. Process Serving Official, in the facts and circumstances of the case, should take the assistance of the Applicant/Decree Holder or any respectable person of the area, if available, in locating the party as well as the address for service of the process.

Q.27 In preparation of the list of Inventory Articles lying in the shops/offices etc. most of the time Judgement Debtors do not cooperate with Bailiff. What is the remedy available?

Ans. In such case, the Bailiff is to submit his report in endorsement to be submitted on the process under **Order XXI Rule 25 CPC** and the Executing Court in the facts and circumstances of the case can pass the necessary order including the providing of police assistance to the Bailiff.

Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.28 Process Serving Officials have to pay Parking Fee at Railway Station/Bus Stand from their own pocket. What is the remedy available?

Ans. Process serving Agency should bring the said fact to the notice of the learned Civil Judge (Senior Division) who can take the matter through District Administration for exemption of parking fee to the Process Serving Officials, while performing their duties.

Q.29 At times parties give their incomplete address or address is not sufficient for want of better particulars including nearby landmark. The old address is given which parties have already left. What is the remedy available?

Ans. Process Serving Official is to report said fact in the endorsement to be submitted on the process under **Order XXI Rule 25 CPC** upon which the Applicant/Decree Holder can be directed by Executing Court to furnish the same. On the failure of the Applicant/ Decree Holder to

furnish the same, the Execution Applicant can be rejected under **Order XXI Rule 17(1A) of the CPC** or it can be dismissed under **Volume 1 Chapter 12 Part E Rule 13 of Rules and Orders.**

Q.30 In many cases, the police does not cooperate with the Bailiff and make him to sit in the Police Station for long time and then refuse to give him assistance on a flimsy ground of non availability of the police force. What is the remedy?

Ans. As per directions given by Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418,** upon receiving such report in the endorsement on the process from the Bailiff under **Order XXI Rule 25 CPC**, the Executing Court is expected to take a stringent legal action against the Station House Officer of the said Police Station, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 184 IPC** for obstructing sale of property offered for sale by authority of public servant, **Section 186 IPC** for obstructing public servant in discharge of public functions and **Section 187 IPC** for omission to assist public servant when bound by law to give assistance, as the case may be.

Q.31 Sometimes list of the articles mentioned in the Execution Application does not match with the articles at the spot and sometimes, the articles at the spot do not belong to the Judgement Debtor but to other family members. How to deal with such situation?

Ans. Bailiff is required to submit his report in the endorsement to be submitted on the process under **Order XXI Rule 25 CPC**, upon which the Executing Court is to seek the fresh List of Property sought to be

attached from the Applicant/Decree Holder and can always press for furnishing the proof of its ownership of the Judgement Debtor, where available. The Executing Court can also obtain an Affidavit from the Decree Holder/Applicant, so as to avoid unnecessary delay in disposal of Execution Case within the mandatory period of six months as per the directions of the Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418**.

Q.32 After the attachment of a vehicle belonging to Government, difficulty is faced by the Bailiff in taking it to the District Courts in the absence of any driver provided to assist him. What is the remedy available?

Ans. The Bailiff is only to submit his report in the endorsement on the process under **Order XXI Rule 25 CPC**, and it is for the Executing Court to pass the necessary directions, including fixing responsibility of the Applicant/ Decree Holder to arrange a driver to take the vehicle to the district courts.

Q.33 Ascertaining the identity of person against whom the process to be served is a tedious task. What is the remedy available?

Ans. In the Execution Application filed under **Order XXI Rule 11(2) CPC**, the Applicant / Decree Holder is obtaining the assistance from the Executing Court in relation to implementation of his decree. He should submit names and addresses of the person against whom the process is issued. In case the same is incomplete, under **Order XXI Rule 17 CPC,** the Executing Court is to obtain it from Applicant/ Decree Holder and on his failure to reject the applicant under **Sub Rule 1(A) of said Rule 17.** Even if with complete name and complete address the Process Serving Official is unable to locate the person / address, he is to submit said

report in the endorsement on the process under **Order XXI Rule 25 CPC,** upon which the Executing Court can always ask Applicant/ Decree Holder to assist the Process Serving Official in locating the person/address.

Q.34 Sometimes parties get the Process Serving Official bitten by their dogs. What is the remedy available?

