

EXECUTION PROCEEDINGS IN VARIOUS DECREES

such as

**Money Decree,
Decree in Injunction Suit,
Decree for possession
Decree for restitution of Conjugal rights
Decree for Specific Performance**

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*The law exists to allow the plaintiff to get the relief given
to him by the Court upon execution of the decree.*

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*Subrata Roy Sahara v. Union of India,
AIR 2014 SC 3241*

Definition

The word “**Execution**” is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree-holder by a competent court.]

As per Rule 2 (e) of Civil Rules of Practice “**Execution Petition**” means a petition to the Court for the execution of any decree or order.

As per Rule 2(f) Civil Rules of practice “**Execution Application:**” means an application to the Court made in a pending execution petition, and includes an application for transfer of a decree.

The Relevant Provisions on Execution in Code of Civil Procedure and Civil Rules of Practice are:

1. Sections 36 to 74, Sections 144, 146 & 148 Code of Civil Procedure and Order 21.
2. Chapter XVI Rules 205 to 285 of Civil Rules of Practice.
3. Articles: 125 to 129, 134 to 137 of Limitation Act

Jurisdiction

As per Section 37 of Code of Civil Procedure, the decree can be executed by the court which passed the decree and as per section 38 of Code of Civil

Procedure the court to which the decree is transferred, have jurisdiction to entertain the Execution Petitions.

Today's assigned subject is execution proceedings in respect of (i) Money Decree; (ii) Decree in Injunction Suit; (iii) Decree for possession; (iv) Decree for restitution of conjugal rights; (v) Decree for Specific Performance. Irrespective of nature of decrees, the aim is to ensure the decree-holder gets the relief granted in the decree effectively.

Money Decree

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

Different Modes of Execution:

To enforce execution, power is conferred to the Court under Sec. 51 of CPC. Section 51CPC deals with the power of a Civil Court to enforce execution of money-decrees rendered by a Civil Court, a fortiori, there is apt judgment '**Jolly George Varghese's case, (1980) 2 SCC 360** to follow while ordering arrest of J.Dr, wherein it was highlighted 'Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts.' and there is another important which is also significant ruling as to this context, and it is **Subrata Roy Sahara v. Union of India, AIR 2014 SC 3241**. There is always conflation between Civil law and Criminal law but it is seminal to see keep in mind the language of Order 21 Rule 37. 'The proviso attached to Rule 37 of Order 21 provides that the

court can issue an arrest warrant without first issuing notice if the judgment-debtor is likely to abscond court's jurisdiction'.

Modes of Execution :-

The section enumerates different methods through which a decree can be executed.

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

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

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

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

Discretion of the Court:-The court has the discretion to choose the appropriate mode of execution based on the specifics of the case.

Arrest and Detention :-

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

The Hon'ble High Court of Andhra Pradesh held in Gangadharam v. Siva Prasad Reddy reported in 2011 (4) ALT page 127, in which it is held that Order XXI Rule 22 CPC notice is not applicable in any of the EPs filed under Rule 37 of Order XXI CPC and the reason is being that separate procedure altogether is prescribed

for the said proceedings. Issuance of Rule 22 notices to the JDR No. 1 and 2 is dispensed with. Since this court proposes to issue notice under Order XXI Rule 37(1) CPC and not warrant of arrest at this stage, as no prejudice is going to be caused to the JDR No 1 and 2.

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

The clause in Sec. 51 (e):-

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

- a). Attachment:- The court may order the attachment of the judgment debtor's property under Or. 21, Rules 43, 54, 52 of CPC.
- b). Movable properties are attached by actual seizure, while immovable properties are attached by prohibitory orders by following the procedure under Order 21 of CPC. Ex:- Or.21 R.43.
- c). Sale:- After attachment, the property may be sold through a public auction to realize the decree amount. Ex:- Or. 21 Rules 54, 64, 66 of CPC, Sale of Immovable property.

Landmark Cases: -

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

- Facts of the case in succinct:- In this case, the issue was whether a person could be detained in civil prison for non-payment of a debt.
- Judgment:- The Hon'ble Supreme Court held that arrest and detention for non-payment of debt are permissible under Section 51 only if the court is satisfied that the judgment-debtor has the means to pay but refuses or neglects to pay. The Court emphasized that the provision must be applied judiciously and not arbitrarily, ensuring that the judgment-debtor's fundamental rights are not violated. The decision underscored the need for a careful and humane approach in the application of Section 51. Please read

the recent ruling of Andhra Pradesh High Court in **C. Dilip Kumar vs. Y.Veera Raghavulu, 2024 (2) ALT 437.**

