

WORKSHOP-III

SCHEDULED

ON

26.09.2026

Sl No	Sessions	Topics	Name of the Judicial officer	
			Paper Presentation by	Mentor for the topic by
1	2	3	4	5
1	SESSION – I & II	Interim Orders – importance, basis for granting or rejecting interim orders and importance of reasoned order.	Sri P. Sai Ram Special Judicial Magistrate of I Class, Mobile Court, Nellore	Sri K V N Pavan, VII Additional District Judge, Nellore
2	SESSION – III	Timeline for disposal of Execution Petitions – practical challenges	Sri Ch Madhu Babu Prl. Civil Judge (Junior Division), Gudur	Smt B Gayatri, Civil Judge (Senior Division), Atmakur
3	SESSION – IV	Execution Proceedings in respect of - a) Money Decree b) Injunction decree c) Decree for possession d) Decree for restitution of conjugal rights e) Decree for specific performance	Sri C.K.V. Satyakanth Kumar Civil Judge (Junior Division), Udayagiri	Sri I Karuna Kumar Prl Civil Judge (Senior Division), Nellore

SESSION I & II

INTERIM ORDERS- IMPORTANCE, BASIS FOR GRANTING OR
REJECTING INTERIM ORDERS AND IMPORTANCE OF REASONED
ORDER.

Paper Presented by: Sri. Sai Ram Potharlanka;
Civil Judge (Junior Division) cum Judicial Magistrate of First Class, Nellore.

**INTERIM ORDERS- IMPORTANCE, BASIS FOR GRANTING OR
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1) Meaning of “Interim Order”:

An “interim order” is an order passed by a Court during the pendency of a case, before its final adjudication, generally to preserve the rights or position of the parties or to regulate the proceedings until the final decision. In simple terms: Interim order = an order passed “in the meantime”, pending final decision of the case.

Source of the word “Interim”: The word “interim” is derived from the Latin word *interim*, meaning “in the meantime” or “meanwhile.” Thus, literally: Interim Order = an order made in the meantime, before the final decision.

Legal distinction:

Interim Order: Temporary order passed during the pendency of proceedings.

Final Order/Judgment: Final adjudication determining the rights and liabilities of the parties.

Example: In a property suit, if the Court directs the parties not to alienate the property until the suit is finally decided, such a direction is an interim order.

2) Chapter I of the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990. Rule 2(j): “Interlocutory application” means an application to the Court in any suit, appeal or proceeding already instituted in such Court, other than a proceeding for execution of a decree or order.

Example: Suppose O.S. No. 100/2026 is pending. The plaintiff files: I.A. No. 1/2026 under Order XXXIX Rules 1 & 2 CPC seeking temporary injunction. That application is an “Interlocutory Application” under Rule 2(j). If the Court passes an order, that “There shall be an interim injunction restraining the defendant from alienating the suit schedule property until further orders.” That is an interlocutory order, and it may also commonly be described as an interim order.

3) The Hon’ble High Court of Andhra Pradesh had decided in *Sri P. Udaya Bhaskara Reddy v. M/s. Sreepada Real Estates & Developers, CRP No.900 of 2024, decided on 11.09.2024* that when an order can be treated as a final order or an interlocutory order?

- 1. Facts:** The plaintiffs filed a suit for performance of a development agreement or recovery of Rs.1,71,36,372/-. Ex.P1 was marked in an

interlocutory application. The petitioner sought its de exhibition/rejection under Order XIII Rules 3 and 4 CPC for insufficient stamp duty. The Special Judge declined rejection and directed payment of stamp duty.

2. The petitioner contended that the impugned order conclusively decided admissibility of Ex.P1 and was therefore final, not interlocutory, making a challenge under Article 227 maintainable.

3. The respondents contended that the order concerned admissibility of Ex.P1 during the suit, did not terminate proceedings, and was interlocutory, subject to Section 8's bar.

4. The Hon'ble High Court held that the impugned order was interlocutory, not final. Though it decided admissibility of Ex.P1, it did not terminate the suit or finally determine the parties' substantive rights. The Hon'ble High Court applied the test whether acceptance of the objection would culminate the proceedings. Rejection or de-exhibition of Ex.P1 would not bring the suit to an end; the suit could proceed on other aspects. Therefore, the order was not a final judgment or decree. The Court observed that because the order arose from an interlocutory application does not determine its character; its nature and effect must alone be examined.

4) Interlocutory Orders where finally proceedings are terminated:

1. **Rejection of plaint — Order VII Rule 11 CPC:** An application under Order VII Rule 11 is interlocutory in form, but an order rejecting the plaint terminates the suit. Hence, it is treated as a decree under Section 2(2) CPC.

2. **Dismissal of suit as not maintainable:** If an application raises a preliminary objection to maintainability and the Court accepts it and terminates the entire suit, the order has a final effect.

3. **Application for withdrawal of suit with liberty refused:** If the plaintiff seeks withdrawal with liberty to institute a fresh suit and the Court finally determines the application in a manner that conclusively terminates the existing suit, the order may have final consequences.

4. **Application determining jurisdiction and terminating the proceeding:** If a Court decides a jurisdictional objection and, as a consequence, terminates the entire proceeding before it, the order is final in effect, though the objection arose through an interlocutory application.

5. **Application for dismissal on a preliminary statutory bar:** Where an application is made contending that the proceeding is barred by limitation, res judicata, statutory prohibition, etc., and the Court accepts the objection and finally disposes of the proceeding, the resulting order has final effect.

5) "Interim order" is primarily a descriptive legal expression, rather than the name of one specific statutory type of order. Different statutes and procedural provisions empower Courts to grant particular forms of

interim relief, such as injunctions, stays, status-quo orders, or interim custody.

6) **Section 94 in The Code of Civil Procedure, 1908**

1. **94. Supplemental proceedings.** - In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, -

- a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
- b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
- c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- e) make such other interlocutory orders as may appear to the Court to be just and convenient.

7) The provisions dealing with the supplemental and the incidental proceedings is contained under part VI and III Of the code of civil procedure. But such applications are moved under various provisions of the Code of civil procedure, 1908 which include applications for appointment of Commissioner, Temporary Injunctions, Receivers, payment into court, security for cause, and etc.

8) Sec 141 of CPC provides, that the procedure provided in the Code of Civil Procedure, in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction, therefore the procedure with regard to such applications is the same as that of original suit, in matters like recording of evidence, examining witnesses etc.

9) **For a trial Court, the most frequently dealt with in day-to-day civil cases commonly are:**

1. I.A. under Order XXXIX Rules 1 & 2 CPC: Temporary injunction.
2. I.A. under Order XXXIX Rule 3 CPC: Ad-interim/ex parte injunction.
3. I.A. under Order XXXIX Rule 4 CPC: Vacating/modifying injunction.
4. I.A. under Order XXXVIII Rule 5 CPC: Attachment before judgment/security.
5. I.A. under Order XL Rule 1 CPC: Appointment of receiver.
6. I.A. under Order XXVI CPC: Appointment of commissioner.
7. I.A. under Section 151 CPC: Inherent-power interim directions.

8. Stay applications: Particularly under Section 10 CPC, Order XLI Rule 5 CPC, etc., depending upon the proceeding.
- 10) **Importance of Interim Orders in Civil Proceedings:** An interim order is important because it enables the Court to protect the subject matter of litigation and the rights of the parties during the period between institution of the proceedings and final adjudication. The underlying purpose is to ensure that the eventual judgment does not become ineffective or incapable of implementation.
1. **Preservation of the subject matter:** The foremost purpose is to preserve the property or subject matter of the suit in its existing condition. For example, in a suit concerning immovable property, an injunction against alienation or alteration of the property prevents the dispute from becoming complicated by subsequent transactions.
 2. **Prevention of irreparable injury:** An interim order prevents a party from suffering an injury which cannot be adequately compensated by damages. This is particularly important where the injury is immediate and waiting until final judgment would defeat the very purpose of the suit.
 3. **Maintaining status quo:** The Court may direct parties to maintain status quo regarding possession, title-related conduct, physical condition of property, or other relevant circumstances. The object is not to decide the ultimate rights prematurely, but to preserve the existing position until those rights are finally adjudicated.
 4. **Preventing frustration of the final decree:** A party should not be permitted to take steps during the pendency of the proceedings which would defeat or render ineffective the decree that may ultimately be passed. For instance, attachment before judgment under Order XXXVIII Rule 5 CPC may be considered where the statutory requirements are satisfied.
 5. **Protection of the efficacy of judicial proceedings:** Interim orders ensure that the Court's eventual decision remains meaningful and capable of enforcement. Thus, interim jurisdiction is ancillary to the Court's primary function of finally adjudicating the dispute.
 6. **Balancing competing rights:** At the interlocutory stage, the Court may have to balance the interests of both parties. The Court does not ordinarily conduct a full trial at this stage; instead, it considers whether temporary protection is justified on the materials then available. For temporary injunction, the familiar considerations are: Prima facie case; Balance of convenience and Irreparable injury
 7. **Prevention of multiplicity and complications:** Appropriate interim directions can prevent subsequent transactions, interference, destruction of property, or other acts which may generate further litigation and complications.

8. Interim orders do not ordinarily decide the suit finally: An important principle is that an interim order is generally temporary and ancillary. The Court should ordinarily avoid finally determining the substantive rights of the parties at the interlocutory stage unless the law specifically permits such determination.

- 11) **Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719:** Preserve subject matter/status quo; prevent irreparable injury.
- 12) **Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC 545:** Interim injunction is preservative and protects efficacy of final relief.
- 13) **Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727:** Protective purpose and principles governing interim injunction.
- 14) **Deoraj v. State of Maharashtra, (2004) 4 SCC 697:** Exceptional interim relief may be granted where refusal would cause serious injustice.
- 15) **BASIS FOR GRANTING OR REJECTING INTERIM ORDERS:** The grant or refusal of an interim order is not a matter of right. It is an exercise of judicial discretion, guided by the nature of the relief sought, the statutory provision invoked, the facts of the case, and the need to protect the subject matter of the litigation until final adjudication.
- 16) **General principles for a temporary injunction under Order XXXIX Rules 1 and 2 CPC, the Court ordinarily considers the following three requirements:**
 - a) Prima facie case;
 - b) Balance of convenience;
 - c) Irreparable injury.

2. The Hon'ble Supreme Court in *Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719 held that satisfaction of a prima facie case alone is not sufficient. The Court must further examine whether refusal of injunction would cause irreparable injury and where the balance of convenience lies.

3. **Prima facie case:** The applicant must establish a substantial question requiring adjudication and show that the case is not frivolous. "Prima facie case" does not mean that the Court should finally decide the disputed rights at the interlocutory stage. The Court considers whether the material placed before it discloses a bona fide and arguable case requiring protection pending trial. Prima facie case is a threshold requirement; it is not by itself sufficient for grant of injunction.

4. **Balance of convenience:** The Court compares the relative hardship or inconvenience likely to be caused to both parties by granting or refusing the interim order. The question is: To whom would greater prejudice be caused by maintaining or altering the existing position until the suit is finally decided? If greater hardship would result to the defendant from granting the injunction than to the plaintiff from refusing it, the Court may decline the injunction.

5. Irreparable injury: The applicant must show that refusal of interim protection would cause an injury which cannot be adequately compensated by monetary damages or cannot be satisfactorily remedied after trial. The expression does not necessarily mean that the injury must be physically impossible to repair. It refers to injury for which an adequate remedy would not be available at the stage of final adjudication.

17) **Additional considerations**

- a) Conduct of the applicant: An equitable relief such as injunction is discretionary. Therefore, the applicant must approach the Court with clean hands and disclose material facts. Suppression of material facts, misleading statements, delay or inequitable conduct may justify refusal of interim relief. The Hon'ble Supreme Court has repeatedly emphasized that a party seeking equitable/interlocutory relief must make full and candid disclosure.
- b) Delay and acquiescence: Unexplained delay in seeking interim protection may indicate that the alleged urgency or apprehended injury is not genuine. However, delay by itself is not invariably fatal; its effect depends upon the facts and the nature of the injury.
- c) Availability of an alternative remedy: Where monetary compensation or another adequate remedy is available, particularly in cases involving purely commercial injury, the necessity for an injunction may be reduced.
- d) Preservation of status quo: The Court considers whether interim protection is necessary to preserve the subject matter of the litigation. The object is not necessarily to preserve the status quo in every case. Sometimes the existing position itself may be the result of an unlawful act and maintaining it may cause injustice.

18) **Whether the interim order would virtually grant the final relief:** Courts ordinarily exercise caution where the interim order would effectively grant the entire final relief sought in the suit. However, in exceptional cases, such relief may be granted where refusal of interim protection would result in irreparable or irreversible injustice.

a) ***Deoraj v. State of Maharashtra, (2004) 4 SCC 697***

- 1. Brief Facts: The appellant was the only validly nominated candidate for election as Chairman of a cooperative society. Although the election process was complete and no contest remained, the Returning Officer stopped the meeting for want of quorum. The appellant challenged this and sought interim relief directing declaration of the election result. The High Court refused interim relief.

2. The Hon'ble Supreme Court held that this was an exceptional case: only one valid nomination existed, the nomination had not been withdrawn, and nothing remained except the formal declaration of the result. Since the Chairman's one-year term was already substantially running out, refusal of interim relief would effectively deprive the appellant of the very relief sought in the main petition. The Supreme Court therefore granted the interim relief and directed declaration of the election result.
3. ***Principle: In rare and exceptional circumstances, an interim order may amount to granting the final relief itself when withholding it would render the ultimate relief meaningless and cause manifest injustice.***

19) **Circumstances warranting rejection:**

1. An interim order may ordinarily be refused where:
 - a) there is no prima facie case;
 - b) the applicant fails to establish irreparable injury;
 - c) the balance of convenience is against the applicant;
 - d) the applicant has suppressed material facts;
 - e) the applicant has approached the Court after unexplained delay/acquiescence;
 - f) the relief would cause disproportionate prejudice to the opposite party;
 - g) the applicant seeks to obtain the final relief indirectly through an interim order;
 - h) the order sought would effectively decide the suit without trial;
 - i) the applicant's conduct is inequitable;
 - j) the statutory requirements for the particular interim relief are not satisfied.
2. ***Cotton Corporation of India v. United Industrial Bank, (1983) 4 SCC 625***
 - a) Facts: The Bank filed a suit disputing its liability under certain usance bills and sought an interim injunction restraining the Cotton Corporation from presenting a winding-up petition against it.
 - b) Hon'ble Single Judge, Bombay High Court: Refused the interim injunction against the Cotton Corporation.
 - c) Hon'ble Division Bench, Bombay High Court: Allowed the appeal and granted an interim injunction restraining the Cotton

Corporation from presenting a winding-up petition against the Bank.

- d) Hon'ble Supreme Court: Allowed the appeal, set aside the Division Bench's order and restored the Single Judge's order. It held that the Court could not grant an interim injunction where the corresponding final injunction was barred by Section 41(b) of the Specific Relief Act.
- e) **Key principle: *An interim relief is ancillary to the final relief; if the final relief itself is legally impermissible, the same relief cannot ordinarily be granted at the interim stage.***

20) **Different interim orders have different tests**

1. The three-fold test of prima facie case, balance of convenience and irreparable injury is principally associated with temporary injunctions.
2. It should not mechanically be applied to every interlocutory application.

21) **Guidelines for Grant of Ex parte Interim Injunction:**

1. ***Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225.*** The Hon'ble Supreme Court held that an ex parte injunction should be granted only in exceptional circumstances. The following factors should guide the Court:
 - a) Irreparable or serious injury — whether serious or irreparable harm will be caused to the plaintiff if injunction is refused.
 - b) Comparative injustice — whether refusal would cause greater injustice than granting the injunction.
 - c) Timing — the Court must examine when the plaintiff first became aware of the complained act and whether the application was promptly filed.
 - d) Acquiescence or delay — if the plaintiff knowingly remained silent for some time, an ex parte injunction should ordinarily not be granted.
 - e) Utmost good faith — the applicant must approach the Court with complete candour and bona fides.
 - f) Limited duration — even when granted, an ex parte injunction should ordinarily operate only for a limited period.
 - g) Ordinary injunction principles — the Court must also consider prima facie case, balance of convenience and irreparable loss.
 - h) ***Particularly important guideline: The Court must record reasons while granting an ex parte injunction; this is not a mere formality. The applicant must demonstrate the gravity and urgency of the situation, and the Court must consider why the object of granting injunction itself would be defeated if notice is first given to the opposite party.***

- i) Ex parte injunction is an exceptional remedy and must be granted only after examining urgency, irreparable injury, comparative injustice, bona fides, delay, prima facie case and balance of convenience, with reasons recorded by the Court.
2. Guidelines from ***The Visakhapatnam Port Authority v. Kalyan Kumar, COMCA Nos.29 & 30 of 2025, decided on 22.01.2026.*** The Hon'ble High Court of Andhra Pradesh laid down the following important principles concerning ad-interim mandatory injunction, status quo ante orders:
- a) Status quo ante is different from status quo — “status quo” means the existing state of things at a given point of time, whereas status quo ante means restoring the state of things that existed before.
 - b) Status quo ante cannot be granted lightly — An order restoring status quo ante “are not to be passed lightly and certainly not for no reasons assigned in the order.”
 - c) Specific reasons are mandatory — An order granting status quo ante in the nature of an ad-interim mandatory injunction must contain justifiable reasons.
 - d) Interim mandatory injunction is exceptional — Such relief is “not a remedy that is easily granted” and can be granted only where the circumstances are clear and the prima facie material clearly justifies restoration of the earlier position.
 - e) Prima facie finding regarding alteration of status quo — Before directing restoration of status quo ante, the Court should have material justifying a prima facie finding that one party has altered the existing status quo and that the interests of justice require restoration.