Ans. Process Serving Official is a Public Servant discharging his official duty. Upon receiving such report in endorsement on the process under **Order XXI Rule 25 CPC**, the Executing Court is to take suitable action in the matter, including forwarding of complaint for setting criminal law in motion against such person, which includes proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173 IPC** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 186 IPC** for obstructing public servant in discharge of public functions, **Section 187 IPC** for omission to assist public servant when bound by law to give assistance and **Section 189 IPC** for threat of injury to public servant, as the case may be.

Q.35 Sometimes Kissan Unions exercise their influence in obstructing the execution process. What is the remedy available?

Ans. Process Serving Official is to submit the said obstruction in his report to be submitted in the endorsement on the process under **Order XXI Rule 25 CPC**, upon which the Executing Court can proceed in accordance with the law, including providing requisite Police Assistance and proceeding for commission of an offence under **Chapter X of Indian**

Penal Code, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 184 IPC** for obstructing sale of property offered for sale by authority of public servant, **Section 186 IPC** for obstructing public servant in discharge of public functions, **Section 187 IPC** for omission to assist public servant when bound by law to give assistance and **Section 189 IPC** for threat of injury to public servant, as the case may be.

Q.36 Sometimes at many places properties are not being sold for want of Court Auctioneer. What is the remedy available?

Ans. Executing Court can entrust the process of Public Auction to any other suitable Officer/Official, including the Nazir of the station.

Excerpt of Chapter in Hindi (खंड)
सवाल जबाब

1. प्रोसेस की तामील कैसे करनी चाहिए?

उत्तर: हर संभव प्रयास करना चाहिए कि प्रतिवादी को प्रत्यक्ष तामील हो। उसके लिए बार बार जाकर कोशिश करनी चाहिए ।

अगर बार बार कोशिश करने पर प्रत्यक्ष तामील नहीं होती तो प्रतिवादी परिवार के किसी वयस्क सदस्य को तामील करवानी चाहिए। अगर कोई भी ना मिले तो प्रतिवादी के दिए हुए पते के मुख्य द्वार पर या किसी प्रत्यक्ष जगह पर प्रोसेस की चसपानगी करनी चाहिए ।

2. प्रोसेस की तामील करवाने में किसकी सहायता लेनी चाहिए?

उत्तर: जब गांव में तामील करवानी हो तो प्रतिवादी की पहचान करने के लिए मुख्यत: चौकीदार या लम्बड़दार की मदद लेनी चाहिए । अगर इनमें से कोई सहयोग ना करे तो उसकी रिपोर्ट न्यायालय को करनी चाहिए और किसी भी पंच/सरपंच या आदरणीय निवासी की मदद लेकर तामील करवानी चाहिए ।

शहरों में इस काम के लिए म्युनिसिपल कौंसिलर/पूर्व म्युनिसिपल कौंसिलर या किसी भी आदरणीय निवासी की मदद लेनी चाहिए ।

अगर गांव या शहर में ऐसा कोई भी व्यक्ति उपलब्ध नहीं है तभी तामील करवाने की कोशिश करनी चाहिए और जहां पर प्यादा या बैलिफ संतुष्ट हो, वह बिना किसी की निशानदेही पर भी तामील करवा सकता है। इनके द्वारा की गई कोशिश और किसी पहचानकर्ता के ना उपलब्ध होने के बारे में रिपोर्ट बना कर न्यायालय को दे देनी चाहिए।

3. यदि प्रोसेस में पता अधूरा हो तो क्या करना चाहिए ?

उत्तर: पूरा और सही पता देने की जिम्मेवारी पार्टी की होती है। अहलमद को प्रोसेस तैयार करते समय इस बात की जाँच करनी चाहिए और अगर उसको पता अधूरा लगता है तो उसको यह बात न्यायालय के ध्यान में लानी चाहिए।

अहलमद द्वारा तैयार किये प्रोसेस की रीडर द्वारा जांच अनिवार्य है। इसके उपरांत ही उसे न्यायाधीश के हस्ताक्षर करवाने चाहिए। जब कोई भी प्रोसेस, न्यायाधीश के हस्ताक्षर हो कर प्रोसेस सर्विंग एजेंसी में जाता है तो नाज़िर को भी उसकी जांच करनी चाहिए और यदि पता अधूरा हो तो उसको वह प्रोसेस न्यायालय में रिपोर्ट करके वापिस कर देना चाहिए और उसकी जानकारी न्यायाधीश को देनी चाहिए।

4. यदि कोई पार्टी प्रोसेस में सहयोग नहीं करती या लड़ाई झगड़ा करती है तो क्या करना चाहिए ?