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

Garnishee Proceedings:-Order 21, Rules 46-46F CPC:-The Civil court may order the garnishee to pay the amount directly to the decree-holder. Garnishee proceedings under Order 21 Rules 46 to 46F of the Civil Procedure Code, 1908, provide a mechanism for a decree-holder to collect the decretal amount directly from a third party (the garnishee) who owes money to or holds funds on behalf of the judgment-debtor under Order XXI Rule 46 of the Civil Procedure Code, 1908,

1. **Attachment of Debt:-**

The rule allows for the attachment of debts not secured by a negotiable instrument, including debts owed by a third party (garnishee) to the JDr. The court issues a prohibitory order to the garnishee, prohibiting them from making any payment to the judgment-debtor.⁵

2. **Prohibitory Order:-**

The prohibitory order directs the garnishee not to pay any debt due to the judgment-debtor and not to deliver any movable property belonging to the judgment-debtor, to anyone except the court; The order is served on the garnishee, who is then legally bound to comply with it. The court must issue a notice to the judgment-debtor informing them of the attachment. This ensures that the judgment-debtor is aware of the proceedings and has an opportunity to respond or contest the attachment. The garnishee is required to appear before the court on a specified date to show cause why they should not pay the debt to the decree-holder. The garnishee can either agree to pay the amount directly to the decree-holder or contest the garnishment on valid legal grounds. If the garnishee contests the

attachment, the court conducts an inquiry into the validity of the debt and the garnishee's liability. If the court is satisfied that the debt is due, it may order the garnishee to pay the amount directly to the decree-holder or into the court. If the garnishee fails to comply with the court's order without valid reason, they may be held liable for the amount specified in the prohibitory order. The decree-holder can seek enforcement of the court's order against the garnishee, similar to enforcing a decree against a judgment-debtor.

II Execution of Decree in Injunction Suit;

Enforcing a decree of injunction is a crucial aspect of civil litigation, ensuring that the rights of decree-holders are protected and that court orders are not rendered meaningless. Order XXI Rule 32(1) of the Civil Procedure Code (CPC) lays down the procedure and powers of the court in enforcing such decrees, whether they require a party to do or refrain from doing a particular act. This article explains the legal framework, procedure, and important judicial interpretations related to the enforcement of injunction decrees.

An injunction decree can be:

- **Mandatory** (requiring a party to perform a specific act), or
- **Prohibitory** (restraining a party from performing a specific act).

Order XXI Rule 32(1) applies to both types and provides remedies when a judgment debtor willfully disobeys the decree. The 2002 amendment clarified that Rule 32(1) applies to both mandatory and prohibitory injunctions, ensuring comprehensive coverage. The said Rule further states that if a judgment debtor willfully disobeys a decree for specific performance, restitution of conjugal rights, or an injunction, the court may enforce the decree by:

- Detaining the judgment debtor in civil prison,
- Attaching their property,
- Or both.

Court's Inquiry: The court issues notice to the judgment debtor and examines whether the disobedience was willful and whether the debtor had an opportunity to comply. Upon finding willful disobedience, the court may (i) Order detention in civil prison, (ii) Attach property, (iii) Authorize the decree-holder or a third party to perform the act at the debtor's expense. If a prohibitory injunction is violated (e.g., illegal occupation), the court can restore possession to the decree-holder without

requiring a fresh suit. The court must be satisfied that the breach was intentional and not accidental. There is no time bar for executing decrees of perpetual injunction (proviso to Article 136, Limitation Act).

- **Binding on Legal Representatives:** Legal heirs of a deceased judgment debtor are bound by the injunction and can be subject to execution proceedings.

Important Judicial Pronouncements

- **Madhya Pradesh High Court:** Held that violation of a prohibitory injunction allows the court to evict the judgment debtor under Rule 32(5) without a fresh suit.
- **Karnataka High Court:** Affirmed that legal representatives of the judgment debtor are bound by the decree and can face execution.

Order XXI Rule 32(1) CPC is a powerful tool for decree-holders to ensure compliance with injunctions. By providing for detention, attachment, and restoration of possession, the law upholds the authority of court orders and protects the rights of parties. Understanding and utilizing these provisions is essential for effective legal remedies in civil matters.

III Execution of Decree for possession: Order 21 Rule 35 CPC deals with decree for immovable property:

1. Where a decree is for the delivery of any immovable property, 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;
2. Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree;
3. Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any person 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. This rule describes the mode of obtaining possession- For possession of vacant land the court can order the removal or demolition of the constructions made during the pendency of the suit.

It is manifest from order 21 Rule 35 CPC that decree holder can recover possession in execution of the decree for possession from the judgment debtor or from the person or persons who are bound by the decree. The transferee pendents lite is bound by the decree. In fact, order 21 Rule 102 of CPC provides that order 21 Rules 98 and 100 shall not apply to resistance or obstruction in execution of a decree for possession of immovable property by a person to whom the judgment debtor had transferred the property after the institution of the suit in which the decree passed or to the dispossession of any person.