An ad-interim mandatory injunction restoring status quo ante is an exceptional remedy; it should be granted only on clear prima facie material showing that the existing position was altered and that restoration is necessary in the interests of justice, with specific and justifiable reasons recorded in the order.

3. ***Shiv Kumar Chadha v. Municipal Corporation of Delhi, (1993) 3 SCC 161.*** The Hon'ble Supreme Court laid down the following guidelines for ex parte temporary injunctions under Order XXXIX Rule 3 CPC:
- a) Normal rule is notice — the opposite party should ordinarily be heard before granting an injunction.
 - b) Ex parte injunction is exceptional — it can be granted only where delay in granting the injunction would defeat its very object.
 - c) Reasons are mandatory — whenever the Court grants an injunction without notice, it must record reasons explaining why notice was dispensed with. This is not a mere formality.

- d) Consider all relevant factors — the Court must consider the circumstances justifying immediate relief and specifically explain how the object of injunction would be defeated by delay.
- e) **Ex parte order must be time-bound** — it should remain in force only up to a specified date, by which time the plaintiff must serve the defendant with the application, plaint and relevant documents.
- f) Two-week limit in the prescribed situation — the Court directed that such an ex parte injunction should operate only for two weeks, during which service must be completed; continuation thereafter requires hearing the opposite party.
- g) Prima facie case, balance of convenience and irreparable injury — even for temporary injunction, the Court must be satisfied about a strong prima facie case, balance of convenience and irreparable injury.
- h) Undertaking by plaintiff — while granting an ex parte injunction in the context of construction, the Court directed the plaintiff to undertake not to make further construction until disposal of the injunction application.

An ex parte injunction is an extraordinary remedy; the Court must record specific reasons showing why notice would defeat the object of injunction, make the order time-bound, ensure prompt service, and reconsider continuation after hearing the opposite party.

22) **Attachment before judgment: O.XXXVIII Rule 5 CPC; statutory conditions must be established.**

1. Guidelines laid down by Hon'ble Supreme Court in ***Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302***

- a) Prima facie case is essential — the Court must first be satisfied that the plaintiff has a prima facie case.
- b) Prima facie case alone is insufficient — the plaintiff must additionally establish that the defendant is attempting to remove or dispose of his property with the intention of obstructing or delaying execution of the decree.
- c) Both conditions must coexist — even if the defendant is removing or disposing of assets, attachment cannot be ordered if the plaintiff fails to establish a prima facie case.
- d) Drastic and extraordinary power — power under Order XXXVIII Rule 5 CPC must be exercised sparingly and strictly in accordance with the Rule, and not mechanically.

- e) Not a debt-security mechanism — Order XXXVIII Rule 5 cannot be used merely to convert an unsecured debt into a secured debt.
 - f) No coercive use — the provision cannot be used as a leverage to coerce the defendant into settling the suit claim.
 - g) Mere shifting is insufficient — merely shifting the business or machinery from one premises to another does not, by itself, justify attachment before judgment.
 - h) Bona fide and valid claim — the plaintiff must prima facie demonstrate that the claim is bona fide and valid.
 - i) Purpose of the provision — the object is to prevent the defendant from defeating the execution of a decree that may ultimately be passed, not to provide security for every claim.
2. Guidelines laid down in ***Premraj Mundra v. Md. Maneck Gazi, AIR 1951 Cal 156***. The Hon'ble High Court expressly deduced the following guiding principles under Order XXXVIII Rules 5 & 6 CPC:
- a) An order under Order 38, Rules 5 & 6, can only be issued, if circumstances exist as are stated therein.
 - b) Whether such circumstances exist is a question of fact that must be proved to the satisfaction of the Court.
 - c) The Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced.
 - d) The affidavits in support of the contentions of the applicant must not be vague, and must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, and the grounds for belief should be stated. A mere allegation that the defendant was selling off his properties is not sufficient; particulars must be stated.
 - e) A mere allegation that the defendant was selling off his properties is not sufficient. Particulars must be stated.
 - f) There is no rule that transactions before the suit cannot be taken into consideration, but the object of attachment before judgment must be to prevent future transfer or alienation.
 - g) Where only a small portion of the property belonging to the defendant is being disposed of, no inference can be drawn, in the absence of other circumstances, that the alienation is necessarily to defraud or delay the plaintiff's claim.

- h) The mere fact of transfer is not enough, since nobody can be prevented from dealing with his properties simply because a suit has been filed. There must be additional circumstances to show that the transfer is with an intention to delay or defeat the plaintiff's claim. The Court may look to the conduct of the parties immediately before the suit, examine the surrounding circumstances, and draw an inference as to whether the defendant is about to dispose of the property and, if so, with what intention. The Court is entitled to consider the nature of the claim and the defence put forward.
- i) The fact that the defendant is in insolvent circumstances or in acute financial embarrassment is a relevant circumstance, but not by itself sufficient.
- j) In the case of running businesses, the strictest caution is necessary, and the mere fact that a business has been closed, or that its turnover has diminished, is not enough.
- k) Where the defendant starts disposing of his properties one by one immediately upon receiving notice of the plaintiff's claim, and/or where he had transferred the major portion of his properties shortly before institution of the suit and was in an embarrassed financial condition, these may constitute grounds for legitimately inferring that the object of the defendant was to delay and defeat the plaintiff's claim.
- l) Mere removal of properties outside the jurisdiction is not enough; but where the defendant, with notice of the plaintiff's claim, suddenly begins removing his properties outside the jurisdiction without any other satisfactory reason, an adverse inference may be drawn. Where the removal is to a foreign country, the inference is greatly strengthened.
- m) The defendant in a suit is under no liability to take any special care in administering his affairs simply because a claim is pending against him. Mere neglect, or suffering execution by other creditors, is not sufficient reason for an order under Order 38 CPC.
- n) Sale of properties at a gross undervalue, or benami transfers, are always good indications of an intention to defeat the plaintiff's claim. The Court must, however, be very cautious about the evidence on these points and not rely on vague allegations.

23) **Receiver: O.XL Rule 1 CPC; necessity for preservation/protection of property and circumstances justifying receiver.**

1. T. Krishnaswamy Chetty v. C. Thangavelu Chetty & Ors., AIR 1955 Mad 430. The Hon'ble Court concerns the appointment of a Receiver under Order XL Rule 1 CPC. The Hon'ble Court summarised the governing principles as the "panch sadachar" (five principles) for appointment of a Receiver.

Panch Sadachar:

- a) Judicial discretion: Appointment of a Receiver is discretionary, but the discretion must be sound and judicial, exercised considering all circumstances and the rights of all parties, particularly where there is no other adequate remedy.
- b) Strong prima facie case: The plaintiff must establish a very good prima facie chance of succeeding in the suit.
- c) Great and imminent danger: The plaintiff must show an emergency or danger of loss requiring immediate action; mere possible or remote danger is insufficient.
- d) Protection of possession: A Receiver should not ordinarily be appointed if it would deprive the defendant of de facto possession, causing irreparable injury. Where the property is *in medio*—in the enjoyment of no one—the Court may more readily appoint a Receiver to preserve it.
- e) Clean hands: The applicant must approach the Court with clean hands; laches, delay, acquiescence or other blameworthy conduct may disentitle the applicant to this equitable relief.

Appointment of a Receiver is an extraordinary equitable remedy, to be exercised cautiously where there is a strong prima facie case, imminent danger to the property, no adequate alternative remedy, and the applicant approaches the Court without blameworthy conduct.

24) **Commission: O.XXVI CPC; necessity and purpose of investigation/evidence.**

1. From ***Padam Sen v. State of U.P., AIR 1961 SC 218***, the following practical guidelines emerge regarding appointment of a commissioner:
 - a) Power must have a legal source — the Court may appoint a Commissioner under Section 75 and Order XXVI CPC only for purposes authorised by the Code.
 - b) Section 151 is complementary, not unlimited — inherent power may be exercised where it is not inconsistent with the express provisions or legislative scheme of the CPC.

- c) No invasion of substantive rights — Section 151 cannot be used to confer a power affecting or interfering with the substantive rights of a litigant.
- d) No forcible seizure of property — the Court has no inherent power to direct a commissioner to forcibly seize a party's property or documents merely because they may be relevant to the case.
- e) Commission cannot be used to collect evidence — the Court cannot appoint a Commissioner merely to collect documentary evidence for one party or protect that party against the possibility that the opponent may subsequently fabricate evidence.
- f) Use prescribed CPC procedure for documents — where relevant documents are in the possession of the opposite party, the CPC provides procedures for requiring their production; the Court should use those procedures rather than resorting to an unauthorised commission.
- g) Jurisdictional limit — an order appointing a commissioner for a purpose beyond the Court's lawful power is without jurisdiction and void.

A Commission under Order XXVI CPC is a judicial aid for a lawful purpose contemplated by the CPC; it cannot be used as a device to collect evidence for a party, invade substantive rights, or confer upon the Court a power which it otherwise does not possess.

2. ***Haryana Waqf Board v. Shanti Sarup, (2008) 8 SCC 671.*** The Hon'ble Supreme Court held that where the real controversy in a suit relates to demarcation of disputed land, appointment of a Local Commissioner under Order XXVI Rule 9 CPC is appropriate for proper investigation of the dispute.

The practical guidelines emerging from the judgment are:

- a) Nature of dispute is the primary consideration — the Court must examine the pleadings and identify the actual controversy between the parties. Here, the dispute essentially concerned demarcation of the suit land.
- b) Local investigation is appropriate for demarcation — where the disputed property requires identification, measurement or demarcation, the Court should consider appointing a Local Commissioner under Order XXVI Rule 9 CPC.
- c) Pleadings must be considered — the Court should not reject an application for commission without examining the pleadings and the precise nature of the dispute.
- d) Commission can assist in determining encroachment — where the question is whether a party has encroached upon particular land, physical demarcation may be necessary to properly adjudicate the issue.

- e) Erroneous refusal can affect proper adjudication — in the present case, the Trial Court wrongly rejected the application for demarcation, and the High Court failed to consider whether a Local Commissioner ought to have been appointed.
- f) Appellate Court must examine the necessity — even when an application for commission was rejected by the Trial Court, the appellate Court should consider the application afresh where the nature of the dispute makes local investigation necessary.

Where the controversy in a suit concerns the identity, boundaries or demarcation of disputed immovable property, appointment of a Local Commissioner under Order XXVI Rule 9 CPC may be necessary for proper investigation and effective adjudication of the dispute.

3. *M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. M/s. Modi Transport Service, Civil Appeal No. 1973 of 2022, decided on 11.05.2022 (2022 LiveLaw (SC) 471)*

The Hon'ble Supreme Court Guidelines:

- a) Commissioner is a facilitator — The Court may appoint a commissioner or expert for a specific purpose to ascertain a fact, even where that fact is disputed.
- b) Purpose is to assist the Court — The Commissioner assists the Court in arriving at a fair and just decision and does not replace the Court's adjudicatory function.
- c) Order XXVI Rule 9 — wide power — The Court may appoint a commissioner for local investigation necessary or proper to elucidate a matter in dispute, ascertain market value, mesne profits, damages or annual net profits.
- d) Order XXVI Rule 11 — accounts — Where examination or adjustment of accounts is necessary, the Court may appoint a person to conduct such examination or adjustment and submit a report.
- e) Commissioner does not adjudicate — The commissioner performs essentially a ministerial/non-adjudicatory function and cannot decide the rights or issues in dispute.
- f) Report is only an opinion/factual report — The commissioner's report merely places before the Court the relevant facts, observations or opinion; it does not automatically become the Court's opinion.
- g) Court can vary or reject the report — The Court has power to confirm, vary or set aside the report, and, where necessary, issue a fresh commission.

- h) Parties can object — The parties are entitled to contest the commissioner's report, and the Court must decide whether the report deserves reliance after considering their objections.
- i) Report does not bind the Court — Even where the Court relies upon the report, it merely aids the Court and does not bind it.
- j) Judicial power cannot be delegated — Appointment of a commissioner does not amount to abdication or delegation of the Court's power to decide the issues. The Court alone adjudicates the rights of the parties.
- k) ***“Commissioners' reports are ‘non-adjudicatory in nature’, and the courts adjudicate upon the rights of the parties.”***

A commissioner is a facilitator appointed for a specific fact-finding purpose; his report assists but never binds the Court, and he cannot adjudicate the substantive rights or disputed issues of the parties.

4. *Bandi Samuel v. Medida Nageswara Rao, C.R.P. No.338 of 2016, decided on 04.11.2016 by the Hon’ble High Court of Judicature for state of Andhra Pradesh and state of Telangana.*

- a) No absolute bar in injunction suits: An Advocate commissioner can be appointed even in a suit for bare/permanent injunction; there is no rule prohibiting such appointment.
- b) Purpose is elucidation, not evidence collection: Order XXVI Rule 9 is intended to elucidate a matter in dispute, not to assist a party in collecting evidence which it can otherwise procure.
- c) Examine pleadings and real controversy: Before appointing a commissioner, the Court should examine the pleadings, relief claimed and the real controversy and determine whether local investigation is actually necessary.
- d) Physical facts may require local inspection: Where the relevant evidence is available only at the spot, such as the existence of a pathway, physical features, measurements or encroachment, a commissioner may be necessary because oral evidence may not provide an accurate practical determination.
- e) Possession cannot ordinarily be investigated: A commissioner should not be appointed merely to determine the factum of possession, as that would amount to fishing for information rather than elucidating the dispute.
- f) Preservation of existing physical features: Where there is a possibility that a party may alter or obliterate existing physical features, prompt appointment of a commissioner may be justified to preserve valuable evidence.

- g) Demarcation and measurement: Where the controversy concerns identification, location, boundaries, measurement or encroachment, local investigation and measurement/demarcation by a commissioner may be appropriate.
- h) Delay is not an absolute bar: Delay in filing the application, by itself, does not create an absolute bar to appointment; the Court must consider the necessity arising from the facts of the particular case.
- i) Commissioner may be appointed at an early stage: In disputes involving identification, location or measurement, early investigation may enable parties to know the Commissioner's report and prepare their evidence accordingly.
- j) Specific material should be shown: The applicant should place sufficient material regarding the measurements, dimensions, alleged encroachment or physical features so that the Court can determine whether local investigation is necessary.

The test is not whether the suit is one for injunction, but whether local investigation is necessary to elucidate the real controversy; where the disputed fact can be accurately ascertained only by inspection, measurement or demarcation at the spot, appointment of an Advocate Commissioner is permissible and may be necessary.

25) **Stay under Section 10: Identity of matters and statutory conditions under Section 10 CPC.:**

1. *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, (2005) 2 SCC 256

- a) Object of Section 10 CPC: It is intended to prevent two parallel trials by Courts of concurrent jurisdiction concerning the same matter and thereby avoid conflicting findings.
- b) Fundamental test: The test is whether, if the previous suit is finally decided, that decision would operate as res judicata in the subsequent suit.
- c) Identity of subject matter: Section 10 applies only when the whole subject matter in both suits is identical.

Section 10 CPC applies only when the matter directly and substantially in issue in a previously instituted suit is identical with that in the subsequent suit and a final decision in the former would operate as res judicata in the latter.

2. *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333, This case clarifies the test for “matter directly and substantially in issue” under Section 10 CPC.