उत्तर: प्रोसेस सर्विंग कर्मचारी को यह बातें अपनी रिपोर्ट में दर्ज कर न्यायालय की जानकारी में लेकर आनी चाहिए जिसके बाद न्यायालय उस पर उचित कार्यवाही करेगी ।

5. अगर पुलिस सहायता नहीं देती तो क्या करना चाहिए?

उत्तर : न्यायालय द्वारा पुलिस सहायता के आर्डर होने के बाद उचित सहायता देने के लिए पुलिस बाध्य है। अगर पुलिस सहायता नहीं करती तो प्रोसेस सर्विंग कर्मचारी को इसके बारे न्यायालय में रिपोर्ट करना चाहिए ताकि न्यायालय उचित कार्यवाही कर सके।

6. यदि सरकारी दफ्तर में कोई प्रोसेस तामील करने में मुश्किल आती है तो क्या करना चाहिए ?

उत्तर: प्रोसेस सर्विंग कर्मचारी को उस दफ्तर के सबसे उच्च अधिकारी से मिलकर उनकी सहायता मांगनी चाहिए। अगर फिर भी कोई दिक्क्त आती है तो न्यायालय की जानकारी में लाना चाहिए ताकि न्यायालय उचित कार्यवाही कर सके।

7. यदि कोई महिला घर का दरवाजा ना खोले तो क्या करना चाहिए ?

उत्तर: प्रोसेस सर्वर को सबसे पहले महिला सदस्य को अपना परिचय देना चाहिए और दरवाजा ना खोलने का कारण जानना चाहिए। अगर कोई मान्य कारण ना हो तो प्रोसेस की एक प्रति उसके घर के बाहरी दरवाज़े पर चिपकायी जा सकती है या फिर ऐसी जगह पर चिपकायी जा सकती है जिस पर सबकी दृष्टि जाए। सम्मन की दूसरी कॉपी पर चसपानगी बारे विस्तृत रिपोर्ट देकर कॉपी कोर्ट में प्रस्तुत करनी चाहिए। रिपोर्ट में लिखा जायेगा कि चसपानगी क्यों और कैसे की गई थी और घर को किस ने शिनाख्त किया।

8. क्या पते पर फ़ोन नंबर लिखना चाहिए और पार्टी को सूचित कर देना चाहिए ?

उत्तर: फ़ोन द्वारा तामील का कानून में कोई प्रावधान नहीं है । तामील प्रत्यक्ष ही करवानी चाहिए ।

9. यदि कोई पार्टी दीवार पर चसपानगी ना करने दे तो क्या करना चाहिए ?

उत्तर: ऐसी स्थिति में प्रोसेस की एक प्रति ऐसी जगह पर चिपकायी जा सकती है जिस पर सबकी दृष्टि जाए। सम्मन की दूसरी कॉपी पर चसपानगी बारे विस्तृत रिपोर्ट देकर, कॉपी कोर्ट में प्रस्तुत की जानी चाहिए। रिपोर्ट में लिखा जाये कि चसपानगी क्यों और कैसे की गयी थी और घर को किस ने शिनाख्त किया।

10. अगर मुनादी के लिए ढोल बजाने वाला मुनादी फीस के कम होने पर नहीं मानता तो क्या करना चाहिए ?

उत्तर: इसमें डिक्री धारक/एप्लिकेंट की मदद लेनी चाहिए और अगर फिर भी काम ना बने तो अपनी रिपोर्ट में दर्ज करके न्यायालय की जानकारी में लाना चाहिए ।

11. यदि कोई डिक्री होल्डर/एप्लिकेंट साथ चलने को तैयार नहीं हो तो क्या करना चाहिए ?

उत्तर: इस बात की जानकारी अपनी रिपोर्ट में लिख कर उचित कार्यवाही हेतु न्यायालय को दे देनी चाहिए ।

12. यदि जगह खाली होने के बाद, वहां पर पड़े सामान की कोई जिम्मेवारी नहीं लेता तो क्या करना चाहिए?

उत्तर: निर्णय देनदार को सूचित करना चाहिए और अगर वह सामान नहीं ले जाता तो विस्तृत रिपोर्ट बना कर न्यायालय को सूचित करना चाहिए ।

13. यदि किसी प्राइवेट गेटेड रेजिडेंशियल सोसाइटी या डिफेन्स एरिया में तामील करवाने से कोई सिक्योरिटी गार्ड मना करता है तो क्या करना चाहिए ?