The Executing Courts are at liberty to exercise its inherent powers while ordering the very delivery of possession of suit land, without there being insisting upon the very filing of separate suit for mandatory injunction so also without there being insisting upon the very impleadment of tenants of Judgment debtors as parties to the suit in the event of Judgment debtors have inducted those tenants in the suit land, with a view to avoid multiplicity of proceedings. Even, if for any reason, the judgment debtors do not co-operate in removing the movables from the existing structures, the Bailiff is authorized to make an "inventory" of those movables in the presence of two respectable panchas i.e., Panchayat Secretary and Village Servant and keep all those movables in the custody of such Panchayat Secretary, to be delivered to the decree holder as per the provisions of Rule 35 of order 21 CPC.

Bailiff is authorized with a power to remove or demolish any structures appearing in suit land or any tenant inducted in it by Judgment Debtors, the Bailiff is supposed to hand over vacant possession of schedule land to the Decree holder by following the provisions of Order 21 Rules 35(3), 97 & 101 C.P.C., by removing Judgment debtor or his tenant so as to enable the Decree holder to get the decree fruits for declaration of his title and for recovery of possession of the suit land, without there being relief of mandatory injunction.

It is held in **Gangadhar Vs. B. G. Rajalingam** (AIR 1966 Supreme Court 780) held that;

“The implicit power under Order 21 Rule 35 (3) C.P.C., which authorizes Executing Court to pass all the incidental, ancillary or necessary orders for the purpose of enforcement of the decree under execution for the relief of delivery of the possession of the suit land.”

In Donti Reddy Venkat Reddy Vs. Bhiavarapu Bhusi Reddy
and others – AIR 1971 AP 87 wherein it was held that;

“under order 21 Rule 35 CPC an order for delivery of possession can be executed by removing any person bound by the decree who refuses to vacate the property. The sub tenant as he claims through the tenant is bound by the order of eviction passed against him and can be evicted under the provisions of this Rule.

In M. V. S. Manikyala Rao Vs. M. Narasimhaswami and others – 1966 AIR (SC) 470, the Hon’ble Supreme court has held that;

“Now, it is well settled that the purchaser of a coparcener’s undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased. His right to possession “would date from the period when a specific allotment was made in his favour.”

36. Decree for delivery of immovable property when in occupancy of tenant

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Rule 35 and 36 of order XXI both are related to execution of decree for immovable property. The possession referred to in sub rules (1) and (3) of order XXI, rule 35 is actual possession, whereas the possession referred to in sub rule (2) and Rule 36 is formal or symbolical possession. Order 21 Rule 35 presupposes the existence of lawful decree.

In **Mohd. Ismail Vs. Ashiq Hussain AIR 1970** it was held that;

“all decrees for ejectment against a tenant is binding upon the tenant's licensee.”

In **I & M Ltd. Vs Pheroze AIR 1953 SC 73, 75** it was held that;

“where property has been leased out for raising construction and subletting shops and the landlord obtained eviction decree, but did not implead sub-tenants as parties in the suit and not opposed their impleadment, the sub tenants are not bound by the eviction decree as they are not rank trespasser, they cannot be evicted, the mode of execution of decree would be only symbolic possession.”

Objection to execution of decree:

The main hurdles to execute the decree passed by the civil court, is the objection raised by the judgment debtors, strangers or the persons claiming under or through the judgment debtors, during the execution of proceeding. Generally, the objectors have raised their objections under section 47 and order XXI Rule 97, 99, 101 of the CPC. Section 47 & 74 and Order XXI rules ,97 to 103,104 and 105 to 106 of the Civil Procedure Code, 1908.

Section 47 CPC:

The scope of Section 47 is very wide and should be construed liberally, so that, all questions capable of determination by the executing Court may be brought before it and the parties should not be driven to the worries and expenses of an independent suit unless the case clearly falls outside the purview of Section 47. The executing Court has been given exclusive jurisdiction and the Section as to all matters relating to the execution of decrees.

The provisions of Section 47 of the Court can be invoked only after a decree is passed. Under section 47 of the Court the purchaser at a sale in execution of a decree whether he is the decree holder or not, is unquestionably a party to the suit for the purpose of 47. Under section 47 CPC it would not be a bar and the Court can call in aid the contents of the pleadings as well as the judgment when there is ambiguity in the decree.

The scope of Section 47 has been explained by the Apex Court in **Umashankar vs. Sarabjeet - AIR 1996 SC 1005** wherein it was held that;

“that there is no conflict between Section 47 and Order 21 Rule 2. Even if there is any conflict, general provision contained in Sec. 47 must yield to the special provisions contained in Order 21 Rule 2 CPC.”