- a) Facts: The plaintiffs filed three eviction suits concerning the same premises. The first two suits were filed in 2004 on grounds including non-user. During their pendency, the plaintiffs filed a third suit in 2010 alleging non-user for six months immediately preceding the third suit. The defendant sought stay of the third suit under Section 10 CPC.
 - b) Small Causes Court: Stayed the third suit, holding that the issue of non-user was directly and substantially identical in the earlier and subsequent suits.
 - c) Hon'ble Bombay High Court: Affirmed the Trial Court's order and held that the subsequent suit should be stayed under Section 10 CPC.
 - d) Hon'ble Supreme Court: Allowed the appeal and set aside both orders, holding that Section 10 was not attracted because the non-user alleged in the third suit related to a different period and therefore a different cause of action.
- Supreme Court Guidelines
- e) Section 10 is mandatory — the expression “no Court shall proceed with the trial” makes Section 10 mandatory when its statutory conditions are satisfied.
 - f) Purpose: To prevent parallel trials, contradictory judgments and multiplicity of proceedings.
 - g) Previous suit must be competent: The Court in which the earlier suit is pending must be competent to grant the relief claimed in the subsequent suit.
 - h) Whole subject matter must be identical: Section 10 does not apply merely because some issues are common. The entire subject matter in controversy must be the same.
 - i) Test of res judicata: Ask: If the earlier suit is finally decided, would that decision operate as res judicata in the subsequent suit?
 - j) Same relief test: If the plaintiff can still obtain the same relief in the subsequent suit even after dismissal of the earlier suit, the subsequent suit is not liable to be stayed.
 - k) Different cause of action: Even where the ground is similar, Section 10 does not apply if the causes of action are different—for example, non-user during different periods.

Section 10 CPC applies only when the entire subject matter and the matter directly and substantially in issue are identical, such that the decision in the earlier suit would operate as res judicata

in the subsequent suit; similarity of issues or relief alone is insufficient.

26) **IMPORTANCE OF A REASONED ORDER IN INTERIM / INTERLOCUTORY PROCEEDINGS.**

1. From judgment, ***Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496***, the Hon'ble Supreme Court expressly summarised the guidelines on reasoned/speaking orders in paragraph

51. The following are the guidelines:

- a) Recording reasons even in administrative decisions: "In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially."
- b) Quasi-judicial authorities must give reasons: "A quasi-judicial authority must record reasons in support of its conclusions."
- c) Reasons ensure justice appears to be done: "Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well."
- d) Reasons restrain arbitrariness: "Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power."
- e) Reasons show proper exercise of discretion: "Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations."
- f) Reasons are an essential part of decision-making: "Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies."
- g) Reasons facilitate judicial review: "Reasons facilitate the process of judicial review by superior Courts."
- h) Reasoned decisions are the life blood of judicial decision-making: "The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice."
- i) Relevant factors must be objectively considered: "All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered."

- j) Reasons ensure accountability and transparency: “Insistence on reason is a requirement for both judicial accountability and transparency.”
- k) Reasons must be cogent, clear and succinct: “Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘rubber-stamp reasons’ is not to be equated with a valid decision making process.”
- l) Transparency prevents abuse of judicial power: “Transparency is the sine qua non of restraint on abuse of judicial powers.”
- m) Reasons are part of fairness and due process: “Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights...”
- n) Reasons are essential for development of law: “In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of ‘Due Process’.”

“Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘rubber-stamp reasons’ is not to be equated with a valid decision making process.” And the Supreme Court ultimately set aside the cryptic order and remanded the matter for a reasoned order, directing the forum to decide in the light of these principles.

2. Why reasons are particularly important in interim orders: The requirement assumes greater significance in interim proceedings because interim jurisdiction frequently involves the exercise of discretion on incomplete material and sometimes without a full trial.

An interim order may:

- a) restrain a person from dealing with property;
- b) affect possession;
- c) attach property;
- d) appoint a receiver;
- e) stay proceedings;
- f) grant relief without hearing the opposite party;
- g) or substantially affect the practical position of the parties before final adjudication.

Therefore, the Court should make clear why such exceptional intervention is necessary. A cryptic order such as: “Heard. Perused the record. Interim injunction granted.” does not adequately demonstrate the judicial reasoning where the Court is exercising exceptional jurisdiction.

3. Guidelines from ***The Visakhapatnam Port Authority v. Kalyan Kumar, COMCA Nos.29 & 30 of 2025, decided on 22.01.2026***, The Hon'ble High Court of Andhra Pradesh laid down the following important principles concerning reasoned orders:
- a) Reasons are the backbone of every order — The Court emphatically held: “The reasons are the back bone of every order. The very life of law.”
 - b) Reasons must show application of mind — A judicial order must give reasons demonstrating why the relief was granted or refused; a non-speaking order or an order without justifiable reasons cannot be sustained.
 - c) Reasons need not always be lengthy — The requirement of reasons does not mean that every order must be elaborate. Even a short order must contain some reasoning, sufficient to explain the basis of the conclusion.
 - d) Reasons cannot be supplied subsequently — An order must stand or fall on the reasons contained in it. Fresh reasons cannot subsequently be supplied by affidavit or arguments to validate an otherwise defective order.
 - e) Court cannot speculate or reconstruct missing reasons — Where the impugned order contains no justifiable reasons, the appellate Court should not invent or speculate about reasons which might have been in the mind of the original Court.
 - f) Prima facie consideration is necessary — If the Court proposes to restore status quo ante because possession was allegedly changed contrary to an earlier order, it should at least consider the relevant factual and legal material prima facie and record an appropriate finding before granting such ad-interim relief.

An ad-interim mandatory injunction restoring status quo ante is an exceptional remedy; it should be granted only on clear prima facie material showing that the existing position was altered and that restoration is necessary in the interests of justice, with specific and justifiable reasons recorded in the order.

4. From the judgment ***Ille Ratna Prasad v. State of A.P., W.P. No.11598 of 2023, decided on 10.05.2023***, the following guidelines on reasoned orders emerge by the Hon'ble High Court of Andhra Pradesh:

Guidelines for a Reasoned Order:

- a) The authority must consider the reply/explanation objectively and judiciously. Merely stating that the reply is “not satisfactory” amounts to no consideration at all.
- b) Reasons must support the conclusion. The reasons are the links between the material considered and the conclusion reached. The expression “found not satisfactory” is a conclusion, not a reason.
- c) No cyclostyled/printed or rubber-stamp orders. The Court specifically directed that authorities should not pass orders mechanically in printed formats; the facts and reply must actually be considered.
- d) Reasons must be contained in the order itself. The validity of an order is to be judged from its contents and not from reasons subsequently supplied by affidavit.
- e) Reasons must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not a valid decision-making process.
- f) Reasons must demonstrate application of mind. The order should show that the relevant factors and material placed before the authority have been objectively considered.
- g) Reasons are particularly important where discretion is exercised. They demonstrate that discretion has been exercised on relevant grounds and not on extraneous considerations.
- h) Even interlocutory orders require reasons. Such orders need not be as elaborate as final judgments, but they “should be supported by reason howsoever briefly stated.”
- i) Every material contention should be dealt with. The order must disclose what weighed with the Court/authority in granting or refusing the relief claimed.
- j) Reasons facilitate appellate/judicial review. They enable the higher Court to understand the foundation of the conclusion without having to speculate about what was in the mind of the original decision-maker.
- k) Inadequate or unintelligible reasons may constitute an error of law. The judgment, relying on *S.N. Chandrashekar*, notes that reasons which are “inconsistent, unintelligible or substantially inadequate” may amount to an error of law.

- l) Natural justice requires reasons. Giving an opportunity of hearing and thereafter giving reasons for the conclusion are both components of a fair decision-making process.

“Orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement.” Therefore, even at the interlocutory stage, the Court need not write an elaborate judgment, but it must record brief, clear and intelligible reasons showing application of mind to the relevant facts, contentions and legal requirements, particularly where the order substantially affects the rights of the parties.

- 27) **Conclusion:** Interim orders are an essential part of civil adjudication because they protect the subject matter of litigation, prevent irreparable injury, preserve the efficacy of the final decree and maintain the balance between competing rights until final adjudication. At the same time, the power to grant interim relief is discretionary and must be exercised cautiously, having regard to the nature of the relief sought and the statutory requirements applicable to it. Whether the Court is considering an injunction, ex parte relief, attachment before judgment, appointment of a Receiver, Commission or stay of proceedings, the Court must ensure that the requirements governing that particular relief are strictly satisfied. Interim jurisdiction should not become a means of granting indirectly what cannot be granted finally or of prejudging the rights of the parties. Above all, every interim order, particularly an order granting exceptional or ex parte relief, must disclose clear, cogent and sufficient reasons demonstrating judicial application of mind. A reasoned interim order not only safeguards the rights of the parties but also promotes transparency, accountability, fairness and confidence in the administration of justice. Ultimately, the object of interim jurisdiction is not to decide the dispute prematurely, but to ensure that the final adjudication remains meaningful, effective and capable of being implemented.

SESSION III

PAPER PRESENTATION ON TIMELINE FOR DISPOSAL OF EXECUTION PETITIONS - PRACTICAL CHALLENGES

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TIMELINE FOR DISPOSAL OF EXECUTION PETITIONS - PRACTICAL CHALLENGES

PREFACE:

Timely justice is an essential component of constitutional governance. The Hon'ble supreme Court judicially interpreted Article 21 of the Constitution of India to include the right to speedy justice/trial.

- The Code of Civil Procedure, 1908 does not separately define the word 'execution'. The Latin maxim '***Executio est finis et fructus legis***' conveys that execution is the end and fruit of the law.
- It is often said that obtaining a decree is easier than realizing its fruits. In N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd., (2002) 1 SCC 662, the Hon'ble Supreme Court recognized the real and practical difficulties which a successful litigant may face after obtaining a decree for immovable property.
- After obtaining a decree, the decree-holder may face several obstacles before obtaining the actual relief. Execution should not become a fresh round of litigation or an endless hurdle for the successful party.

NEED OF THE HOUR AND GUIDING FACTORS:

Execution is not merely the final stage of litigation; it is the culmination of the justice delivered by the Court. In Periyammal (Dead) through LRs v. V. Rajamani, 2025 INSC 329, decided on 6 March 2025, the Hon'ble Supreme Court reiterated the direction that execution proceedings should be completed within six months. The judgment builds upon Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418, and Bhoj Raj Garg v. Goyal Education and Welfare Society, 2022 Live Law (SC) 976. These decisions emphasize that the efficacy of a decree lies in its prompt and meaningful execution.

In view of the large pendency of execution proceedings, Periyammal has emphatically underlined the need for time-bound and effective execution. A decree-holder who has already undergone prolonged litigation should not suffer further because of mechanical adjournments or avoidable procedural delay.

Courts must therefore adopt a proactive and purposive approach, streamline execution proceedings, control unnecessary adjournments and prevent abuse of process, while preserving every notice, hearing and enquiry required by law.

Objectives of the Study:

In *Rahul S. Shah v. Jinendra Kumar Gandhi*, decided on 22 April 2021, the Hon'ble Supreme Court examined how procedural provisions intended to prevent injustice were being misused to obstruct implementation of orders and decrees. The Court issued mandatory directions to trial courts and executing courts and also directed Judicial Academies to prepare manuals and provide continuing training to court personnel engaged in execution work.

A Court which grants a remedy must also ensure, through lawful execution, that the remedy reaches its logical conclusion. The confidence of bonafide litigants in civil justice depends not only upon the passing of decrees but also upon their effective enforcement.

Procedure is a vehicle of justice. Executing courts issue notices, writs and warrants, but their effective implementation often depends upon trained court staff. Intentional delay must be controlled, while lack of skill should be addressed through practical training. Court staff dealing with execution must be familiar with Sections 36 to 74 and Order XXI CPC and the applicable local rules.

Observation in Rahul S. Shah:

The Hon'ble Supreme Court observed that execution proceedings, which are intended to serve the cause of justice, were increasingly being misused as tools to obstruct justice.

A) Mandatory Directions in *Rahul S. Shah v. Jinendra Kumar Gandhi*

The Hon'ble supreme court making note of the large volume of execution petitions in the country, the delays in disposing such cases, and multiple issues that may arise due to claims by third parties laid down directions with respect to suits and execution proceedings so as to do justice to the litigants.

B) Role of the Trial Court Before Passing the Decree

1. 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.

2. 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 CPC. 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.

3. 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.

4. Before passing a decree for delivery of possession, the Court must ensure that the decree is unambiguous, contains a clear description of the property and takes note of its relevant status.

5. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose assets on oath to the extent of the potential liability. In an appropriate case, the Court may also require security under Section 151 CPC to ensure satisfaction of a decree.

C) Role of the Executing Court After Passing the Decree

1. In a money suit, the Court must resort to Order XXI Rule 11, where applicable, to ensure immediate execution of a decree for payment of money on an oral application.

2. A Court exercising jurisdiction under Section 47 or Order XXI C.P.C must not issue notice mechanically on a third-party application. It should refrain from entertaining an application already considered in the suit or raising an issue which could have been raised and decided during the suit if due diligence had been exercised.

3. Evidence in execution should be permitted only in exceptional and rare cases where the factual issue cannot fairly be decided by a more expeditious method, such as appointment of a Commissioner or consideration of electronic material, photographs or video supported by affidavits.

4. If an objection under Order XXI Rule 97 or Rule 99 is subsequently raised at the execution stage, the executing court must scrutinize and decide it in accordance with Rules 97 to 103, while taking note of the proceedings and opportunities afforded during the suit. Where an objection, resistance or claim is found to be frivolous or mala-fide, the Court may resort to Order XXI Rule 98(2), where applicable, and award compensatory costs under Section 35A CPC.

5. For the purpose of Section 60 CPC, the expression concerning property held in the name of the judgment-debtor or by another person in trust for him or on his behalf should be read liberally in the manner directed by the Hon'ble Supreme Court.

6. The executing court must dispose of execution proceedings within six months from the date of filing. The period may be extended only by recording reasons in writing for the delay.

7. Where execution is not possible without police assistance, the executing court may direct the concerned police station to assist the officials executing the decree. If an offence against a public servant discharging execution duties is brought to the Court's notice, it must be dealt with strictly in accordance with law.

Practical Challenges in Execution of Decrees:

A. Procedural Complexities

(i) Service of Notice: Order XXI Rule 22 does not require notice in every execution petition. Notice is required only in the situations specified in the Rule, subject to its proviso and recorded exceptions. Delay nevertheless occurs when a notice which is legally necessary cannot be served promptly.

(ii) Adjournments: Frequent adjournments are a major cause of delay, often attributed to:

- Non-service of processes.
- Lawyer's strikes or non-appearance.
- Requirement of reports from local commissioners or police.
- Heavy dockets of executing courts.

B. Obstacles from Non-Compliance by Judgment Debtors

(i) Fraudulent Transfers: Judgment debtors often transfer property to relatives (Benamidars) or create sham encumbrances to defeat execution.

(ii) Concealment of Assets: To avoid execution assets are fraudulently moved to deceive or prevent them from being legally distributed, seized, or claimed. This can include hiding money during a divorce, transferring assets to avoid creditors, or other actions intended to defraud.

(iii) Evasion of Service: Judgment debtors employ various tactics to evade the service of process with the goal to delay or entirely avoid execution of decree. The most direct method is physically hiding or moving to a new, undisclosed location, leaving no forwarding address and changing phone numbers to become untraceable.

(iv) Vexatious Objections: Repeated objections under Section 47 CPC, Order XXI Rule 58 or Rules 97 to 101, as applicable, may be filed primarily to delay execution.

C. Resource Limitations

(i) Difficulties of Process Servers: Process servers often face challenges. Such as difficulty in accessing secure locations, uncooperative recipients, and the need for meticulous documentation and adherence to specific local and state laws.

(ii) Shortage of staff: Inadequate staffing and procedural inefficiencies in the broader justice system contribute to case backlogs and delays, documents and moving cases forward can be slow. It affects timely service of notices, warrants, and delivery of possession.

D. Inter-Agency Coordination Issues

Agencies may need to conduct joint inspections, seizures, or other enforcement actions. This requires a shared understanding of roles, responsibilities, and operational procedures to avoid duplication of effort or conflicting actions.

(i) Police Assistance: Delays in police reports for attachment or assistance in taking possession.

(ii) Revenue and Registration Departments: Delay may occur in verification of property particulars, production of records or registration of a document executed through Court. Attachment and court sale, however, remain judicial execution steps and are not performed by the Registration Department.

(iii) Banking Sector: Delay may occur in obtaining bank-account particulars and implementing garnishee or attachment orders.

SALARIED PERSON AS JUDGMENT-DEBTOR

Attachment of salary is governed by Section 60 CPC read with Order XXI Rule 48. In an ordinary money decree, the first Rs.1,000 and two-thirds of the remainder are exempt from attachment. In execution of a maintenance decree, one-third of the salary is exempt. The duration and further exemption are governed by the provisos to Section 60(1)(i).

RECOVERY BY ATTACHMENT OF IMMOVABLE PROPERTY

Where movable property is insufficient, the decree-holder may seek attachment of the judgment-debtor's immovable property under Order XXI Rule 54, provided that the property is legally attachable under Section 60 CPC. A single residential house is not universally exempt; Section 60(1)(ccc) applies only to the specified classes and is subject to the statutory language and applicable amendments. Property genuinely belonging to a third person cannot be attached merely because of relationship with the judgment-debtor. A prior mortgage or secured charge must be taken into account while determining the manner and effect of sale.