उत्तर : सिक्योरिटी गार्ड को यह जानकारी देनी चाहिए कि प्रोसेस सर्वर न्यायालय के किये आदेश पर अपनी सरकारी ड्यूटी में तामील करने आया है । अगर सिक्योरिटी गार्ड फिर भी मना करे तो वहां के सीनियर अफसर को मिलकर जानकारी देनी चाहिए । यदि फिर भी बात ना बने तो सारी जानकारी अपनी रिपोर्ट में लिख कर उचित कार्यवाही हेतु न्यायालय को देनी चाहिए ।

14. प्रोसेस की तामील करवाने के लिए यदि रेलवे स्टेशन या बस स्टैंड पर अपनी मोटरसाइकिल खड़ी करनी हो तो पार्किंग फीस लेते है । इसका क्या उपचार है?

उत्तर : यह बात न्यायालय की जानकारी में लानी चाहिए ताकि माननीय जिला न्यायाधीश, जिला एडमिनिस्ट्रेशन के साथ संपर्क करके ड्यूटी के दौरान ली गई पार्किंग फीस को माफ़ करवा सकें ।

APPENDIX

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 1659-1660 of 2021
(Arising out of Special Leave to Appeal Nos. 7965-7966/2020)

Rahul S. Shah ….. Appellant (S)

Versus

Jinendra Kumar Gandhi and Ors. ….. Respondent(s)

WITH

Civil Appeal Nos. 1661-1662 of 2021
(Arising out of SLP (C) Nos. 11859-11860/2020)

WITH

and Civil Appeal Nos. 1663-1664 of 2021
(Arising out of SLP (C) Nos. 11792-11793/2020)

ORDER

1. Leave granted.

2. The present appeals arise out of the common judgment and order dated 16th January, 2020 of the Karnataka High Court which dismissed several Writ Petitions. The course of the litigation highlights the malaise of constant abuse of procedural provisions which defeats justice, i.e. frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree.

3. The third Respondent (hereafter referred to as 'Narayanamma') had purchased a property measuring 1 Acre (Survey No. 15/2) of Deevatige

Ramanahalli, Mysore Road, Bengaluru (hereafter referred to as 'suit property') under the sale deed dated 17.03.1960. The suit land was converted and got merged in the municipal limits of Bengaluru and was assigned with Municipal Corporation No. 327 and 328, Mysore Road, Bengaluru. Narayanamma sold 1908 square yard of the suit property in Municipal Corporation (Survey No. 327) to 2nd and 3rd Respondents (hereafter referred to 'Jitendra' and 'Urmila') under a sale deed dated 13.05.1986. This was demarcated with the sketch annexed to the sale deed. The adjacent portion of property, Survey No. 327 was sold to Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi by another sale deed dated 13.05.1986. This property was also demarcated in the sketch and clearly shows its dimensions and boundaries annexed to the sale deed. Therefore, the first two Respondents, Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi became absolute owners of the suit property with the totally admeasuring of 3871 square yards. Thus, Narayanamma had sold about 34,839 square feet of the property out of 1 Acre land (43,860 square feet) owned by her. Subsequently, after the sale of the major portion of the said property to the first two Respondents and their brother, Narayanamma who is the mother of A. Ramachandra Reddy the fourth Respondent (hereafter called "the vendors") filed a suit for declaration that the two sale deeds in favour of the first two Respondents (also called "purchasers" or "decree-holders") as well as against Shri Moolendra Kumar Gandhi etc. were void. The vendors and Shri Anjan Reddy (deceased Respondent No. 8) on 25.03.1991 executed a registered partition deed. This document did not advert to the sale deed executed in favour of the purchasers and Shri Moolendra Kumar Gandhi and Smt. Baby Kumari Gandhi. The purchasers were restrained by an injunction from entering the property which Narayanamma claimed was hers.

4. During the pendency of the suit for declaration, the first purchasers filed two suits against the vendors for possession. During the pendency of these suits on 11.02.2000 by two separate sale deeds Shri Dhanji Bhai Patel and Shri Govind Dhanji Patel purchased 7489 square feet and 7650 square feet respectively, out of the residue of the property owned by Narayanamma. While so, during the pendency of the suits instituted by the purchasers, the vendors again sold the suit property i.e. the land to the present Appellant (Rahul Shah) and three others (Respondents No. 5-7) by four separate sale deeds. In the possession suits the vendors filed counter claims (dated 18.04.1998). During the pendency of proceedings the purchasers sought for transfer and mutation of property in their names which were declined by the Municipal Corporation; this led to their approaching the High Court in Writ Petition No. 19205/1992 which was disposed of with a direction that after adjudication of the injunction suit (filed by the vendors) the khata be transferred.