Another important case law is **Pradeep Mehra Vs. Harijivan J. Jethwa (Thr.LRs) and others in Civil Appeal No.6375 of 2023 (Arising out of SLP(C) No.8943 of 2021)** wherein it was held that;

“the Code of Civil Procedure, 1908; Section 47 read with Order XXI - Executing Court can only go into questions that are limited to the execution of decree and can never go behind the decree. As per Section 47, all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

Referring to this Section, the Court said: "A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree." A bench comprising Justices Sanjay Kishan Kaul and Sudhanshu Dhulia was hearing a civil appeal filed by a landlord, aged above 70 years, challenging an order of the High Court, which directed the Executing Court to take a fresh decision on the objections raised by the tenants (judgment-debtors) to the maintainability of the execution petition in the eviction suit. This Court then gave certain directions, which were to be mandatorily followed by all

Courts dealing with civil suits and execution proceedings that the court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant. 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.” It further directed all the High Courts to update their Rules relating to execution of decrees.

Order 21 Rule 95 CPC – Delivery of Property in occupancy of Judgment debtor:

Where the immovable property sold is in the occupancy of JDR or some person on his behalf on the application of purchaser or any person authorized by him to receive delivery, the Court shall order delivery to be made by removing any person who refuses to vacate the same.

Order 21 Rule 96 CPC – Delivery of property in occupancy of tenant:

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree, the Court shall order delivery of the vacant possession to be made;

1. By affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property;
2. When a decree is for the joint possession of immovable property, the same shall be delivered; --by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree;
3. Where possession of any building or enclosure is to be delivered and the person who is in possession, does not afford free access, then the Court; through its officers, may, after giving reasonable warning and facility to any

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. For possession of vacant land the court can order the removal or demolition of the constructions made during the pendency of the suit.

Order 21 Rule 97 CPC: Resistance or obstruction to possession of immovable property:

1. Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make application to the Court complaining of such resistance or obstruction;
2. Where any application is made under sub rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

If an application under order 21 Rule 97 is made, then its determination will be under Rule 101, 103. When any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and will be subject to same conditions as to an appeal or otherwise as if it were a decree.

Under Order XXI Rule 97 the decree holder or purchaser can file an application for removal of obstruction of any property sold in execution of decree by taking possession. If an application is made under sub-rule 1 of Rule 97 of Order XXI the Court has to adjudicate upon the application in accordance with the provisions contained therein. Order 21 Rule 97 CPC has to be read along with order 21 Rule 35 and Section 74. When there is an obstruction caused to execution of a decree is to be filed within thirty days thereof as per Article 129 of Limitation Act. No petition can be receiving beyond thirty days from the date of obstruction for removal of the same.

Though Order XXI Rule 97 empowers the Dhr or the purchaser to file application for removal of obstruction, in view of Sec.47 CPC even a third party can also file application under the above provision. In this regard the decision of Apex Court in the case of **Brahmadeo Choudhary vs. Rishikesh Prasad Jaswal & another** reported in AIR 1997 SC 856 is an authority.

Third person other than Judgment Debtor complained of its dispossession from suit property by decree holder or purchaser in execution of decree held can no longer be put back into possession merely on establishing there that it is that such Third party was in possession prior to being dispossessed from the suit property. All questions including right, title or interest in the property between the parties to the proceeding arising on the application under Rule 99 by such third person, are required to be adjudicated by the executing Court itself dealing with application. Only thereafter question of possession of suit property can be decided. No separate suit is required. Order of adjudicating Court shall be treated as decree.

The Executing Court can pass orders directing its Bailiff to execute the delivery warrant duly demolishing structures if any made by the judgment debtors and to deliver the vacant possession of suit land, on the application made by decree holder under order 21 Rule 97 CPC requesting the executing Court to give such specific directions to its Bailiff and handover vacant possession to him. The Court can execute the decree without tortious remedy by way of filing a separate suit for mandatory injunction or possession.

Section 74 CPC: Resistance to execution/Resistance to delivery of possession to decree- holder or purchaser

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

In Vegulla Satyanarayana Murthy and others Vs. Alluri Annapoornamma and others – 1992 (1) ALT 371 – wherein it was held that;

“Section 74 CPC can be invoked only in cases of resistance by the judgment debtor or some person on his behalf. But, one who purchased the property from the judgment debtor prior to the suit cannot be held as a person holding

possession on behalf of judgment debtor, so, the Court cannot pass any direction for dispossession of such person.”