CHALLENGES IN EXECUTING MONEY DECREES:

- ◆ It is a well-known adage in legal circles that obtaining a money decree from an Indian court is often easier than actually executing it and recovering the awarded sum from the Judgment Debtor. The judgment-debtor can ultimately prevail by failing to pay the decreed amount, leaving the Decree Holder unable to recover the money he is legally entitled to.
- ◆ In a significant number of cases, even after successfully obtaining a money decree, the Decree Holder faces substantial challenges in the execution proceedings, resulting in the decree remaining largely on paper. The process of executing a decree is often prolonged, expensive, and exhausting, leading many Decree Holders to abandon their efforts out of frustration. Execution of a money decree is an arduous task, requiring great effort and perseverance on the part of the Decree Holder to recover the sum he is entitled to as per the court's judgment. The executing court,

upon receiving a report of non-satisfaction of the decree, issues warrants for attachment of the judgment-debtor's movable properties. A court-appointed bailiff then visits the judgment-debtor's premises to attach the movable assets as per the list provided by the decree-holder, if they are found at the given address. If the decree-holder manages to obtain the judgment-debtor's bank account details, the executing court may issue warrants for attachment of the balance funds in the account.

WHEN THE JUDGMENT-DEBTOR MOVES OUTSIDE THE JURISDICTION

When the judgment-debtor is an individual, they may relocate to a different place after the decree is passed, making it challenging for the decree-holder trace their whereabouts. Even if some movable assets are found at the judgment-debtor's premises, they are often of little value, being mostly household items. If the judgment-debtor moves outside the jurisdiction of the executing court or to another state, the decree-holder faces even greater difficulty in recovering the money, as the decree must then be transferred to the court having jurisdiction over the judgment-debtor new place of residence or business.

E. Impact of Legal Challenges and Appeals

(i) Appeals and Challenges to Execution Orders: Filing an appeal does not by itself stay execution under Order XLI Rule 5(1) CPC. Further, not every order passed in execution is appealable under Section 96. Orders deciding questions under Section 47 which amount to decrees, and adjudicatory orders under Rules 58, 98 and 100 read with Rule 103, are appealable as decrees. Other orders are governed by the remedy specifically provided by law.

(ii) Revisionary Powers: The revisional power of the High Court under Section 115 of the Civil Procedure Code (CPC) allows it to call for the record of a subordinate court case where no appeal lies to correct errors in jurisdiction, such as when the lower court has exercised a jurisdiction not vested in it, failed to exercise a vested jurisdiction, or acted illegally or with material irregularity.

(iii) Stay Orders: Stay of execution pending appeal is principally governed by Order XLI Rule 5 CPC. Order XXI Rules 26 and 29 apply in their respective situations. The executing court must read the operative portion carefully and continue with steps which are not prohibited by a limited stay.

Suggestions and Strategies for Timely Execution of Decrees:

A. True Ascertainment of Property in many execution cases, proceedings are delayed due to third party objections. In order to minimize the occasion for such objections, true and complete ascertainment of property must be undergone during the trial itself. In this regard directions given by Hon'ble Supreme Court in the matter of Rahul S. Shah Vs. Jinendra Kumar Gandhi and others 2021 SCC On-line SC 341 shall be followed.

B. Time Bound Actions

(i) Control of Adjournments: Unnecessary adjournments must be refused and reasons should be recorded whenever an adjournment is granted. Required notices, hearings and enquiries must be completed through short and specific schedules.

(ii) Time-Bound Disposal of Objections under Section 47: The Court should first identify whether the objection genuinely concerns execution, discharge or satisfaction of the decree. Re-litigation of matters already decided in the suit must be prevented, and a case-specific schedule should be fixed for pleadings, necessary evidence and arguments.

- Limit the scope of objections to concerning the execution, discharge, or satisfaction of the decree itself preventing the re litigation of issues already decided in the original suit.

(iii) Simplified Asset Disclosure Mechanisms

- Encourage courts to utilize powers under Order XXI, Rule 41 (examination as to assets) more effectively.
- Judgment-debtors may be directed to file an affidavit of assets under Order XXI Rule 41(2) when its statutory conditions are satisfied. The order should identify the information required and fix a definite date for compliance.

C. Technological Integration

i) Leveraging the National Judicial Data Grid (NJDG)

- Use NJDG for monitoring execution caseloads, identifying bottlenecks, and tracking disposal rates.

ii) E-Registration and Property Search

- Enhance integration between courts and the e-Registration system for faster verification of property ownership and encumbrances.

iii) Digital Banking Integration

- Streamline processes for issuing garnishee orders and attachment notices to banks, possibly through standardized digital formats.

iv) E-Auction Mandate

- E-auction may be used where it is authorized by the applicable High Court Rules, Civil Rules of Practice or binding administrative directions. It should not be treated as a universal default without reference to the governing rules.

- In modern age, use of technology may be very helpful in execution works. If proceedings of delivery of possession as well as attachment are video-graphed, then violent person will not come on the spot for causing illegal hindrance during execution works. Thus, video-graphs and photographs may be helpful not only in execution but may be helpful for executing court also.

D. Enhanced Judicial Powers and Discretionary Tools

(i) Effective Use of Arrest and Detention (Order XXI, Rules 37-40)

Civil arrest is an exceptional coercive mode. Before ordering detention, the Court must comply with the proviso to Section 51 and Order XXI Rules 37 to 40, give the judgment-debtor the required opportunity and record the relevant statutory findings. Mere non-payment is not sufficient.

- Decree holder and Advocates should file the execution petition as soon as possible with all the relevant documents.
- Ensure detailed recording of evidence regarding the debtor's means before ordering detention to withstand legal scrutiny.

(ii) Attachment of Property (Order XXI, Rules 54-66)

Attachment should be ordered only after the Court verifies that the property is legally attachable, correctly identified and covered by the selected mode of execution.

- Encourage decree holders to provide specific information about the judgment debtor's assets.
- Ensure property is adequately valued before auction. Utilize court-appointed valuers if necessary.

(iii) Appointment of Receivers (Section 51(d))

- The appointment of a receiver under the Civil Procedure Code (CPC) is governed by Order XL, which allows the court to appoint an impartial person to manage and preserve disputed property during litigation. This is a discretionary power of the court, typically exercised to prevent manifest injury, waste, or damage to the property until the suit is decided.
- Appoint receivers for properties that are yielding income (e.g., rental properties, businesses) to collect rent/profits towards decree satisfaction, especially when immediate sale is not feasible or desirable.¹⁶

E. Inter-Agency Coordination Strategies in India

(i) Enhance inter-agency cooperation

Courts can specifically order the assistance of various enforcing agencies (like police or revenue officials) if an imminent threat of violation exists or for smooth, timely completion of the execution.

- If there is a apprehension of resistance or obstruction, request police assistance in the execution application to ensure smooth enforcement of order.

(ii) Defining Roles and Responsibilities

- Clear delineation of roles ensures each agency understands its specific tasks within the execution process. This prevents duplication of effort or key tasks being neglected.

(iii) Information Sharing

- Effective coordination relies on the seamless and secure exchange of relevant information between agencies. This might involve shared platforms or regular communication channels, within legal and privacy guidelines, to keep all parties on the same page.

(iv) Joint Planning and Strategy

- For complex execution proceedings (e.g. large-scale asset recovery or property transfers), joint planning meetings and strategy development ensure a cohesive approach. This involves input from all involved agencies early in the process.

(v) Designated Coordination Mechanisms

- Establishing specific inter-agency groups or a 'coordinating agency' can provide a formal platform for regular meetings, dispute resolution, and overall management of the execution process.

(vi) Resource Pooling

- Agencies may share resources, expertise, and support to ensure adequate capacity for the execution, especially in cases where a single agency may have limitations.

(vii) Standard Operating Procedures

- Develop and implement SOPs for coordination between executing courts, District Police, Revenue authorities, and Registration offices. This should detail timelines for reports, assistance, and document filing.

(viii) Empowered Liaison Officers

- Assign specific officers within courts and respective agencies to act as nodal points for execution-related communication.

(ix) Utilizing Technology for Information Exchange

- Explore secure portals for agencies to share information relevant to execution proceedings, such as property ownership records, FIR details (if relevant), or solvency certificates.

F. Incentives and Deterrents

(i) Robust Application of Contempt Powers

For willful disobedience of a final injunction decree, the proper execution provision is Order XXI Rule 32. Order XXXIX Rule 2A relates to breach of an interim injunction. Resistance to delivery of possession is dealt with under Order XXI Rules 97 to 101. Contempt proceedings are not automatic and may be invoked only where their legal requirements are satisfied.

(ii) Imposition of Costs

- Consistently impose compensatory costs on parties filing frivolous objections or causing inordinate delays.

(iii) Disincentivizing Benami Transactions

Courts must be vigilant regarding alleged benami or sham transactions; however, property standing in the name of a third person cannot be attached merely on suspicion. Its liability must be established under Section 60 CPC and any claim must be adjudicated under the applicable provisions of Order XXI.

G. Capacity Building for Indian Judicial Officers

(i) Targeted Training Programs

- Conduct workshops at Judicial Academies.
- Updates in CPC and relevant case law on execution.
- Practical aspects of conducting auctions and managing attachments.
- Effective use of technology (e-Courts, e-filing, e-auctions).
- Inter-agency coordination protocols.

(ii) Explore Alternative

Consider out-of-court settlements or alternative dispute resolution (ADR) if it can lead to a faster, mutually agreeable resolution, provided the terms are legally documented and certified by the court.

(iii) Best Practice Sharing

- Encourage High Courts to facilitate sessions where experienced judges share successful strategies for execution.

(iv) Resource Materials

- Develop and circulate practical guides and checklists for judicial officers on various aspects of decree enforcement.
- A duty should be cast upon the Nazir to submit a monthly report as to how many decrees or orders have been assigned to him for execution by different executing courts and what steps have been taken by him. The report must be submitted timely to the Judge-in-Charge/the Hon'ble PDJ/the executing court concerned.

(v) Monitor and Follow-Up

- Actively monitor the status of the execution petition and advocate for its expeditious disposal. Remind the court of the Supreme Court guidelines on time limits for execution proceedings.

LANDMARK JUDGMENTS ON EXECUTION

1. In *Pratibha Singh v. Shanti Devi*, (2003) 2 SCC 330, the Hon'ble Supreme Court held that an accidental defect in the identification of decretal property may, depending upon the facts, be corrected under Section 152 CPC by the Court which passed the decree or determined as an execution question under Section 47 CPC.

2. The recent Andhra Pradesh High Court judgment in **Potturi Venkata Rama Vanaja v. M/s. Sundaram Finance Ltd. & Ors., CRP No.808 of 2026, decided on 23 April 2026**, addresses a practical issue commonly arising in finance-company execution proceedings.

The judgment debtor/guarantor argued that the decree-holder should first exhaust the execution remedy against the principal borrower before proceeding against the guarantor.

The Division Bench rejected that contention. The Court held that where the award/decreed is also against the guarantor, the mere pendency of an execution petition against the principal borrower does not legally bar execution against the guarantor. The Court observed that pendency of one execution petition against one judgment debtor does not prevent the decree-holder from instituting execution against another judgment debtor.

This decision is practically important because objections of this nature can otherwise result in unnecessary preliminary litigation before the actual execution begins.

3. Re-Execution of Arbitral award which is held to be not executable: The Andhra Pradesh High Court considered this issue in M/s. Real Fab India Pvt. Ltd. v. M/s. Rashtriya Ispat Nigam Ltd., CRP No.2936 of 2024, decided on 21 March 2025.

The Court considered an earlier execution proceeding relating to an arbitral award. An earlier order had held that the award was not executable and that order had attained finality. The petitioner subsequently sought to pursue execution again. The High Court held that the earlier adjudication could not simply be ignored and that the subsequent attempt to execute the same award was not maintainable in the circumstances.

The decision illustrates the importance of **finality in execution proceedings**.

If an executing Court finally determines an issue relating to executability and that determination becomes final, the same issue cannot ordinarily be repeatedly raised in successive execution proceedings.

This is particularly relevant to the workshop theme because successive execution proceedings themselves can become a source of delay.

4. The decree-holder can also be responsible for delay

An important aspect which deserves greater attention is that execution delay cannot always be attributed to the judgment debtor.

The recent Hon'ble Apex Court decision in **M/s. Uttam Rice Mill, Dhamtari v. M/s. Ashok Construction Company**, Civil Appeal No.3787 of 2025, decided on 17 March 2025, provides a useful illustration. The execution proceedings had been allowed to remain dormant because of the decree-holder's failure to comply with procedural directions, including requirements relating to process fee and furnishing particulars of property. The Hon'ble Apex Court emphasized the requirement of diligence on the part of the litigant seeking execution.

The case demonstrates an important practical proposition:

A decree-holder cannot remain inactive and thereafter attribute the entire delay to the executing Court or judgment debtor.

5. The significance of Nandi Infrastructure for appellate/supervisory challenges

The decision in **Nandi Infrastructure Corridor Enterprises Ltd. v. B. Gurappa Naidu, 2026 INSC 434**, is especially useful when discussing how execution orders should be challenged.

For execution proceedings, this principle has an important institutional consequence. If every interlocutory order passed by an executing Court becomes subject to routine supervisory challenge, the execution process may be effectively suspended for considerable periods.

Therefore, **efficient execution requires not only disciplined executing Courts but also disciplined appellate and supervisory intervention.**

6. Scope of mechanism Order XXI Rules 97, 98, 99 and 101 CPC:

The recent Hon'ble Apex Court judgment in **Challani Ginning and Pressing Factory v. Kamal, 2026 INSC 426**, is particularly important in this context. The case involved prolonged execution proceedings and objections concerning the property. The Hon'ble Apex Court dealt with the scope of the mechanism under **Order XXI Rules 97, 98, 99 and 101 CPC** and emphasized that these provisions constitute a complete framework for adjudicating execution-related claims.

The practical significance of the decision is that the executing Court must not permit an objector to indefinitely postpone execution merely by raising a claim. At the same time, where a genuine issue of right, title or interest arises, it must be properly adjudicated in accordance with the statutory mechanism.

Therefore, the appropriate judicial approach may be described as:

“Protect genuine third-party rights, but do not permit the execution process to be converted into an instrument of obstruction.”

EXECUTION OF DECREES FOR POSSESSION OF IMMOVABLE PROPERTY: CHALLENGES AND SOLUTIONS

1) Property occupied by a tenant and structures raised during litigation: When the property is occupied by a person lawfully entitled to remain and not bound by the decree, Order XXI Rule 36 contemplates symbolic delivery. A tenant or transferee inducted pendente lite may, however, be bound by the decree and by Rule 102. Where resistance or an independent right is asserted, the question must be adjudicated under Rules 97 to 103. In *B. Gangadhar v. B.G. Rajalingam*, AIR 1996 SC 780, the Hon'ble Supreme Court recognized the executing court's incidental power to remove a superstructure raised pendente lite where necessary for effective delivery of possession.

➔ In *Dongala Venkaiah v. Dongala Raji Reddy*, 2007 (5) ALD 716, the High Court of Andhra Pradesh considered the executing court's power to direct removal of structures for effective delivery of possession under Order XXI Rules 35, 97 and 101, having regard to the decree and the facts of the case.

The executing court may pass incidental orders necessary to make a possession decree effective. It must nevertheless examine whether the person in occupation is bound by the decree and whether any independent right requires adjudication under Rules 97 to 103.

2) Objections under Section 47 and Order XXI Rules 97, 99, and 101 of the Civil Procedure Code (CPC). One of the primary obstacles in enforcing a decree issued by a civil court is the objections raised during execution proceedings—these objections may come from the judgment-debtor, third parties, or those claiming rights through or under the judgment-debtor. Typically, such objections are filed under Section 47 and Order XXI Rules 97, 99, and 101 of the Civil Procedure Code (CPC). If the obstruction is by someone who is bound by the decree, the decree-holder may seek redress under Rule 35(3). However, if a third party creates the obstruction, the appropriate procedure is to apply under Rule 97.

Section 47 CPC specifically deals with questions that must be addressed by the executing court. The current version includes two sub-sections and two explanations:

Any issues arising between the original parties to the suit (or their legal successors) that relate to execution, satisfaction, or discharge of the decree are to be decided by the court executing the decree itself—not by a separate civil suit. If the question concerns whether someone qualifies as a representative of a party, the executing court must determine it for the purposes of this section.

Explanation I clarifies that "parties to the suit" includes both the plaintiff (even if the suit is dismissed) and the defendant (even if the decree goes against them).

Explanation II states:

- (a) A purchaser of the decree is considered a party to the original suit.
- (b) Any matter concerning delivery of possession to such a purchaser or their representative is treated as related to the execution, discharge, or satisfaction of the decree.

An executing court ordinarily cannot go behind the decree or reassess its correctness. An objection may nevertheless be raised where the decree is a nullity for want of inherent jurisdiction. The governing principle is stated in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*, AIR 1970 SC 1475.

Section 60 must be applied in accordance with its text and the directions in *Rahul S. Shah* when property is alleged to be held in trust for or on behalf of the judgment-debtor.