5. The proceedings in the injunction suit filed by the vendors and the other two suits filed by the purchasers were clubbed together. The City Civil Judge, Bangalore by a common judgment dated 21.12.2006 allowed and decreed the suits for possession preferred by the purchasers and dismissed the vendor's suit for injunction. The decree holders preferred execution proceedings. They filed applications Under Order XXI Rule 97 of the Code of Civil Procedure (CPC) since the judgment debtors/vendors had sold the property to the Appellant and Respondents No. 4 to 7. The Appellant i.e. a subsequent purchaser filed objections.

6. During the pendency of the proceedings the front portion of the suit property bearing Municipal Corporation No. 327, Mysore road, Bangalore

became the subject matter of the acquisition for the Bangalore Metro Project. The decree holders (the first two Respondents) preferred objections to the proposed acquisition and further claimed the possession. In the meanwhile, aggrieved by the dismissal of the suit and decreeing the suit for possession, Narayanamma filed first appeals in the High Court. In these proceedings it was brought to the notice of the High Court that the suit properties had been sold to the Appellant and Respondents No. 4 to 7. By an order the High Court directed the vendors to furnish particulars with respect to the sale, names of the purchaser and area sold etc. By common judgment dated 22.10.2009 the High Court dismissed all the appeals pending before it. The Special Leave Petition preferred by the vendors was also dismissed by this Court on 23.07.2010.

7. Apparently, during the pendency of execution proceedings before the trial Court the vendors again sold the properties in favour of Shri P. Prem Chand, Shir Parasmal, Shri Kethan S. Shah and Ors. and Shri Gopilal Ladha & Shri Vinay Maheshwari by separate sale deeds. This was brought to the notice of the High Court which had dismissed the appeal preferred by the vendors.

8. During the pendency of the proceedings before the High Court Narayanamma, the Appellant and Respondents No. 4 to 7 filed indemnity bonds claiming that there was no dispute with respect to the suit property and claimed the compensation in respect of portions that were acquired. These were brought to the notice of the High Court which passed an order in W.P. No. 9337/2008. The court considered all the materials and held that the compensation could not have been dispersed to the vendors, the Appellant and Respondents No. 4 to 7. The High Court issued directions to them to deposit the amounts. An appeal was preferred by the Appellant and the said

Respondents, against that order, which was rejected by the Division Bench. Consequently, an enquiry was held and order was passed by the Land Acquisition Officer on 01.08.2011 directing the Appellant, the vendor and others to redeposit the amounts. By an order passed in another Writ Petition No. 2099/2011 the High Court held that the decree holder/purchasers were entitled to transfer of khata of property in their names and directed to hold an inquiry against the Revenue Officer. Since the orders of the High Court, with respect to the deposits of amounts, were not complied with, contempt proceedings were taken.

9. The High Court in another order dated 19.04.2013 directed Narayanamma and Respondents No. 4 to 7 to deposit the amounts. That order in contempt proceedings (C.C.C. No. 280/2011) was challenged before this Court in a special leave petition which was dismissed on 05.11.2014. Thereafter, apparently in compliance with the High Court's direction for transfer of khata the municipal and revenue records reflect the names of the decree-holder/purchasers.

10. The execution proceedings initiated by the decree holders resulted in the court requiring parties to lead evidence, in view of the obstruction by the Appellant and Respondents No. 4 to 7, by its order dated 23.04.2010. When obstruction proceedings were pending Under Order XXI Rule 97, the judgment debtor i.e. the vendors initiated criminal proceedings in 2016 against the decree holders; these were stayed by the High Court on 20.06.2016 and later quashed on 16.03.2017. The judgment debtors had alleged forgery of certain documents. The High Court directed appointment of Court Commissioner to identify and measure the property. At the time of disposal of the criminal proceedings High Court directed that the

Commissioner's report along with the objections of the judgment debtors ought to be forwarded to the Executing Court.

11. In the meanwhile, by an order the Executing Court had appointed the Taluka Surveyor of BBMP as the Court Commissioner and directed him to visit the spot and survey and fix the boundaries of decretal property. Recall of these orders was sought by the judgment debtors; they also sought for reference to forensic examination by a Handwriting Expert of the sale documents. These two review applications were dismissed; and on 13.06.2017 the Executing Court declined the application for forensic examination of documents and also rejected the obstructers' resistance to execution.