Order 21 Rule 98 - Orders after adjudication:

1. Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub Rule (2);
 - make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
 - pass such other order as, in the circumstances of the case, it may deem fit;
2. Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

A plain reading of the aforesaid provisions of Order XXI makes it clear that no application for adjudication of the right, title and interest of an obstructor would lie before he is dispossessed in execution of a decree to which he is not a party. If however, he is dispossessed, he is given a remedy under Rule 99 of Order XXI CPC to apply for restoration of possession of the execution Court. The execution Court on such application is required to adjudicate the question of the right, title and interest of the dispossessed obstructor and appropriate orders under Rule 100 and such order of the execution Court is to be treated as a decree for all purposes including....second appeal”.

Har Vilas vs. Mahendranath (2011) 15 SCC 377 it was held that;

*“If any obstruction petition is made, then the Court has to formulate points after enquiry and dispose of such claim or obstruction.”***Order 21 Rule 99 CPC - Dispossession by decree-holder or purchaser:**

Rule 99 of order 21 provides an objector, other than the judgment debtor, to raise objection claiming any right in the property from which, he is directed to be dispossessed. When objections raised by the third party or superfluous, then the Court can refuse to entertain the same and such objections could summarily be tried. Where objections have some merits, then the Court could decide those objections after seeking reply and evidence of the parties.

In **Asgar Vs. Mohan Varma** – (2020) 16 SCC 230 it is held that;

“a stranger to a decree is entitle to agitate his/her grievance and claim for adjudication for an independent right, title and interest in the decretal property, even after being dispossessed in accordance with Order 21 Rule 99.”

Order 21 Rule 100 CPC – Order to be passed upon application complaining of dispossession

The executing Court is bound to consider the application by a person who is in possession not on behalf of the judgment-debtor and that application has to be treated as a resistance to the execution of the decree without an application by the decree-holder under Order 21, Rule 97, and without an inquiry thereon and a conclusion in accordance with Order 21, Rule 98, he cannot be dispossessed.

As soon as the third person resists or obstructs delivery of possession, the executing Court must stay its hands, until the decree-holder either satisfies it that such a person is bound by the decree, or makes an application under Order 21, Rule 97, complaining resistance or obstruction.

The third person can give intimation in writing to the executing Court of his intention to resist or obstruct. Such intimation may be given to the Court after or even before a warrant of possession is issued.

Order 21 Rule 101 CPC – Question to be determined: The executing Court has been conferred a specific power to decide all the questions arising between the parties including the question of the right title or interest before allowing the application for removal of obstruction.

When the decree for possession had become final and judgment debtor or a person interested has taken the law in his hands and made any construction on

the property pending suit, the decree holder is not bound by any such construction. It is not necessary to file a separate suit when the construction was made without permission of the Court, otherwise the decree becomes inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.

In **M. R. Brahmaiah Vs. Mohd. Ibrahim Khan** – 1978 (2) APLJ 294, it was held that;

“the enquiry under order 21 Rule 101 and 103 has to be decided as if it is a suit.”

Rule 102 CPC - Rules not applicable to transferee pendent lite.

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation:

In this rule, “transfer” includes a transfer by operation of law.

In **Vimala Amal Vs. C. Susheela** and others – AIR 1991 MAD 209 it was held that;

“subsequent purchaser purchasing property from the judgment debtor is person other than the judgment debtor, and therefore an application under order 21 Rule 102 was maintainable.”

A transferee of the subject matter of the decree can continue the execution petition if it is already filed by the transferor-decree holder or can file a fresh execution petition on the ground that he is such a transferee under section 146 CPC and there is nothing in order 21 Rule 16 which precludes him from carrying on the execution of the decree obtained by his transferor, the subject matter of which was subsequently transferred.

Rule 103 CPC - Orders to be treated as decrees:

Where any application has been adjudicated upon under rule 98 or rule 100 the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

Rule 104 CPC, Order under rule 101 or rule 103 to be subject to the result or pending suit:

Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

The execution of eviction orders under AP Land Grabbing (Prohibition) Act, 1982 can only be by the Revenue Divisional Officer and no execution petition need be even filed.

In **Mohammed Ayub Vs. Mohammed Abdul Lateef Khan** decided on 19-04-2006 wherein the Hon'ble High Court held that;

“execution of the order of the eviction passed under the AP Land Grabbing (Prohibition) Act, 1982 is the bounden duty of the Revenue Divisional officer and the decree holder cannot initiate execution proceedings.”

IV EXECUTION OF DECREE IN RESPECT OF RESTITUTION OF CONJUGAL RIGHTS

a) Scope of a Decree: When a husband or wife withdraws from the society of the other without any reasonable excuse, the aggrieved party may approach the Court for restitution of conjugal rights. This is one of the oldest matrimonial remedies in Indian law: a positive relief by which the Court directs the withdrawing spouse to return to and resume cohabitation with the petitioner. Its object is to preserve the marriage by bringing the parties back together rather than dissolving the tie.

What is Restitution of Conjugal Rights?