- (A) Decrees passed against a deceased individual;
- (B) Decrees that are vague or ambiguous;

(C) Decrees passed without jurisdiction.

Multiple court decisions have confirmed that a judgment-debtor may argue that a decree is void under this section, but such a claim must relate to a jurisdictional defect rendering the decree a nullity. The executing court is not empowered to review the correctness or legality of the decree unless it is inherently void. The term "representative" used in Section 47 is broader than "legal representative." It includes anyone who steps into the shoes of a party, handles their property, or to whom rights or obligations have been assigned, transferred, or devolved. Thus, heirs, executors, administrators, and transferees all qualify as representatives under this section. Additionally, any questions about handing over possession to a purchaser or their representative fall within the scope of execution, discharge, or satisfaction of the decree. Under Order XXI Rule 16 CPC, a decree can be executed by someone who has legally acquired it—making such transferees “representatives” of the decree-holder under Section 47. Therefore, the executing court is empowered to adjudicate all issues concerning the execution, discharge, or satisfaction of the decree between the original parties and their representatives but it cannot go beyond this mandate. In *Awadh Bihari Tewari Vs Narain Tewari* - AIR 1961 Pat 427 at pages 433–434, it was held:

“The validity of the decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have jurisdiction of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time of the suit had been instituted or decree passed, or some other grounds which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject - matter of the suit or over the parties to it.”

Similarly, in *Vasudev Dhanjibhai Modi Vs. Rajabhat Abdul Rahman* AIR 1970 SC 1475, the Supreme Court observed :

“...when a decree is nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who is dead at the date of decree is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again when a decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears in the face of the record. When the matter of jurisdiction not appear on the face of the record and requires examination of the question raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.”

In *Haryana Vidyut Prasaran Nigam Ltd. Vs. Gulshan Lal* (2009) 13 SCC 354, it was held that:

“An objection under Section 47 of the Code of Civil Procedure when filed by the judgment debtor it is incumbent upon him to show that the decree was ex-facio nullity. For the said purpose, the court is precluded from making in depth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint, but also the defense set up by the judgment debtor. As the judgment of the trial court could have not been reopened, the correctness thereof could not have been put in question.”

Further, in *Pratique Singh Vs. Shanti Devi* (2003) 2 SCC 330, the Hon'ble Supreme Court, while explaining the scope of Section 47, held:

“...when the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order VII Rule 3, in Order XX Rule 3 is capable of being cured. After, all a successful plaintiff should not be deprived of the fruits of the decree. Resort can be had to Section 152 or Section 47 of the Code of Civil Procedure depending on the facts and circumstances of each case which of two provision be more appropriate, just and convenient to invoke. Being an inadvertent error not effecting the merit of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained, by the executing court as a question relating to execution, discharge or satisfaction of the decree within the meaning of this Section. A decree of a competent court should not be allowed to be defeated on account of an accidental slip or omission, we think it would be more appropriate to invoke Section 47 CPC.”

3) Resistance to Execution / Resistance to Delivery of Possession to Decree-Holder or Purchaser (Section 74 and Rules 97 to 103 of Order XXI of the CPC)

If the court determines that the decree-holder (who has obtained a decree for possession of immovable property) or the purchaser (who acquired such property through court sale) is being hindered or resisted from taking possession—either by the judgment-debtor or someone acting on their behalf—and that such resistance has no valid basis, the court may, upon application by the decree-holder or purchaser, order that the person causing such obstruction be detained in civil prison for up to 30 days. Additionally, the court can direct that possession of the property be handed over to the decree-holder or purchaser.

Order XXI Rule 97 permits the decree-holder or auction purchaser to apply when resisted or obstructed in obtaining possession. Upon such an application, the Court must adjudicate the relevant questions under Rules 98 and 101. A third person who has been dispossessed may apply under Rule 99.

In *Brahmadeo Choudhary Vs. Rishikesh Prasad Jaiswal* AIR 1997 SC 856, the Hon'ble Supreme Court ruled that the executing court may assess objections filed by a third party against a possession warrant. The court further held that even before being dispossessed, an objector is entitled to have their rights adjudicated under Rule 97.

This interpretation was affirmed in *Silverline Forum Vs. Rajiv Trust* AIR 1998 SC 1756, and *Rajesh Vs. Sreenath* AIR 1998 SC 1827.

In *Tanzeem-e-Sufia v. Bibi Haliman*, (2002) 7 SCC 50, the Hon'ble Supreme Court reiterated the executing court's duty to decide objections arising under the scheme of Order XXI Rules 97 to 101.

Order XXI Rule 98 – Orders After Adjudication

1. Once the issues under Rule 101 have been decided, the court may:

(a) Allow the application and order possession to be handed over to the applicant; or

(b) Pass any other appropriate order based on the case's circumstances.

2. If it is established that the obstruction or resistance was unjustified and caused by the judgment-debtor, someone representing them, or a transferee during the pendency of the suit or execution, the court shall direct that the applicant be granted possession. If resistance continues, the court may further order detention of the obstructing party for up to 30 days.

Order XXI Rule 99 – Dispossession by Decree-Holder or Purchaser

1. If a person (other than the judgment-debtor) is unlawfully dispossessed by a decree-holder or auction purchaser, they can file an application with the court alleging such dispossession.

2. The court shall then adjudicate the matter as per the applicable provisions.

This rule is meant to protect individuals who are not judgment-debtors but are still dispossessed by a decree-holder or purchaser. Such persons may establish their independent right or claim over the property.

Order XXI Rule 100 – Order on Application Complaining of Dispossession

Once the court resolves the issues listed under Rule 101, it shall either:

(a) Grant the application and order that the applicant be restored to possession; or

(b) Issue such orders as deemed appropriate under the circumstances.

Order XXI Rule 101 – Questions to Be Determined

All questions, including questions relating to right, title or interest in the property, which arise between the parties to a proceeding on an application under Rule 97 or Rule 99 and are relevant to adjudication of that application must be determined by the executing court and not by a separate suit.

In Vol Builders Pvt. Ltd. & Anr. Vs. Janab Salim Saheb & Anr., AIR 2009 Jharkhand 84 = 2009 (1) JCR 318 (Jhr), it was held that when an objector files a suit for declaration based on an agreement to sell, and another party files a suit for injunction on the same subject, the executing court should not begin a separate inquiry, knowing that the matter is subjudice.

In Sushilkumar Sureka Vs. Santosh Kumar Singh, 2009 Supreme(Jharkhand) 982 = 2009(3) JCR 740 (Jhr), the court observed that repeated objections under Rules 98 to 101 that were rejected even up to the High Court, followed by a new suit from the objector's father, amounted to a gross misuse of legal process. The order was set aside with a nominal cost of ₹ 2,500

Order XXI Rule 102 – Rule Inapplicable to Transferee Pendente Lite Rules 98 and 100 do not apply to persons who acquired the property from the judgment-debtor after the original suit was instituted. Such transfers are hit by the doctrine of lis pendens, which is recognized in Section 52 of the Transfer of Property Act, 1882. "Transfer" here also includes transfers by operation of law.

In Usha Sinha Vs. Dina Ram & Others (2007) 7 SCC 144, the Hon'ble Supreme Court explained the rationale behind this rule. It stressed that granting protection to those who knowingly purchase property during litigation would undermine the rights of decree-holders and obstruct justice.

Order XXI Rule 103 – Orders to Be Treated as Decrees

Any final order passed under Rules 98 or 100 after adjudication is considered equivalent to a decree. Thus, it is appealable just like any decree.

An adjudicatory order under Rules 98 or 100 is treated as a decree under Rule 103 and is appealable accordingly. A second appeal is governed by Section 100 CPC and lies only when a substantial question of law arises.

Outright without adjudication (at the threshold), such an order is not considered a decree and is therefore not appealable.

Order XXI Rule 104 – Effect of Pending Suits

Orders passed under Rule 101 or 103 are subject to the result of any pre-existing suits concerning the same property, provided those suits were already filed before the start of the execution proceedings.

FREQUENT PRACTICAL PROBLEMS IN DELIVERY OF POSSESSION

PROBLEM NO. 1:

Resistance Due to Locked Premises During Execution of Possession Warrant
THE ISSUE:

In several cases, when the Bailiff or Court Amin reaches the site to execute a

warrant of possession, the property is found locked. This raises a practical dilemma — whether the executing team has the authority to break open the lock or door to deliver possession to the decree-holder, especially in the absence of the judgment-debtor or occupant.

LEGAL POSITION AND SOLUTION:

Yes, the Court has the authority to direct breaking open of the lock or door if necessary to execute the decree of possession. As per Order XXI Rule 35(3) of the Code of Civil Procedure, if the person in possession is bound by the decree but obstructs delivery by locking the premises or being absent, the Court through its officers is empowered to remove or open any lock or bolt, break open any door, or do any act necessary to put the decree-holder in possession.

This principle was upheld in the case of:

G. Kethamma v. Allam Keshava Raju, 2008 (2) ALD 179

The Hon'ble Andhra Pradesh High Court ruled that under Rule 35(3), when resistance to possession is due to the property being locked, the executing officer can legally break open the lock to give effect to the decree, provided the decree is binding on the person in possession.

PROBLEM NO. 2:

Property in Possession of Tenant of Judgment-Debtor — Can Physical Possession Be Given to Decree-Holder?

THE ISSUE:

During execution of a decree for possession, the executing court may find that the property is in the lawful possession of a tenant or sub-tenant of the judgment-debtor. The question arises: Can the Court forcibly evict such occupants and deliver physical possession to the decree-holder?

LEGAL POSITION AND SOLUTION:

When a property is in the occupancy of a tenant or any other person lawfully entitled to remain in possession, and such person is not bound by the decree, the Court cannot deliver actual physical possession by evicting the occupant. Instead, the Court must execute the decree by delivering symbolic possession.

As per Order XXI Rule 36 of the Code of Civil Procedure:

“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 the substance of the decree by beat of drum or other customary mode.”

This means symbolic possession is to be delivered, not actual eviction.

Judicial Precedent:

Rule 36 governs symbolic delivery where a tenant or other lawful occupant is not bound to relinquish possession. *B. Gangadhar v. B.G. Rajalingam*, AIR 1996 SC 780, principally concerns removal of a superstructure raised pendente lite; it should not be treated as the sole authority for every tenant claim.

Judgment-Debtor Constructs on Property During Suit — Can Such Constructions Be Removed During Execution?

THE ISSUE:

At the stage of executing a decree for possession, it is often found that the judgment-debtor has raised constructions or built structures on the suit property during the pendency of the suit. The question arises — can the executing court direct demolition of such constructions while delivering possession?

LEGAL POSITION AND SOLUTION:

Yes, the executing court has the power to order removal or demolition of unauthorized construction made by the judgment-debtor pendente lite (during the pendency of the suit), to give effective and meaningful possession to the decree-holder. As per Order XXI Rule 35(3) of the Code of Civil Procedure, the executing court is empowered to: "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 includes removal of constructions or obstructions created to frustrate the execution process.

Judicial Precedent:

B. Gangadhar v. B.G. Rajalingam, AIR 1996 SC 780

The Hon'ble Supreme Court held that:

Order XXI Rule 35(3) recognizes the executing court's power to pass incidental, ancillary or necessary orders for effective enforcement of a decree for possession. This may include removal of a superstructure raised pendente lite by a person bound by the decree.

The power must be exercised judicially and within the decree; an executing officer cannot decide a disputed title or independent right on his own.

PROBLEM NO. 4:

Movable Property of Judgment-Debtor Found in the Premises at the Time of Delivering Possession — What Should Be Done?

THE ISSUE:

During the execution of a decree for possession, it often happens that the premises contains movable property belonging to the judgment-debtor. If the

judgment-debtor is absent or refuses to remove the movables, the executing officer is faced with a dilemma — should the possession be denied to the decree-holder, or should the movables be removed forcibly?

LEGAL POSITION AND SOLUTION:

The presence of movable property does not by itself prevent delivery of possession. The executing officer should prepare a detailed inventory in the presence of independent witnesses, take photographs where directed, arrange safe custody strictly in accordance with the Court's directions, and submit an immediate report.

Movables should not automatically be handed over to the decree-holder or auctioned. Notice should be given to the judgment-debtor and further orders regarding custody, return, perishable articles or lawful sale should be obtained from the Court.

Suggestions for Speedy Execution of Decrees and Orders:

Execution reveals the practical value of a decree. Execution work should therefore receive the same judicial attention as original civil work and should be dealt with methodically and regularly. A designated day or time block may be reserved for execution work where the local workload permits, without postponing urgent steps.

Section 5 of the Limitation Act expressly excludes applications under Order XXI except sub rule (4) of Rule 106; however, the relevant article and nature of the application must first be identified. Order XXI Rule 22 notice is required only in the situations specified in that Rule. If the Court dispenses with notice under its proviso, reasons must be recorded.

A stay order may delay execution. The Court must read the operative portion carefully, ascertain whether the stay is conditional or limited, and continue with every step which is not prohibited.

Mere filing or pendency of an appeal does not stay execution under Order XLI Rule 5(1). An execution petition should not be dismissed merely because an appeal or a delay-condonation application is pending. Execution must proceed unless a competent Court grants stay; if the stay is limited, unaffected steps may continue.

For speedy relief, establishment of a dedicated execution court or allocation of a specific weekly session may be considered administratively, depending upon the district's caseload and the policy of the Hon'ble High Court.

The Nazir may be required to submit a periodic report showing the warrants and orders received for execution, the steps taken and the reasons for non-

execution. The report may be placed before the Judge-in-Charge, Principal District Judge or the concerned executing court, as applicable.

Court staff, including the Sheristadar, Nazir and process servers, must submit reports within the time prescribed by the Court or applicable administrative rules. Unexplained delay should be examined and responsibility fixed in accordance with due process.

Technology may be used, where available, for payment of Nazir's fee, Commissioner's fee and other authorized execution expenses. Ministerial staff should be trained in the relevant digital systems.

Where police or Executive Magistrate assistance is lawfully required, the Court should issue a precise communication stating the purpose, date, responsible officer and applicable cost, so that delivery or attachment is not delayed.

Appendix E of CPC prescribes forms of warrants for attachment, seizure and delivery of possession. The Bench Clerk or Office Clerk must fill in every required entry, attach the necessary documents and place the process before the Sheristadar for verification before obtaining the Presiding Officer's signature.

Delay may occur when warrants remain pending in the Nazarat because of staff shortage or administrative work. A monitoring mechanism should therefore record the date of receipt, officer entrusted, action taken, return date and reason for non-execution.

(a) A separate execution register may be maintained in the Nazarat recording every writ and process, its serial number, date of receipt, issuing Court, person entrusted and date and result of return.

(b) The Judge-in-Charge may periodically review the register and fix a reasonable internal return date having regard to the nature of the warrant, distance and available staff. Any suggested fifteen-day interval is an administrative monitoring target and not a universal statutory period.

If a Nazir returns a warrant merely stating that the judgment-debtor claimed that an appeal was pending, the Court should verify whether any stay order was produced and call for an explanation for failure to act according to the warrant. Adverse action, if warranted, must follow due process.

The Nazir or Amin must act strictly within the decree, warrant and judicial directions. He cannot independently decide disputed questions or demolish structures by applying his own discretion. Any doubtful structure, third-party resistance or legal impediment must be reported promptly for further orders.

Police assistance should be sought or directed where the Court is satisfied that it is necessary for lawful execution. There is no universal requirement to send every execution warrant to the police station when police aid has not been ordered.

The extent of police assistance and the incidence of execution costs must be governed by the applicable rules and a specific lawful order. No general proposition should be made that the State must bear such costs whenever the decree-holder lacks means.

Where an authority fails to provide assistance despite a lawful order, the Court may call for compliance or an explanation and take only such action as is authorized by law after following due process.

Photography or videography may assist in recording attachment, inventory, obstruction or delivery in an appropriate case. It should be undertaken under a judicial direction and the authenticity and custody of the record must be preserved.

A reliable photographic or video record may discourage false allegations concerning the manner of execution. Its use, preservation and production must nevertheless comply with the applicable evidentiary and administrative requirements.

Conclusion

Execution is a critical component of civil justice because it converts the decree into actual relief. Civil arrest and detention are exceptional coercive modes and are not punitive. A judgment-debtor cannot be detained merely because the decretal amount remains unpaid; the Court must comply with the proviso to Section 51 and Order XXI Rules 37 to 40 and record the required statutory satisfaction. Claims to attached property must be adjudicated under Rules 58 and 59, while resistance or obstruction to possession is governed by Rules 97 to 103. Effective execution requires firm case management, trained staff, lawful use of technology, timely coordination with implementing agencies and fair adjudication of genuine claims. These measures ensure that decrees do not remain mere pieces of paper but become effective instruments of justice.