12. All these orders led to initiation of five writ petitions on behalf of the Appellant, and the vendors etc. Three First appeals were preferred by obstructers challenging the decision of the Executing Court dated 15.02.2017. By impugned common order all these Writ Petitions and appeals were dismissed.

13. It is argued by Mr. Shailesh Madiyal on behalf of the Appellant (Rahul Shah) that the impugned order has the effect of diluting the order of the Executing Court dated 23.04.2010 with respect to survey of the entire property. It was pointed out by the counsel for the Appellant that there were disputes with respect to boundaries and identity of the properties as between parties. Referring to the order, it was submitted that the Court had noticed that the High Court in earlier Writ Petitions had directed the Special Land Acquisition Officer to hold an enquiry and if necessary refer the matter to Civil Court Under Section 30 of the Land Acquisition Act. In view of all

these disputes, questions especially related to the boundaries and the imprecise nature of the extent and location of the disputed properties, the impugned order should be interfered with and the reliefs sought by the Appellant be granted. Learned Counsel submitted that subsequently by order dated 31.10.2014 the Executing Court erroneously held that Sketch Exhibit P-26 was drawn by Revenue Authorities whereas in fact it was introduced by handwritten sketch given by the decree holders.

14. Learned Counsel submitted that decree holder's efforts in all the proceedings were to confuse the identity of the property and therefore had sought clubbing of both execution cases; this request was rejected by the Executing Court after concluding that the property sought to be executed in two cases were different and further that rights claimed too were distinct.

15. Learned Counsel for the Appellant in the second set of petitions, i.e. SLP (C) No. 11859-11860 of 2020 and SLP (C) No. 11792-11793 of 2020, on the other hand urged that the High Court as well as the Executing Court fell into error in holding that what was sought by the obstructer (i.e. the Appellant Gopilal Ladha) was far in excess of what was left after decree holders had purchased and therefore the conveyances had overlapped.

16. Mr. Arunava Mukherjee appearing for the second set of Appellants also reiterated the submissions of Mr. Shailesh Madiyal that the decree holders had intentionally confused the identity of the property. He highlighted that the High Court acted in error in rejecting the Appellants' request for subjecting documents to forensic examination by handwriting experts. It was submitted that this aspect was completely overlooked because the

Appellants' had raised serious doubts with respect to the genuineness and authenticity of the signatures of the documents.

17. The Respondents urged that this Court should not interfere with the findings of the High Court. Learned Counsel reiterated that numerous proceedings were taken out and that the judgment debtors had sold the very same property three times over-at least two times after the decree holders purchased their portions of the property and during the pendency of the suits filed by them. The judgment debtors had sought a declaration that the sale deeds executed in favour of the decree holders were not genuine and lost. Thereafter, the judgment debtor and some of the obstructers succeeded in collecting compensation in respect of the portion of the property that had been acquired. Ultimately, those amounts had to be disbursed by the Court orders. The judgment debtors/vendor even sought forensic examination and initiated the criminal proceedings that were quashed by the High Court. The High Court took note of all these circumstances and passed a just order, requiring the appointment of a Court Commissioner to identify and measure the properties. While doing so the Executing Court has been asked to take into consideration all the materials on record including the reports submitted by the previous Court Commissioner Mr. Venkatesh Dalwai.

Discussion and conclusions:

18. It is quite evident from the above discussion that the vendor and her son (judgment debtors) after executing the sale deed in respect of a major portion of the property, questioned the transaction by a suit for declaration. The decree holders also filed a suit for possession. During the pendency of these proceedings, two sets of sale deeds were executed. The vendors' suit

was dismissed-the decree of dismissal was upheld at the stage of the High Court too. On the other hand, the purchasers' suit was decreed and became the subject matter of the appeal. The High Court dismissed the first appeal; this Court dismissed the Special Leave Petition. This became the background for the next stage of the proceedings, i.e. execution. Execution proceedings are now being subsisting for over 14 years. In the meanwhile, numerous applications including criminal proceedings questioning the very same documents that was the subject matter of the suit were initiated. In between the portion of the property that had been acquired became the subject matter of land acquisition proceedings and disbursement of the compensation. That became the subject matter of writ and contempt proceedings. Various orders of the Executing Court passed from time to time, became the subject matter of writ petitions and appeals-six of them, in the High Court. All these were dealt with together and disposed of by the common impugned order.