“Conjugal rights” are the rights that a husband and wife have to each other's society, comfort and companionship that flow from the marriage. When one spouse leaves the matrimonial home and withdraws from the company of the other without a

reasonable or lawful justification, the deserted spouse can ask the Court to order the resumption of that companionship. The remedy is preventive in nature — the law treats marriage as a relationship that should be saved where possible, and the decree is an attempt to give the relationship one more chance before the parties move towards separation or divorce.

The burden of proof works in two stages. The petitioner must first show that the respondent has withdrawn from his or her society. Once that is shown, the burden shifts to the respondent (the withdrawing spouse) to prove that there was a reasonable excuse for the withdrawal — for example, cruelty, a matrimonial offence, or the petitioner's own failure to discharge marital obligations.

Statutory Provisions: Section 9 Hindu Marriage Act and Section 22 Special Marriage Act

For Hindus, the remedy is contained in **Section 9 of the Hindu Marriage Act, 1955**. It provides that when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. An Explanation to the section makes it clear that where the question arises whether there has been a reasonable excuse for the withdrawal, the burden of proving reasonable excuse lies on the person who has withdrawn.

A corresponding provision exists for marriages solemnised or registered under the **Special Marriage Act, 1954 — Section 22** — which provides the same remedy in nearly identical terms for inter-faith and civil marriages. Similar remedies are available under other personal laws as well.

The constitutional validity of this remedy has been the subject of debate, but the Supreme Court upheld Section 9 in *Saroj Rani v. Sudarshan Kumar Chadha* (1984), holding that it serves a legitimate social purpose of preventing the breakup of marriage.

How a Restitution Decree is Executed: Order 21 Rule 32 CPC

A decree of restitution of conjugal rights cannot be executed by physically forcing the spouse who has withdrawn from the society of the other to live with the person who instituted the petition. The law does not compel cohabitation by bodily force. Instead, execution is governed by **Order 21 Rule 32 of the Code of Civil**

Procedure, 1908, which deals with decrees for specific performance, restitution of conjugal rights, and injunctions.

Under Order 21 Rule 32, where the party against whom the decree is passed has had an opportunity of obeying it and has wilfully failed to comply, the decree may be enforced by the attachment of his or her property. The decree can therefore be executed only by attachment of the properties of the judgment debtor, and if the disobedience continues, by sale of the attached property. In practice this makes the relief a weak one — experience has shown that the decree of restitution is often a “paper decree”, because no amount of attachment can genuinely restore a broken marital relationship if one spouse is determined to stay away.

The Husband’s Obligation: The Honble Bombay High Court held that husbands who do not maintain their wives cannot seek restitution of conjugal rights unless they can themselves perform their marital duties, the Bombay High Court has held. The Court observed: “In every petition of the husband whether he demands the company of the wife in a petition of restitution of conjugal rights or whether he demands his own freedom from his wife in a petition for divorce, the condition precedent for the grant of relief must be that he is himself ready and willing to discharge his marital obligations including duty to maintain his wife...the husband must, therefore, show his own offer to demonstrate how he wants to perform his part of the marriage contract”.

The Court made these observations while hearing a petition filed by a woman whose plea for alimony had been turned down by the family court. The principle that emerges is one of reciprocity: a spouse who comes to court seeking the company of the other must come with clean hands and must himself be ready and willing to perform his side of the marital bargain, including the duty of maintenance.

Restitution of Conjugal Rights vs Judicial Separation

It is important not to confuse restitution of conjugal rights with judicial separation, as the two are opposite in their aim. A decree of restitution seeks to bring the spouses together; a decree of judicial separation allows them to live apart lawfully.

A judicial separation is a legal way to stay separate from one’s spouse without obtaining a decree of divorce. It also helps a respondent in cases where it is necessary to defend a petition for restitution of conjugal rights. Either party may present a petition on any of the grounds available for divorce, praying instead for a

decree of judicial separation. The effect of such a decree is that it is no longer obligatory for the petitioner to cohabit with the respondent, although the marriage itself subsists.

A “judicially separated spouse” cannot be given a meaning that includes a spouse who is merely living separately and who has not obtained a decree for judicial separation. The distinction matters because several legal consequences — including the right to seek divorce after the lapse of the prescribed period — flow specifically from a formal decree.

Divorce after One Year of Non-Compliance

A failed restitution decree is not the end of the road; it can become a stepping stone to divorce. Where the decree of restitution of conjugal rights is not honoured for a period of more than one year after the date of the decree, that non-compliance itself becomes a ground for divorce. In other words, if there has been no restitution of conjugal rights between the parties for one year or more after the passing of a decree for restitution, either party may petition for divorce on that ground.