SESSION- IV

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

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

INTRODUCTION :-

There are three Stages in a Civil Litigation. They are Institution of Litigation, Adjudication of Litigation and Implementation of the Decree passed in favour of the Plaintiff in such Litigation. The Process of Implementation is called as 'EXECUTION' in general parlance. Execution is considered as the last stage of any Civil Litigation. In the Execution Proceedings, the Judgment Debtor will be compelled to satisfy the Claim of the Decree Holder, as stipulated in the Decree. Execution of a Decree enables the Decree Holder to recover the fruits of the Judgment from the Judgment Debtor.

MEANING OF 'EXECUTION':-

The term "Execution" is not at all defined in the Code of Civil Procedure. A simple meaning of the term 'Execution' can be taken as the Process of enforcing, or giving effect to the Judgment of a Court of Law. It is the complete fulfillment and enforcement of the Orders passed by the Court in the Decree and the Judgment.

Before going to proceed with the Execution of various Decrees granted under the Law, it is relevant to look into the meaning of the words, Decree, Judgment, Decree Holder and Judgment Debtor, which we come across normally in the Proceedings of the Execution.

Section 2 of the Code of Civil Procedure provides the Definitions for several words. Sub-Section [2] defines 'Decree', Sub-Section [3] defines 'Decree Holder', Sub-Section [9] defines 'Judgment', and Sub-Section [10] defines 'Judgment Debtor'. They provide as follows:-

“(2) “Decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include —

- (a) any adjudication from which an appeal lies as an appeal from an order,
- or
- (b) any order of dismissal for default.

Explanation: A Decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

(3) “Decree Holder” means any person in whose favour a Decree has been passed or an order capable of execution has been made.

(9) “Judgment” means the Statement given by the Judge of the grounds of a Decree or Order.

(10) “Judgment Debtor” means any person against whom a Decree has been passed or an order capable of execution has been made.”

It is clear that a Decree is the operative and conclusive Part of a Judgment. It can be said that the Judgment contains the Reasons for the Conclusion, and the Decree contains the Conclusion, i.e., the operative part alone. It provides the exact relief, which is sought to be executed by the Decree Holder, in the Language of the Court.

RELEVANT PROVISIONS IN THE CODE OF CIVIL PROCEDURE, CIVIL RULES OF PRACTICE AND THE LIMITATION ACT:

The Substantive Law governing the Process of Execution of the Decrees and Orders is provided in Sections 36 to 74, which come in Part II of C.P.C., dealing with the Concept of ‘Execution’, apart from Sections 144, 146 and 148 of C.P.C., while the Procedural Mechanism is provided under Order XXI of the Code of Civil Procedure, 1908. Order XXI of C.P.C. is the longest Order in the Code of Civil Procedure, containing 106 Rules, from Rules 1 to 106, with some Rules containing the Sub Rules. It is generally said that Order XXI of C.P.C. is a self contained code, as it covers various situations, that we come across for the Execution and during the Process of Execution.

Likewise, Chapter 16 of Civil Rules of Practice, consisting of Rules 205 to 285, deals with the Proceedings in Execution. The Articles 125 to 129 and 134 to 137 of the Limitation Act deals with the Limitation in respect of the Execution Proceedings. Further, we have to look into whether any Amendments are made by our own High Court of Andhra Pradesh, to the Rules in Order XXI, CPC, before proceeding further.

PLACE OF EXECUTION OF A DECREE:-

Section 38 of C.P.C. provides that a Decree may be executed, either by the Court which passed it, or by the Court to which it is sent for Execution. Section 39 of C.P.C. provides that, upon an Application of the Decree Holder, the Court, which may passed a Decree, may send it for execution to another Court

of Competent Jurisdiction, within whose jurisdiction, the Person against whom the Decree is passed, i.e., the Judgment Debtor is residing or works for gain, or has Property, and where the Decree directs for Sale and Delivery of Immovable Property, or for any other reason, recorded in writing, or on its own motion. Section 39 [4], CPC clearly provides that 'Nothing in this Section shall be deemed to authorize the Court, which passed the Decree, to execute the such Decree against the Person or Property, outside the local limits of its jurisdiction.' Section 40 of CPC deals with the Transfer of the Decree to the Court in another State, and it says that it shall be executed in such manner, as prescribed by the Rules in force that State. Section 41 of CPC provides that the Court, which the Decree was sent for Execution, has to certify the fact about the execution of the Decree, to the Court, which passed the Decree. Section 42 of C.P.C., says that the Court, to which a Decree is sent for Execution, shall have the same powers in executing such Decree, as if it had been passed by itself. It includes the power to send the Decree for Execution to another Court under Section 39, and to execute the Decree against the Legal Representatives of the Deceased Judgment Debtor under Section 50, and to order attachment of a Decree. But, a Copy of such Order shall be sent to the Court, which passed the Decree. However, Section 42 [4] of C.P.C. says that such Powers do not include the Powers to order execution at the instance of the transferee of the Decree, and to grant leave to execute a Decree, which was passed against a Firm, against any Person, other than such a Person referred in Order XXI, Rule 50, Sub-Rule [1], Clauses [a] and [c].

WHAT IS AN EXECUTION PETITION:-

The Proceedings in the Execution commence with filing an Application for Execution, which is locally called as 'Execution Petition', before the Court, which will be generally the Court which passed the Decree, and in some Cases, the Decree can be got transferred to the Court, where the Judgment Debtor resides or has Property, and then, filed before the said Court.

WHO CAN FILE AN EXECUTION PETITION:-

An Execution Petition can be filed by a Person, who is the Sole Decree Holder. When there are more than one Decree Holders, called as Joint Decree Holders, then, any of the Decree Holder can file the Execution Petition, with the Permission of the Court, and the Court has to pass such Orders, which are required to protect the interests of other Decree Holders, who have not joined in filing such an Execution Petition.

Apart from the Decree Holders, the Person, to whom the Decree is transferred, by way of an Agreement or by an Operation of Law, like Legal Representatives. It is to be kept in mind that Order XXII of CPC, which deals with addition of Legal Representatives, is not applicable to the Execution, as per Rule 12 therein. It says that Rule 3 [dealing with Legal Representatives of the Plaintiff], Rule 4 [dealing with the Legal Representatives of the Defendants] and Rule 8 [dealing with the Insolvency of the Plaintiff in the Suit, maintained by the Assignee or the Receiver], are not applicable to the Proceedings in the Execution of a Decree or Order. As such, it is said that there is no Limitation for adding the Legal Representatives in Execution.

However, when the Judgment Debtor dies before the satisfaction of the Decree, then, the Decree Holder may proceed against his Legal Representatives under Section 50 of C.P.C., In this Case, Notice under Section 50 of C.P.C., is issued in general, while issuance of Notice under Order XXI, Rule 22 [b], CPC is mandatory. The Legal Representative of the Judgment Debtor is liable to the extent of the Property of the Deceased, which is in his hands, and has not been duly disposed off. It would mean that he is not personally liable.

If the Decree Holder himself dies, then, his Legal Representatives can proceed under Section 146 of C.P.C. In all these Cases, the Execution Petitions can be filed straight away by or against the Legal Representatives, subject to the condition that the relevant Notices will be issued under the above Provisions.

HOW CAN AN EXECUTION PETITION BE FILED:-

Order XXI, Rule 10, CPC provides that the Application for Execution shall be applied by the Decree Holder, to the Court which passed the Decree, or to the Court to which the Decree is transferred.

Rule 11 [1] provides that when the Decree is for payment of money, then, the Court may, on the oral Application of the Decree Holder, at the time of passing of the Decree, order immediate execution of the same, by the Arrest of the Judgment Debtor, prior to the preparation of the Warrant, if he is within the precincts of the Court.

Rule 11 [2] provides that other than Rule 11 [1], every Application for the Execution of the Decree shall be in writing, signed and verified by the Applicant or the Person, who is proved to be acquainted with the facts of the Case, to the satisfaction of the Court, and it shall contain in a Tabular Form, the Particulars, namely, Number of the Suit, Names of the Parties, Date of the Decree, Whether any Appeal is preferred, Whether any Payment or Adjustment

is made, Whether any Previous Execution Petitions were filed, the amount Due under the Decree, the amount of Costs awarded, the Name of the Person against whom the Execution is sought, the Mode of Assistance, required from the Court. Rule 11 [3] provides that the Application made under Sub Rule [2] may require the Applicant to produce a Certified Copy of the Decree.

When the Execution Petition is filed, the Procedure prescribed under Rule 17 has to be followed. The Court has to check the Calculation of the Decretal Amount, Interest, Costs claimed and awarded in the Decree, and then, register the same. If they are not on par with the Decree, then, the same has to be returned for compliance. Only on compliance of the Objections, making the E.P. amount or relief, on par with the Decree, the E.P. has to be registered.

MODES OF EXECUTION OF THE DECREE:-

As per Section 51 of C.P.C., and Rule 11 [2] [j] of Order XXI, CPC, the modes of the Execution of the Decree are:

1. Delivery of any Property specifically decreed,
2. Attachment, or by Attachment and Sale, or by Sale without Attachment, of any Property,
3. Arrest and Detention in Prison of any Person,
4. Appointment of Receiver,
5. In any such other manner, as the nature of the relief granted may require.

TYPES OF DECREES:-

Generally, basing on the reliefs granted in the Civil Litigation, the Decrees are of different types. They are:-

1. Money Decrees, which will be granted in case of recovery of amount, basing of Promissory Notes, Claim for Damages, Claim of Recovery of Arrears of Rents, etc., [Order XXI, Rule 30, CPC]
2. Decree for Specific Movable Property [Order XXI, Rule 31, CPC]
3. Decrees for Specific Performance of the Contract, by way of the execution of Registered Sale Deed in favour of the Decree Holder, as well as the Injunction granted by the Court, like Mandatory Injunction, wherein the directions given by the Court are to be complied, and for Permanent Injunction, wherein the acts of the Defendants are restrained, etc., [Order XXI, Rules 32 & 34, CPC]
4. Decrees for Restitution of Conjugal Rights [Order XXI, Rules 32 & 33, CPC]
5. Decrees for Immovable Property, like Delivery of Possession of Immovable Property in compliance of the Decree, etc., [Order XXI, Rule 35, CPC]

6. Decree for Delivery of Immovable Property, when in occupancy of a Tenant [Order XXI, Rule 36, CPC]
7. Decrees in Partition Suits, where the Properties are to be divided and shared between the Sharers, etc.,

It is well known that a Decree may be Preliminary or Final, Partly Preliminary and Partly Final. To be more specific, the Decrees passed in Mortgage Suits, Partition Suits, etc., will be considered as Preliminary Decrees, and when the Directions given in the Preliminary Decrees are not complied, an Application will be filed, seeking passing of the Final Decree, and after due hearing or enquiry, the Final Decree will be passed. Basing on that Final Decree, the Execution will be sought by the Decree Holder.

If the Execution Petition is filed beyond the Period of two years from the date of passing of the Decree, then, the Court has to issue Notice under Rule 22 [a], to the Judgment Debtor. For seeking the relief against the Person and Property of the Judgment Debtor at the same time, i.e., simultaneous Execution of the Decree, the Decree Holder has to obtain the Permission of the Court under Order XXI, Rule 21 of C.P.C. In the Judgment given in the Case of Bethia Venkanna Vs. Sait Chunilal Moolchand [1960 (1) ALT 610 (D.B)], the Hon'ble High Court of Andhra Pradesh has held that filing of the two simultaneous Execution Petitions, is maintainable against two different Judgment Debtors, for recovery of money due under the Decree.

1. EXECUTION OF MONEY DECREES:

Section 51 [c], CPC provides that the Execution of the Decree may be ordered by arrest and detention in prison, for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section. The Proviso to Section 51 also provides as follows:-

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

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

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

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

(b) that the judgment-debtor has, or has had since the date of the decree. the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

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

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

Order XXI, Rule 30 of C.P.C. provides that ‘Every Decree for the payment of money, including a Decree for the payment of money, as the alternative to some other relief, may be executed by the detention in the Civil Prison of the Judgment Debtor, or by the Attachment and Sale of his Property, or by both.’

Sections 55 to 59 of C.P.C. deal with ‘Arrest and Detention’. Section 55 provides that a Judgment Debtor may be arrested at any hour and on any day, and be brought before the Court, and his detention in Civil Prison may be ordered. It is subject to the Provisos, that no dwelling house shall be entered after sunset and before sunrise, for the purpose of such arrest; and that no outer door of a dwelling house shall be broken, unless it is in the occupancy of the Judgment Debtor, and he refuses or prevents its access, and even door of any room may be broken, if the Officer authorized to arrest has reason to believe that the Judgment Debtor is in such a room; and that if the room is in occupation of a woman, who is not a Judgment Debtor and does not appear in Public, then, she has to be given an opportunity to withdraw from the room; and that when the Judgment Debtor makes the payment of the amount of the Decree, along with costs of arrest, then, such Officer shall release him.

As per Section 55, CPC, the Court has to inform the Judgment Debtor that he is at liberty to file the Insolvency Proceedings. If he expresses his intention to file IP within one month, he can be released on security. If he is prepared to give security, when he is produced under Rule 37 (2) warrant, or when he obtains Protection from Arrest in the Insolvency Petition Proceedings, the Judgment Debtor must be released.

Section 56, CPC clearly provides that the Court shall not order the arrest or detention in the Civil Prison of a Woman in execution of a Decree for the payment money. It can be inferred that in the Woman can be arrested in the Case of violation of Permanent Injunction, or other Decrees, as the Case may be.

When the Judgment Debtor is detained in Civil Prison, the Decree Holder has to pay the Subsistence Allowance, as contemplated under Section 57, C.P.C. Section 58 of CPC provides that where the Decree is for payment of a sum of money exceeding Rs.5,000/-, then, he shall be detained for a period not exceeding three months, and where the amount is in between Rs.2,000/- and Rs.5,000/-, then, he shall be detained for a period not exceeding six weeks. If the amount does not exceed Rs.2,000/-, then, he shall not be detained in Civil Prison. It also provides that the Judgment Debtor shall be released when he makes payment of the Warrant amount to the Officer in Charge of the Civil Prison, and when the Decree is satisfied, or on the request of the Decree Holder, or failure to pay the Subsistence Allowance. But, once the Judgment Debtor is released from detention in Civil Prison, then, he shall not be liable for re-arrest under the same Decree.

Section 59 of CPC provides that the Judgment Debtor may be released on the ground of his ill health, and such Person may be rearrested, but the Period of detention shall not in the aggregate exceed that prescribed by Section 58 of CPC.

Order XXI, Rules 37 to 40 of C.P.C. deals with the 'Arrest and Detention in Civil Prison'. When the Execution Petition is filed, seeking the Arrest and Detention of the Judgment Debtor in Civil Prison, then, it must be enclosed by an Affidavit of the Decree Holder, stating the means and negligence or disobedience of the Judgment Debtor, and his liability to be arrested.

Rule 37 provides that when the Execution Petition is filed for the Arrest and Detention of the Judgment Debtor is filed by Decree Holder, then, the Court shall issue a Notice, calling the Judgment Debtor to appear before the Court, and show cause as to why he should not be committed to the Civil Prison. Such Notice is not necessary, if the Court is satisfied, by way of Affidavit, that the Judgment Debtor is likely to abscond or leave the local limits of the jurisdiction of the Court, with the object of delaying the execution of the Decree. When the Judgment Debtor fails to appear before the Court, after receiving the said Notice, then, if the Decree Holder requires, then, a Warrant for arrest of the Judgment Debtor may be issued under Rule 37 [2].

Under Rule 38, the Judgment Debtor shall be brought before the Court, immediately, after his arrest, and it has to be mentioned in the Warrant. Rule 39 provides that the Decree Holder shall pay the Subsistence Allowance, from the time of his arrest till he is produced before the Court, and if he is committed to the Civil Prison, then, the amount fixed by the Court has to be paid as Subsistence Allowance, apart from the Costs of Conveyance from the place of arrest to the Court House, by the Decree Holder. Such Payment of Subsistence Allowance shall be included in the Costs of the Suit.

Rule 40 clearly provides that Procedure to be followed, when the Judgment Debtor appears, either in obedience to Rule 37 Notice, or after his arrest under Rules 37 [2] or 38. It says he should be given an opportunity to show cause, as to why he should not be committed to Civil Prison, and that the Enquiry regarding the Means of the Judgment Debtor is to be conducted, and for the said purpose, he may be detained in the custody of the Officer of the Court, or released after furnishing security. Such custody shall not exceed 15 days. He may be rearrested. Only after conducting such an enquiry, the Judgment Debtor can be sent to Civil Prison. Where such an Order is not made, the Judgment Debtor, if he is in the Custody of the Officer authorized by the Court. The Court shall direct the payment of traveling and subsistence allowance by the Decree Holder. In the event of the failure of the Judgment Debtor to pay the same, the Judgment Debtor shall be released by the Court.

The following are the Landmark Judgments, with regard to the Arrest of the Judgment Debtor in the Execution Petition, in the Payment of Money Decrees.