19. A perusal of the common impugned order shows that High Court has painstakingly catalogued all proceedings chronologically and their outcomes. The final directions in the impugned order is as follows:

(a) the other challenge by the JDrs and the Obstructers having been partly favoured, the impugned orders of the Executing Court directing Delivery Warrant, are set at naught, and the matter is remitted back for consideration afresh by appointing an expert person/official as the Court Commissioner for accomplishing the identification & measurement of the decreetal properties with the participation of all the stake-holders, in that exercise subject to all they bearing the costs & fees thereof, equally;

(b) it is open to the Executing Court to take into consideration the entire evidentiary material on record hitherto including the Report already submitted by the Court Commissioner Shri Venkatesh Dalwai,

(c) the amount already in deposit and the one to be deposited by the Obstructers in terms of orders of Coordinate Benches of this Court mentioned in paragraph 8 supra shall be released to the parties concerned, that emerge victorious in the Execution Petitions;

(d) the JDrs shall jointly pay to the DHrs collectively an exemplary cost of Rs. 5,00,000/- (Rupees five lakh) only in each of the Execution Petitions within a period of eight weeks, regardless of the outcome of the said petitions; and, if, the same is not accordingly paid, they run the risk of being excluded from participation in the Execution Proceedings, in the discretion of the learned judge of the Court below; and,

(e) the entire exercise including the disposal of the Execution Petitions shall be accomplished within an outer limit of six months, and the compliance of such accomplishment shall be reported to the Registrar General of this Court.

No costs qua obstructers.

Sd/-

Judge

20. The contentions of the Special Leave Petition mainly centre around one or the other previous orders of the Executing Court with regard identification

of the property and boundary etc and the subjecting documents to forensic examination. As is evident from the reading of the final order, the High Court has adopted a fair approach requiring the Executing Court to appoint a Court Commissioner to verify the identity of the suit properties and also consider the materials brought on record including the reports of the previous local commission. In the light of this, the arguments of the present Appellants are unmerited and without any force. The Court also finds that the complaint that documents ought to be subjected to forensic examination, is again insubstantial. The criminal proceedings initiated during the pendency of the execution proceedings-in 2016 culminated in the quashing of those proceedings. The argument that the documents are not genuine or that they contain something suspicious ex-facie appears only to be another attempt to stall execution and seek undue advantage. As a result, the High Court correctly declined to order forensic examination. This Court is of the opinion that having regard to the totality of circumstances the direction to pay costs quantified at Rs. 5 lakh (to be complied by the judgment debtor) was reasonable, given the several attempts by the decree holder to ensure that the fruits of the judgment secured by them having been thwarted repeatedly. As a result, the direction to pay costs was just and proper.

21. The High Court has directed the Executing Court to complete the process within six months. That direction is affirmed. The parties are hereby directed to cooperate with the Executing Court; in case that court finds any obstruction or non-cooperation it shall proceed to use its powers, including the power to set down and proceed ex-parte any party or impose suitably heavy costs. Therefore, in light of the above observations these appeals are liable to be dismissed.

22. These appeals portray 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. As on 31.12.2018, there were 11,80,275 execution petitions pending in the subordinate courts. As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned Counsels of parties for response. We heard Mr. Shailesh Madiyal, learned Counsel for the Petitioner and Mr. Paras Jain, learned Counsel for the Respondent.

23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing MANU/PR/0029/1872 : (1871-72) 14 Moore's I.A. 605 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna MANU/SC/1607/2009 : (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed

to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

24. In respect of execution of a decree, Section 47 of Code of Civil Procedure contemplates adjudication of limited nature of issues relating to execution i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be

executed as is given Under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is anti-thesis to the scheme of Code of Civil Procedure, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.

28. Order I Rule 10(2) empowers the Court to add any party who ought to have been joined, whether as a Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Further, Order XXII Rule 10 provides that in cases of assignment, creation or devolution of any interest during the pendency of the suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come to be devolved.

29. While Code of Civil Procedure Under Rules 30 to 36 of Order XXI provides for execution of various decrees, the modes of execution are common for all. Section 51 of Code of Civil Procedure lists the methods of execution as by delivery of property; by attachment and sale; by arrest and detention in civil prison; by appointing a receiver or in any other manner as

the nature of relief granted may require. Moreover, Order XL Rule 1 contemplates the appointment of the Receiver by the Court. In appropriate cases, the Receiver may be given possession, custody and/or management of the property immediately after the decree is passed. Such expression will assist in protection and preservation of the property. This procedure within the framework of Code of Civil Procedure can provide assistance to the Executing Court in delivery of the property in accordance with the decree.