The same one-year rule applies after a decree of judicial separation. Where there has been no resumption of cohabitation between the parties to the marriage for a period of one year or more after the passing of a decree for judicial separation, it shall be a ground for divorce. These provisions recognise a practical reality: if a court-ordered attempt at reconciliation (whether through restitution or after judicial separation) fails to revive the marriage within a year, the law allows the parties to seek a clean end to the relationship through divorce.

V - EXECUTION PROCEEDINGS IN RESPECT OF A DECREE FOR SPECIFIC PERFORMANCE

V. (I) Specific Performance – Rule 32 General Provision and Rule 34 Execution of Document

A decree for specific performance is enforced, in the first instance, in the same manner as any other decree covered by Rule 32. If the judgment-debtor wilfully disobeys the decree, after being given an opportunity to comply, the Court may enforce it by detention, attachment of property, or both. If these methods are not effective or are not appropriate, Rule 32(5) provides another method. Under that provision, the required act may be done by the decree-holder or by a person appointed by the Court, and the cost of doing so can be recovered from the judgment-debtor.

A decree for specific performance cannot be executed in the same manner as a money decree. The executing Court must follow the procedure provided under Rule 32. The provision also works both ways, meaning that either party to the original suit, whether plaintiff or defendant, may seek execution of the decree.

Where the decree requires a document to be executed, such as a sale deed pursuant to a decree for specific performance of an agreement of sale, or requires the endorsement of a negotiable instrument, Rule 34 provides the procedure to be followed.

Order XXI, Rule 34(1) to (6) CPC – “Decree for execution of document, or endorsement of negotiable instrument”

(1) Where a decree is for execution of a document or endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to obey it, the decree-holder may prepare a draft of the document/endorsement in terms of the decree and deliver it to the Court.

(2) The Court shall cause the draft to be served on the judgment-debtor with notice requiring his objections, if any, within a fixed time.

(3) Where the judgment-debtor objects, his objections shall be stated in writing, and the Court shall approve or alter the draft as it thinks fit.

(4) The decree-holder shall then deliver a copy of the approved draft on the requisite stamp paper, and the Judge or an officer appointed for the purpose shall execute the document so delivered.

(5) Such execution, in the prescribed form (“C.D., Judge of the Court of ..., for A.B., in a suit by E.F. against A.B.”), has the same effect as execution by the party ordered to execute it.

(6) Where registration is required by law, the Court (or an officer authorised by it) shall cause the document to be registered accordingly; where registration is not compulsory but the decree-holder desires it, the Court may so order, with such directions as to expenses of registration as it thinks fit

The procedure under Rule 34 thus follows a clear, sequential course, set out below for ease of reference:

1. Decree-holder prepares draft document

2. Court serves draft on JDr with notice

3. JDr's objections (if any) considered

4. Court settles/approves draft

5. Court executes document

6. Registration, where required by law

An order passed under Rule 34 is appealable under Order XLIII Rule 1(q). However, a second appeal against such an order is barred by Section 104(2) CPC.

Where a document is executed by an officer of the Court under Rule 34, attestation is not required. Section 59 of the Transfer of Property Act also does not apply to such a document.

Case Law: Hungerford Investment Trust Ltd. (in voluntary liquidation) v. Haridas Mundhra, AIR 1972 SC 1826

Principle: A decree for specific performance is enforceable only in the manner prescribed by Order XXI Rule 32, and the executing Court retains

Continuing control over such a decree even after it is passed – including the power, under Section 28 of the Specific Relief Act, to extend time for payment or, on default, to rescind the contract and restore the parties to their pre-decree position.

The Supreme Court explained that the Specific Relief Act is not an exhaustive code, and that a Court which has passed a decree for specific performance does not become functus officio on doing so — it continues to exercise supervisory control over the working out of that decree, including the power to grant further time for payment of the consideration, and, in the event of continued default, to direct rescission of the underlying contract under Section 28 read with the decree itself.

It should also be kept in mind that Rule 30, which deals with execution of a money decree, does not apply to a decree for specific performance. A decree for specific performance is not a decree for payment of money and must be executed only in the manner provided under Rule 32 and, where execution of a document is required, under Rule 34. It cannot be treated as a money decree merely for the sake of convenience in execution.

Case Law: Pratibha Singh v. Shanti Devi Prasad, (2003) 2 SCC 330 : AIR 2003 SC 643

Principle: Defects in the description or identification of the immovable property in the plaint or decree – incomplete boundaries, missing survey/plot numbers – are curable by the executing Court under Section 47 and do not deprive the decree-holder of the fruits of the decree.

Where the trial Court had overlooked the requirements of Order VII Rule 3 and Order XX Rule 3 CPC, leaving the schedule of the suit property incompletely described, the Supreme Court held that pleadings must be read as a whole and construed liberally, not pedantically; a successful plaintiff should not be deprived of the fruits of his decree merely because of such a defect, which the executing Court is fully competent to cure while giving effect to the decree — a principle of direct relevance where, in working out a decree for specific performance, the draft sale deed under Rule 34 or the map annexed to the decree requires correction of boundaries or measurements.