1. In the Judgment given in the Case of Jolly George Verghese Vs. Bank of Cochin [(1980) 2 SCC 360 = AIR 1980 SC 470 = (1980) 2 SCR 913], the Hon'ble Supreme Court observed that "The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here consideration of the debtor's other pressing needs and strained circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the covenant and the Constitution." It was further held that "a debtor cannot be sent to civil prison simply for failing to pay a debt. There must be a proved element of bad faith or willful neglect, meaning the debtor has the clear means to pay yet willfully refuses or neglects to do so. Imprisonment for pure inability to pay violates constitutional fairness and human rights."
2. In the Judgment given in the Case of Subrata Roy Sahara Vs. Union of India [AIR 2014 SC 3241], it was observed that "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."

3. In the Judgment given in the Case of Bandaru Satyanarayana Vs. Siddantapu Satyasai Babu [2023 (3) ALT 662 (S.B)], the Hon'ble High Court of Andhra Pradesh has held that the Decree Holder is entitled to file the Application to execute the Decree through the process of the Court, till the entire decretal debt is realized.
4. In the Judgment given in the Case of Gudivada Munemma Vs. Jawardhal reported 2006 (6) ALT (S.B), the Hon'ble High Court of Andhra Pradesh has held that if the Decree Holder satisfies the Court that the Judgment Debtor has neglected to pay decretal amount having sufficient means, refusal to order his arrest and detention in Civil Prison on the ground of availability of alternative remedy of attachment of his properties is not legal.
5. In the Judgment given in the Case of Somisetty Bala Venkata Subbaiah Shetty [Died] per L.R., S.Benkateswarulu Gupta Vs. P.Sreenivasulu Setty [2007 (2) ALT 205 (S.B)], the Hon'ble High Court of Andhra Pradesh has held that the Decree Holder has right to proceed both against the property of a Judgment Debtor in Execution of money Decree obtained by him.
6. In the Judgment given in the Case of Guvvala Sudhakara Reddy Vs. Katamreddy Venugopala Reddy [2006 (2) ALT 632 (S.B)], the Hon'ble High Court of Andhra Pradesh has held that when Arrest and Detention is one of the modes of Execution to recover the decretal amount, it is no part of duty of Executing Court to lay down or prescribe the mode of Execution to be followed by the Decree Holder.
7. In the Judgment given in the Case of Bejjanki Peddirajam Vs. M/s. Lavanya Chit Fund Private Limited, Warangal and others [2014 (4) ALT 163 (S.B)], the Hon'ble High Court of Andhra Pradesh has held that the Decree Holder can proceed any one of the Judgment Debtors for realization of the decretal amount without proceeding against the Principal borrower at the first instance.
8. In the Judgment given in the Case of Janapati Jaipal Reddy Vs. Sannihita Chit Funds Private Limited, rep., by its Foreman, Karimnagar and others [2008 (5) ALT 17 (S.B)], the Hon'ble High Court of Andhra Pradesh has held that there is no need to transfer the money Decree to the Court within the local jurisdiction of which the Judgment Debtor is working for a

attachment of salary, and the Attachment can be ordered by the Court which passed the Decree, and the attachment warrant can be sent to the Disbursing Officer for deduction of the amount from the Salary of the Judgment Debtor.

9. In the Judgment given in the Case of M.Muthuswamy Vs. Supasri Chit Funds (2000 (2) CTC 168), it was held that the Executing Court must conduct a proper inquiry, and record a clear, reasoned finding regarding the financial capacity and current means of the Judgment Debtor before moving forward with an arrest order under Rule 37.

10. In the Judgment given in the Case of Gudiwada Munemma Vs. Jawardhal (2007 (5) RCR (Civil) 418), it was clarified that "Arrest and detention is only one of several execution modes. If alternate satisfactory remedies like property attachment exist and the debtor's actual refusal is unproven, mechanical detention orders are unwarranted."

11. In the Judgment given in the Case of Kasi Subbaiah Mudali Vs. Kasi Veeraswamy Mudali and others (2002 (3) ALT 240), it was held that the procedural safeguards outlined in Rules 37 through 40 of Order 21 are mandatory. Skipping the notice requirement without proof of an immediate intent to abscond breaches principles of natural justice.

Enforcement of Decree against the Legal Representatives :-

Section 50 of C.P.C. stipulates that where a Decree is passed against a party as the Legal Representative of a Deceased person, and the Decree is for the payment of money out of the property of the Deceased, it may be executed by the Attachment and Sale of any such Property.

Liability of Ancestral Property—

For the purposes of Sections 50 and 52 of CPC, the Property in the hands of a Son or other Descendant, which is liable under Hindu Law for the payment of the debt of a Deceased Ancestor, in respect of which a Decree has been passed, shall be deemed to be Property of the Deceased, which has come to the hands of the Son or other Descendant, as his Legal Representative. The Legal Representative is not liable personally.

Attachment of Movable and Immovable Property:-

Section 60 of CPC provides what Properties are liable for Attachment and Sale in the Execution of the Decree. It also provides the Properties, which are not liable for such Attachment or Sale.

In brief, the Properties, which are liable for Attachment are, Lands, Houses, other Buildings, goods, money, bank notes, cheques, etc., or any salable property, whether movable or immovable, which are in the name of the Judgment Debtor or any Person on his behalf.

The Properties, which are not liable for Attachment, in brief, are, necessary wearing apparel, cooking vessels, bed and bedding of the Judgment Debtor, Livelihood Tools, i.e., Tools of Artisans, Agricultural Implements, Cattle used for Cultivation, Residential House of an Agriculturist or Labouring Class, and Statutory Benefits like Gratuity, Pension, General Provident Fund, Insurance amount, etc.,

Section 60, Proviso [i], C.P.C. provides that Salary to the extent of the first one thousand rupees and two thirds of the Reminder, in execution of any decree, other than a Decree for Maintenance, is exempted from Attachment. The Proviso says that, if the Salary is attached, then, under one Decree, it can be attached continuously or intermittently, for a total period of 24 months, and thereafter, such amount shall be exempt from attachment for a period of 12 months, which is called as leave period. When the Salary is attached for 24 months towards realization of one Decree, then, it is finally exempt from attachment in execution of the said Decree.

Proviso [ia] provides that one third of Salary in execution of any Decree for Maintenance. It means that in a Decree for Maintenance, two thirds of Salary of the Judgment Debtor can be attached.

To be more clear, it can be said that the Net Salary = Gross Salary – Statutory Exemptions.

As per Section 60[1], Proviso [i], CPC, in a Money Decree, the first ₹1,000 plus two-thirds of the remaining balance is exempted. Exempted Portion would be Rs.1,000/- + 2/3rd of the balance amount. The Attachable Salary = Gross Salary – Statutory Deductions – Rs.1,000/- – 2/3rd Portion of Salary.

In Case of Maintenance Decree, Section 60(1)(ia), CPC says that one-third of the total Salary is exempted. The initial ₹1,000 exemption does not apply to Maintenance Decrees. So, the Attachable Portion would be Gross Salary – Statutory Deductions – 1/3 rd Salary.

Attachment of Property:

Under Order 38, Rule 5 of C.P.C., the movable or immovable Property of the Respondent/ Judgment Debtor can be attached before the Judgment, at the time of Proceedings in a Suit. When the Immovable property of the Judgment Debtor is not attached in the Suit Proceedings, it can be done at

the stage of Execution Proceedings under Order 21, Rules 43 and 54 of C.P.C., as the Case may be.

Attachment of Movable Property.

Order XXI, Rule 43, CPC says about the Attachment of movable Property, other than the Agricultural Produce in possession of the Judgment Debtor. The Rule 43 substituted by the Madras High Court on 05.09.1958, is being followed by the Andhra Pradesh also. The said Rule provides that the Attachment shall be made by actual seizure, and the Attaching Officer shall keep the Property in his own custody, or in the custody of one of his Subordinates, and shall be responsible for the due custody thereof. If the seized property is subject to speedy and natural decay, or involves more expenses, then, the attaching officer may sell it at once.

If the attached property consists of live stock, agricultural implements or other articles, which cannot be moved, then, he may at the instance of either the Decree Holder or the Judgment Debtor, or any other Person claiming to be interested therein, leave it in the Village, by taking a Bond from him, or at a suitable place, for which remuneration is to be paid by the Decree Holder. When the Attachment ceases, then, the attached Property has to be returned to the Person, in whose possession it was before the Attachment.

In the case of B.Venkatadri Reddy, Vs. P.A.Vanajakshi and another, reported in 2005 (1) ALT 640, wherein it was held by the Hon'ble High Court of Andhra Pradesh that "Attachment of movable property under Order 21, Rule 43 be effected only through actual seizure and assumption of possession or custody thereof; and if the Attachment could not be effected for any reason, Decree Holder may choose to select certain items of property, and in the case of Attachment of immovable property under Rule 54, the Judgment Debtor would be simply prohibited from transferring or changing the property in any way".

Rule 44, which deals with the Attachment of Agricultural Produce, provides that the attachment shall be made by affixing a copy of the Warrant of Attachment, at the place where the Crop is grown, in the growing crop is attached, or at the threshing floor or other place, where it is deposited after being cut or gathered. Another Copy of the Warrant has to be affixed at the outer door of the residence of the Judgment Debtor, where he resides, or at the place of his work. Then, the possession of such property is deemed to have been passed into the possession of the Court.

Rule 46 provides for the Attachment of debt, share and other Property not in possession of Judgment Debtor. It shall be sent to the Person, who owes amount to the Judgment Debtor. Rule 47 provides for attachment of share in movables. It will be done by issuing a Notice to the Judgment Debtor,

prohibiting him from the transferring of his share or interest in the Property.

Attachment of Salary of Judgment Debtor:

Rule 48 provides for Attachment of Salary or Allowances of the Government or Railway Employee or Local Authority. Generally, the Salary of the Government Employees, or the Employees who come under the purview of the Government Employees, are attached, subject to the Provisions of Section 60 of C.P.C. It provides for with-holding of the amount in one payment or by monthly payments, after issuing Notice to the Judgment Debtor. For effecting the Attachment under this Rule, the Judgment Debtor need not reside within the jurisdiction of the Court, which issues the Attachment.

Rule 48-A provides for the Attachment of Salary or Allowance of Private Employees. It provides that by issuing a Warrant, the Salary of the Private Employee can be attached, subject to Section 60 of CPC.

For determining the Net Attachable Salary, the Statutory Exemptions shall be deducted from the Gross Salary, subject to Section 60 of C.P.C. Generally, it is considered that the Dearness Allowance [D.A.] and House Rent Allowance [H.R.A.] are exempted from Attachment. But, in the Judgment, dated 21.11.2001, given in C.R.P. No.2377 of 2000, in the Case of K.Venkateswarlu Vs. D.Ranga Reddy and another, the Hon'ble High Court of Andhra Pradesh was pleased to hold that the Dearness Allowance [D.A.] and House Rent Allowance [H.R.A.] are attachable.

Rule 49 deals with the Attachment of the Partnership Property. It provides that the except as provided therein, the Property belonging to a Partnership Firm shall not be attached or sold in execution of a Decree, other than a Decree passed against the Firm, or against the Partners in the Firm, as such. On application, a Charge may be created, and it may be redeemed by the Partners. Rule 50 deals with the Execution of Decree against the Firm, i.e., Partnership Firm. The Decree may be executed against the Property of the Partnership, or any Person, who is admitted or adjudged to be a Partner, or against any Person, who was served with Summons as a Partner, but failed to appear before the Court. The liability of the Partner has to be decided by the Court.

Rule 51 deals with Attachment of Negotiable Instruments, and it says that such instruments shall be actually seized and brought to the custody of the Court, and are held subject to the Court. Rule 52 deals with the Attachment

of Property in the Custody of Court or Public Officer. Generally, the lumpsum amounts which are kept in the Bank Accounts, Cash, etc., will be attached under this Provision. Rule 53 deals with Attachment of Decrees, which provides that the Decree can be attached by the order of the Court, by issuing a Notice to the Court which passed the Decree. The Holder of the Decree is deemed to be a Representative of the Attached Decree, and he is entitled to execute the Decree, as a lawful Holder of the same.

Rule 54 deals with the Attachment of Immovable Property. It provides that the Attachment shall be made by an order, prohibiting the Judgment Debtor from transferring or charging the Property in any way, and the Judgment Debtor is directed to appear before the Court, and the order will be proclaimed at the place adjacent to the Property, by beat of drum, and affixed at conspicuous places in the Government Offices.

Rule 55 provides the Removal of Attachment, when the Decree is satisfied, or when the Decree is set aside or reversed. At the expenses of the Judgment Debtor, withdrawing of the Attachment shall be proclaimed, and the Copy be affixed at the conspicuous places in the Government Offices.

It is relevant to mention here that under Rule 58, the Claims relating to the Attached Property, or the Objections to the Attachment of the Property, will be decided. It clearly provides that all the questions relating to the right, title or interest in the attached property, arising between the Parties to a Proceeding or their representatives, and are relevant for the adjudication of the Claim or Objection shall be determined by the Court, dealing with the Claim or Objection, and not by a separate Suit. Upon the determination of the said Questions, the Court may allow the Claim or Objection, and release the Attachment over the Property, wholly or in part, as it thinks fit, or disallow the Claim or Objection, or continue the Attachment, subject to Mortgage, Charge, or other interest in favour of any Person. The Order shall have same force, and an Appeal will lie against the same, as if it is a Decree. However, when the Court refuses to entertain the Claim or Objection, the Party can file a Suit to establish his Claims in the dispute. Rule 59 provides that the Sale of the attached Property can be stayed, pending the adjudication of the Claim or Objection, by ordering that the Property shall not be sold till the adjudication of the same, or that the Property may be sold, but the Sale shall not be confirmed till the adjudication of the same.

Sale of the Immovable or Movable Property:

Under Order XXI, Rule 66 of C.P.C., Sale of Immovable Property can be done by way of Proclamation, after issuing of the Sale Notice under Rule 64 of Order 21 of C.P.C., to the Judgment Debtor. As per Rule 65, the Sale shall

be conducted in Public Auction, by an Officer of the Court, or any Person appointed by the Court, on its behalf.

Rule 66 provides that the Proclamation of Sale is to be made under in the language of the Court, after giving notices to both Parties, and it shall state the time and place of Sale, and specify the details of the Property to be sold, its value, any encumbrance upon the same, the amount for recovery, and any other necessary details. It shall also include the estimate of the Value of the Property given by the Parties.

As per Rule 67, the Proclamation of Sale shall be made and published in the Official Gazette or a Local News Paper, or both, and the Costs of such Publication shall be deemed to be the Costs of the Sale. As per Rule 68, the Sale shall not be held after the expiration of 15 days in case of immovable property, or after seven days in the case of movable property, from the date of proclamation, without the consent of the Judgment Debtor.

Under Rule 69, the Sale may be stopped, if the Sale is adjourned beyond the period of 30 days, and before the knocking down of the bid, for the reasons to be recorded in writing. After completion of 30 days, a fresh proclamation has to be issued.

As per Rule 71, the Auction Purchaser, who commits the Default in payment of the amount, which leads to resale of the Property, is liable to incur the expenses that occur for resale of the Property.

Before participating in the Auction, the Decree Holder has to take the Permission of the Court, under Rule 71, prior to such participation. If the Decree Holder becomes the Auction Purchaser, then, he is entitled to set off the Decretal amount, from the Auction amount, subject to Section 73, CPC, and the Court shall enter the full satisfaction or part satisfaction of the decretal amount. If the Decree Holder purchases the Property, without the permission of the Court, then, on the Application filed by the Judgment Debtor or aggrieved party, the Sale shall be set aside, and all the expenses of resale shall be paid by the Decree Holder.

Rule 72-A specifically provides that a Mortgagee of an immovable property shall not bid for or purchase the Property sold in the execution of the Decree, without the leave of the Court. If such leave is granted, the Court has to fix a reserve price, and such reserve price shall not be less than the amount then due for principal, interest and costs, if the property is sold in one lot, and in the attributable rate, when more than one lot is to be sold. Rule 73 provides that the Officer or the Person performing the duty in connection with Sale, shall not bid either directly or indirectly, to acquire such property.

When the Agricultural Produce is to be sold, then, the Procedure prescribed under Rule 74 is to be followed. It provides that the Agricultural Produce shall be sold at the place, where the crop is grown, or at the threshing floor, where it is gathered, or at the nearest public place. It shall be sold for a fair price. Rule 75 deals with the special provisions relating to growing crops. It empowers the Purchaser to enter into the land, for the purpose of cutting the growing crop.

Rule 77 deals with the Sale of Movable Property in Public Auction, and it was provided that when the movable property is sold in Public Auction, the price of each lot shall be paid at the time of Sale, and on payment of the same, a receipt shall be issued. Any irregularity in conducting the Sale of Movable Property will not vitiate the sale, but any aggrieved person may sue for Compensation or for recovery of the Property, by filing a separate Suit, as stipulated in Rule 78. Further, Rule 79 provides that movable property, such sold, shall be given to the Purchaser. If it is in possession of another Person, then, a Notice has to be issued to him, to deliver the Property to any person, except the Purchaser, as provided therein. Under Rule 81, the Court may make an Order vesting the Property in the Purchaser.