30. As to the decree for the delivery of any immovable property, Order XXI Rule 35 provides that possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

31. As the trial continues between specific parties before the Courts and is based on available pleadings, sometimes vague description of properties raises genuine or frivolous third-party issues before delivery of possession during the execution. A person who is not party to the suit, at times claims separate rights or interests giving rise to the requirement of determination of new issues.

32. While there may be genuine claims over the subject matter property, the Code also recognises that there might be frivolous or instigated claims to deprive the decree holder from availing the benefits of the decree. Sub-rule (2) of Rule 98 of Order XXI contemplates such situations and provides for penal consequences for resistance or obstruction occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, or by the transferee, where such transfer was made during the

pendency of the suit or execution proceedings. However, such acts of abuse of process of law are seldom brought to justice by sending the judgment debtor, or any other person acting on his behalf, to the civil prison.

33. In relation to execution of a decree of possession of immovable property, it would be worthwhile to mention the twin objections which could be read. Whereas Under Order XXI Rule 97, a decree holder can approach the court pointing out about the obstruction and require the court to pass an order to deal with the obstructionist for executing a decree for delivering the possession of the property, the obstructionist can also similarly raise objections by raising new issues which take considerable time for determination.

34. However, Under Order XXI Rule 99 it is a slightly better position, wherein a person, other than the judgment debtor, when is dispossessed of immoveable property by the decree holder for possession of such property, files an application with objections. Such objections also lead to re-trial, but as the objector is already dispossessed, the execution of the decree is more probable and expeditious. In Order XXI Rule 97 the obstructionist comes up with various objections that ideally should have been raised at the time of adjudication of suit. Such obstructions for execution could be avoided if a Court Commissioner is appointed at the proper time.

35. Having considered the abovementioned legal complexities, the large pendency of execution proceedings and the large number of instances of abuse of process of execution, we are of the opinion that to avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in

deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit.

36. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power Under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.

37. It also becomes necessary for the Trial Court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the Defendant. Thus, the Court may also take recourse to the following actions:

a) Issue commission Under Order XXVI Rule 9 of Code of Civil Procedure.

A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the Court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of

the property including the nature and occupation of the property. In addition to this, the Court may also appoint a Receiver Under Order XL Rule 1 to secure the status of the property during the pendency of the suit or while passing a decree.

b) Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

c) Affix such notice on the said property.

d) Issue such notice specifying suit number etc. and the Court in which it is pending including details of the suit property and have the same published on the official website of the Court.

38. Based on the report of the Commissioner or an application made in that regard, the Court may proceed to add necessary or proper parties Under Order I Rule 10. The Court may permit objectors or claimants upon joining as a party in exercise of power Under Order I Rule 10, make a joinder order Under Order II Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

39. If the above suggested recourse is taken and subsequently if an objection is received in respect of "suit property" Under Order XXI Rule 97 or Rule 99 of Code of Civil Procedure at the stage of execution of the decree, the

Executing Court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued during trial. Such claims Under Order XXI Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

40. In Ghan Shyam Das Gupta v. Anant Kumar Sinha MANU/SC/0488/1991 : AIR 1991 SC 2251, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the Plaintiff or on its own motion using the inherent powers Under Section 151, under the circumstances, direct the Defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction Under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned 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

2. 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.

3. 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.

4. 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.

5. Under Order XL Rule 1 of Code of Civil Procedure, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to

7. 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.

8. 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.

9. 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. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers Under Section 151 Code of Civil Procedure, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction Under Section 47 or Under Order XXI of Code of Civil Procedure, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

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.

13. Under Section 60 of Code of Civil Procedure 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.

14. 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.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to 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.

43. We further direct all the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers Under Article 227 of the Constitution of India and Section 122 of Code of Civil Procedure, within one year of the date of this Order. The High Courts must ensure that the Rules are in consonance with Code of Civil Procedure and the above directions, with an endeavour to expedite the process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.

44. The appeals stand dismissed.

…….. CJI
S.A. Bobde

…… J
L. Nageswara Rao

…… J
S. Ravindra Bhat, JJ.

New Delhi
April 22, 2021

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