Practical implications

- Execution petitions should be scrutinized promptly for maintainability and limitation.
- Where notice is required, it should be issued without unnecessary delay.
- Applications should be decided by identifying the precise statutory provision invoked and the exact relief sought.
- Repeated applications raising substantially identical objections should not be permitted to prolong execution.
- Where property is to be sold, the Court should determine the minimum extent necessary for satisfaction.
- Where obstruction is raised, Rules 97–103 should be invoked and adjudication completed instead of indefinitely reissuing warrants.
- Where the decree requires execution of a document, Rule 34 should be used rather than leaving the decree-holder dependent upon voluntary cooperation.
- Execution orders should clearly identify what has been satisfied and what remains executable.

Curtailment of Dishonest tactics of Judgment Debtor.

The Honble High Court of Andhra Pradesh in C. Dilip Kumar Vs. Y. Veera Raghavulu - 2024 (2) ALT 437 (S.B.) held that

Dishonest tactics of judgment debtor In the course of enquiry, if the executing Court gets a whiff of dishonest tactics by the judgment debtor to delay or default the execution, the executing Courts must be absolutely firm and ruthless in stopping such unhealthy practices This is absolutely essential because otherwise the rule of law would not only be set at naught, but it would virtually nullify and neutralize the decree of competent Courts.

GUIDELINES FOR EARLY DISPOSAL OF EXECUTION PETITIONS

The Honble High Court of Andhra Pradesh is pleased to guide the Trial Judiciary regularly and recently vide CIRCULAR No..08/2026 dated: 20.08.2026 issued Guidelines/suggestions for effective and expeditious disposal of the Execution Petitions. The said guide lines are framed by the Honble High Court for ensuring the implementation of the Decision of the Honble Apex Court for early disposal of Execution Petitions. The said guidelines are available in the website of Honble District Court and the said step wise guidelines enable every judicial officer for quick disposal and huge reduction pendency in Execution Proceedings.

CONCLUSION

Execution is the final bridge between judicial pronouncement and practical justice. The decree-holder approaches the civil Court not merely for a declaration that he is right, but for an enforceable determination of his right. The law of execution therefore has a constitutional and institutional significance beyond procedural technicality.

The Code of Civil Procedure, 1908 establishes a detailed and carefully balanced scheme. Sections 36 to 74 provide the statutory foundation, while Order XXI supplies the procedural machinery. Section 47 concentrates execution-related disputes before the executing Court. Section 51 identifies the recognized modes of enforcement. Section 60 protects specified property from attachment. Section 64 prevents defeat of attachment by private alienation. Order XXI Rules 30 onwards provide specialized mechanisms for different categories of decrees. Rules 97–103 provide a comprehensive mechanism for resistance and third-party claims. Section 144 ensures restitution when an adjudication is subsequently reversed or modified.

For money decrees, the Court must combine effective recovery with the safeguards governing arrest and attachment. For possession decrees, it must distinguish actual possession from symbolic possession and must adjudicate obstruction rather than bypassing statutory procedure. For injunctions, it must examine willful disobedience and use Rule 32 appropriately. For restitution of conjugal rights, it must confine enforcement to the statutory modes under Rules 32 and 33. For specific performance, it must ensure that refusal by the judgment-debtor to execute the required document does not defeat the decree, by using Rules 32(5) and 34 where appropriate.

The consistent message of the Supreme Court and the High Courts of Andhra Pradesh and Telangana is that an executing Court is neither powerless nor omnipotent. It is powerful enough to enforce the decree effectively, adjudicate statutory execution disputes and prevent obstruction; but it is not empowered to rewrite the decree, reopen the trial or grant a relief which was never awarded.

The contemporary emphasis, particularly after **Rahul S. Shah v. Jinendrakumar Gandhi**, is on timely and meaningful execution. The successful litigant should not be forced to undergo another prolonged round of litigation merely to obtain what the Court has already adjudicated. At the same time, procedural fairness cannot be sacrificed in the name of speed.

The ideal execution proceeding is therefore one in which the decree is identified accurately, the legal mode of enforcement is selected carefully, statutory safeguards are observed, genuine objections are adjudicated promptly, frivolous objections are discouraged, and the decree-holder ultimately obtains the fruits of the decree within a reasonable time. In that sense, effective execution is not merely the last chapter of a civil suit; it is the point at which the civil justice system proves that its judgment has practical meaning.

The above paper is prepared under the valuable and constant guidance of Honble Sri M.A.Somasekhar Garu, Honble Judge, POCSO Court, Kadapa.