Rule 82 provides that the Sale of Immovable Property in Execution of Decrees may be ordered by any Court, other than a Court of Small Causes. Rule 83 provides the circumstances in which the Sale will be postponed, to enable the Judgment Debtor to raise amount of Decree. Under this Provision, a Certificate has to be issued by the Court. It does not apply to a Sale of Property directed to be sold in execution of a Decree for Sale in enforcement of a mortgage or charge on such Property.

Rule 84 provides that in the event of Sale of Immovable Property, the Auction Purchaser shall pay immediately a deposit of 25% of the purchase money, to the Officer or Person conducting the Sale. If such amount is not deposited then, the Property shall forthwith be resold. However, where the Auction Purchaser is the Decree Holder, and he takes the ground of Set Off, then, the Court may dispense with the requirements of this Rule.

Rule 85 says that the full amount of Purchase money shall be paid by the Purchaser into the Court, before the closure of the Court on the 15th day from the Sale of the Property. The Decree Holder is entitled to take the plea of Set Off. Under the Rule 85 of the Madras High Court Amendment, the Auction Purchaser shall deposit the money payable, and the general stamp for the Certificate under Rule 94, or such amount required for such Stamp, before the closure of the Court on the 15th day from the Sale of the Property, providing that while calculating the amount to be so deposited, and that while calculating the Purchase money to be deposited to the Court, while taking the Set Off.

Rule 86 of CPC provides that when the payment is not paid within the Period stipulated, the Decree Holder with the permission of the Court or auction purchaser can purchase it.

As per Rule 278 of Civil Rules of Practice, if a third Party purchases the property, he has to deposit the 25% of the purchase amount on the same day, out of which poundage fee is deducted. If the Decree Holder purchases the property, the Decree Holder can ask the Court to dispense with the deposit of 25%. But, the Decree Holder has to pay the poundage fee. The remaining 75% of the purchase amount shall be deposited within period of 15 days along with the Sale Certificate Stamps amount. The Decree Holder has to file a Petition to set off the E.P. amount from the purchase amount. If the Purchase amount is more than the E.P amount, the excess of the purchase amount to be deposited with the Sale Certificate Stamps within 15 days. The Sale Certificate is to be confirmed after 60 days. The Limitation for delivery of possession is one year, which starts from the date of Confirmation of the Sale.

Rule 90 says that an Application to set aside the Sale, on the ground of irregularity or fraud. It must be proved to the satisfaction of the Court that that the Applicant has sustained substantial injury by reason of such fear or subsequently. Rule 91 says that the Auction Purchaser can seek to set aside the Sale, on the ground that the Judgment Debtor has no salable interest in the Property sold.

Rule 92 deals with the circumstances, as to when the Sale becomes absolute, and as to when it is to be set aside. When the Applications under Rules 89 to 91 are not filed, or were filed and were disallowed, then the Court shall confirm the Sale, and it becomes absolute. But, if the Property is sold during the pendency of the Claim Petition, then, till the Sale shall not be confirmed till the final disposal of the said Claim Petition. Sub Rule [2] clearly provides that where the Claim Petition is filed and is allowed, then, the Deposit is to be made within 60 days. No Suit shall be filed to set aside under this Rule, by any Person, against whom such an Order was made. When the Third Party challenges the title of the Judgment Debtor, by filing a Suit against the Auction Purchaser, the Decree Holder and the Judgment Debtor shall be necessary Parties. If such Suit is decreed, then, the Court shall direct the Decree Holder to refund the money to the Auction Purchaser, and when such an Order is passed, the Proceedings of the Execution shall be revived, at the stage, at which the Sale was ordered.

Rule 94 provides that when the Sale of the Immovable Property has become absolute, then, the Court shall grant a Certificate, specifying the Particulars of the Property sold, and the name and details of the purchaser, and the date on which the Sale became absolute.

Rule 95 deals with the Delivery of the Property sold in the Auction, when it is in the custody of the Judgment Debtor, or by some person on his behalf or claiming title through him. Rule 96 deals with the Delivery of the Property sold, which is in the occupancy of at Tenant.

Whenever the Decree Holder or the Auction Purchaser is obstructed in obtaining the possession of the Property, they have to make an Application to the Court, under Rule 97, complaining of such obstruction, and it shall be adjudicated under Rule 101, which deals with the Questions to be determined. Rule 99 deals with dispossession of any person, other than a Judgment Debtor, and he shall complain the same to the Court, which shall be adjudicated under Rule 101. After determining such Questions, an Order shall be passed under Rule 98, with respect to an application under Rule 97, and an Order shall be passed under Rule 100, with respect to an application under Rule 99. Rule 102 provides that Rules 98 and 100 does not apply to the transferee pendente lite. Rule 103 provides that the Orders passed under Rules 98 and 100 shall have same force, and Appeals lie against the same.

Rule 106 deals with setting aside of Exparte Orders passed during the Execution Petition Proceedings. Sub Rule [4], as inserted by way of an Amendment of Andhra Pradesh, the Provisions of Section 5 of the Limitation Act shall apply to all applications under Sub Rule [3]. It was also held in the Judgment given in the Case of Ch.Krishnaiah Vs. Ch. Prasad Rao [AIR 2010 AP 19], that Section 5, Limitation Act is applicable to the Applications under Section 5 of the Limitation Act.

2. DECREE FOR SPECIFIC MOVABLE PROPERTY:

Order XXI, Rule 31, CPC deals with the execution of the Decree passed for any specific movable, or for any share in a specific movable. It provides that it may be executed by seizure of such movable or share, as far as practicable, and by delivery to the Party, in whose favour the Decree was passed, or to the Person, who was appointed to receive the delivery on his behalf, or by the detention of the Judgment Debtor in Civil Prison, or by the Attachment of the Property, or by both.

If such Attachment is in force for three months, and the Judgment Debtor has not obeyed the Decree, then the Decree Holder may apply for Sale of the attached Property, and the Sale Proceeds may given to the Decree Holder, if the amount was fixed as an alternative to delivery of movable property, and in other cases, as compensation. If any balance remains, it shall be paid the Judgment Debtor on his Application. If the Judgment Debtor obeyed the Decree and paid the Costs of the Decree also, and where no Application for Sale of the attached property is not made, or if it is made and refused, within three months from the date of Attachment, then, the Attachment shall cease.

1. In the Judgment given in the Case of Shivaprasad Singh v. Prayag Kumari Debee (AIR 1935 Cal 39), it was that if a decreed movable property is capable of delivery, it must be delivered first, and that the decree-holder cannot bypass the procedure to claim an isolated money value portion without first seeking the specific movable property mechanics outlined in Rule 31.

2. In the Judgment given in the Case of Kapadam Sangalappa Vs. Kamatam Sangalappa (2025 INSC 1307), the Hon'ble Supreme Court has held that the Executing Court cannot grant delivery or proceed on presumptions or historical inferences; and that the Decree-Holder bears the absolute burden to prove actual existence/ possession and demonstrable breach.

3. DECREE FOR SPECIFIC PERFORMANCE OR RESTITUTION OF CONJUGAL RIGHTS OR FOR AN INJUNCTION:

Order XXI, Rule 32 of C.P.C. provides that where the Judgment Debtor had an opportunity to obey the Decree passed for Specific Performance or Restitution of Conjugal Rights or for an Injunction, and he had willfully failed to obey the Decree, then, the Decree may be executed in the following manner.

[a] in the case of a Decree for Restitution of Conjugal Rights, the Decree may be enforced by the Attachment of the Property of the Judgment Debtor,

[b] in the case of a Decree for Specific Performance of a Contract, or for an Injunction, the Decree can be enforced by the Detention of the Judgment Debtor in Civil Prison, or by the Attachment of his Property, or by both.

If such a Decree is passed against a Corporation, then the Decree may be enforced by the Attachment of the Property of the Corporation, or with the Leave of the Court, by the Detention of the Directors or other Principal Officers thereof, in Civil Prison, or by both Attachment and Detention.

If the Attachment under Sub Rules [1] and [2] was in force for Six months, and the Judgment Debtor has not obeyed the Decree, and the Decree Holder had applied for Sale of the such attached Property, then, it may be sold, and out of the sale proceeds, the Court may award fit compensation to the Decree Holder, and pay the remaining amount to the Judgment Debtor on his application.

If the Judgment Debtor obeyed the Decree and paid the Costs of the Decree also, and where no Application for Sale of the attached property is not made, or if it is made and refused, within Six months from the date of Attachment, then, the Attachment shall cease.

In the event of the Decree for Specific Performance of a Contract or for an Injunction was not obeyed, then, the Court may in lieu or or in addition to all or any of the above Processes, direct the act required to be done, as

practicable, by the Decree Holder, or by the Persons appointed by the Court, at the Costs of the Judgment Debtor, and when such act has been done, then, the expenses can be recovered from the Judgment Debtor, as if they were included in the Decree.

The Explanation provides that the expression 'the act required to be done' covers prohibitory as well as mandatory injunctions.

In the Judgment, dated January 17, 2025, given in the Case of Bhudev Mallick Alias Bhudeb Mallick & Another Vs. Ranajit Ghoshal & Others [2025 INSC 175], the Hon'ble Supreme Court of India held that the 'Imprisonment of a judgment debtor for violating a decree is an extreme measure that courts must use cautiously. Before ordering imprisonment, courts must ensure that the judgment debtor had an opportunity to comply and wilfully disobeyed the decree.' This Decision reaffirms the Principle that civil imprisonment should be a last resort in Execution Proceedings and must be supported by clear evidence of wilful non-compliance.

In the Judgment, dated 10.06.2026, given in the Case of Naurang Vs. L.Rs. Of Late Sri Chunnilal [2026 RJ-JD 26922], the Hon'ble High Court of Rajasthan, Jodhpur Bench, has held that "An Executing Court can order the restoration of possession under Order 21, Rule 32[5], C.P.C., if a Prohibitory Injunction is breached, via unlawful dispossession."

Rule 33 stipulates the Discretion of the Court, in executing a Decree for Restitution of Conjugal Rights. It specifically provides that at the time of passing a Decree against the Husband, apart from the Procedure under Rule 22, CPC, the Court may order that the Decree shall be executed in the manner provided therein. If the payment is not made, then, the Judgment Debtor may make periodical payments.

In a Decree for Restitution of Conjugal Rights, the Decree Holder cannot compel the Judgment to resume Cohabitation with him/ her. Such a Decree Holder can only file a Petition for Divorce, if the Spouse does not return or resume cohabitation, even after an interval of one year of the passing of the Restitution Decree. It is a cause for Divorce.

In the case of T.Sareetha vs. T.Venkatasubbaiah [AIR 1983 Andhra Pradesh 356], it was held that Section 9 of the Hindu Marriage Act, which provides the relief to the aggrieved, who has been deserted by their Spouses, without a reasonable justification, offends Article 21, which includes Right to Privacy, and it violates the Privacy of the Spouses, who are living separately.

In the case of Smt. Saroj Rani Vs. Sudarshan Kumar Chadha [AIR 1984 SC 1562], the above said Judgment of T.Sareetha was over-ruled, and the constitutional validity of Section 9 of the Hindu Marriage Act, was upheld, and was declared as valid, ruling that the Restitution of Conjugal Rights does not violate Article 21 of the Constitution of India.

In the case of Dharmendra Vs. Usha Kumar [AIR 1977 Supreme Court 2218], it was held by the Supreme Court that, “we are unable to accept the position that Sec. 9 of the said Act (Hindu Marriage Act) is violative of Art. 14 or Art. 21 of the Constitution. This is because firstly the purpose of the decree for restitution of conjugal rights is only “to offer inducement for the husband or wife to live together” and to settle their differences amicably.”

In the Judgment given in the Case of Boddu Jaya Krishna Vs. Boddu Naga Praveena [2023 (6) ALT 263 [D.B], the Hon’ble High Court of Andhra Pradesh held that, the Appellant/ Husband himself deserted the Respondent without any reasonable cause and made baseless allegation, the Respondent/ Wife is found to be willing to join with him, thereby, the Respondent/ Wife is entitled for Restitution of Conjugal Rights.

4. DECREE FOR EXECUTION OF A DOCUMENT, OR ENDORSEMENT OF NEGOTIABLE INSTRUMENTS:

Order XXI, Rule 34 of C.P.C. provides that where the Decree is for execution of a document, or for the Endorsement of a negotiable instrument, and the Judgment Debtor refuses to obey the Decree, then, the Decree Holder may

prepare a draft of such Document or Endorsement, and it shall be served on the Judgment Debtor, with a notice, calling for his objections to be filed within the time fixed by the Court. Then, the Judgment Debtor objects to the Draft. After due hearing, the Court may approve or alter the Draft.

Then, the Decree Holder may file a Copy of the Draft, which was already altered, upon the proper Stamp Paper, as directed by the Court. Then, the Judge or any Officer appointed by him, shall executed such Document. It shall have the same effect, as if it is executed by the Party himself. Then, the Document shall be registered by the Judge or the Officer appointed by him. Even when the Document need not be required, and the Decree Holder desires for registration, then, the Court may pass a fit order. If the Court orders for registration of any document, then, an order may be made, for Costs and the expenses for registration.

In the Judgment given in the Case of Rajbir v. Suraj Bhan (2022 INSC 247), the Hon’ble Supreme Court held that “Order 21, Rule 34, CPC cannot be diluted under any circumstance. The Executing Court has a

mandatory duty to serve the Draft of the Sale Deed to the Judgment Debtor, and invite Objections before Execution. Skipping this Rule vitiates the entire Execution Proceedings.”

In the Judgment given in the Case of Pratibha Singh v. Shanti Devi Prasad (AIR 2003 Supreme Court 643 = 2003 [2] SCC 330), the Hon'ble Supreme Court held that “The duty of the Court, while dealing with executability under Order 21, Rule 34(2), CPC, noting that descriptions and drafts must be precise, and completely align with the substantive rights adjudicated in the original decree.” It was also held that Rule 32 of Order 21, CPC authorizes correction of any error committed while drafting the Sale Deed in a Decree for Specific Performance or when the measurements or boundaries are not delineated in the map, the same can be rectified by resorting to Section 47, CPC.

In the Judgment given in the Case of Hungerford Investment Trust Ltd. (Involuntary Liquidation) vs. Haridas Mundhra [AIR 1972 SC 1826], wherein the Hon'ble Supreme Court held that under Order 21, Rule 32, CPC, the Court executing a Decree for Specific Performance is competent to give possession. The Hon'ble Supreme Court had affirmed that the Execution of Specific Performance or related Document Decrees must strictly follow the procedural mechanism mapped out in Order 21 Rules (such as Rule 32 and Rule 34), rather than bypassing them via external statutory assumptions.

In the case of Virigineni Sriramulu and others Vs. Murarisetty Ramachandraiah and others [2024 (6) ALT 662 [S.B], the Hon'ble High Court of Andhra Pradesh held that, although oral evidence was provided to explain discrepancies in the property boundaries, the lack of precise measurements rendered the issue unresolved. Nonetheless, since the Defendants did not contest the execution of the specified boundaries in the agreement, the Plaintiffs are entitled for Specific Performance.

In the case of Jonnalagadda Sreerama Krishna Murthy and others Vs. Gedala Rajeswari [2025 (1) ALT 511], wherein the Hon'ble High Court of Andhra Pradesh held that, the efflux of time and the escalation of the price of the property by itself cannot be valid grounds for denying the relief of Specific Performance. The subsequent rise in price will not be treated as a hardship entailing refusal of the Decree for Specific Performance.

In the case of Antonysami Vs. Arulanandanam Pillai [Died] by L.Rs, and another [2002 (1) ALT [SC] 49 [S.B], the Hon'ble Supreme Court held that, the Decree becomes executable on the expiry of the specified date when the Decree Holder paid the amount, and the period of Limitation of 12 years therefore be computed from the specified date and not from the date when the Judgment Debtor complied with the direction of the Court, and the

Execution Petition having been filed beyond 12 years from the specified date is barred by limitation.

In the case of Saladi Suryanarayana Vs. Evani Suryanarayana Sastry and others, reported in 2020 (3) ALT 528 [S.B], the Hon'ble High Court of Andhra Pradesh held that, the Plaintiff in a Suit for Specific Performance should prove his continuous readiness and willingness from the date of the Agreement up to the date of the Decree to get a relief of Specific Performance.

In the case of Seeram Tirupathamma and others Vs. Nekkanti Nageswara Rao and others [2019 (2) ALT 77 [S.B], the Hon'ble High Court of Andhra Pradesh held that, the Specific Performance of contract may be enforced against any person claiming title arising subsequent to the contract of sale, when such transferee is not a bonafide purchaser and had notice of the original contract of sale. The relief of recovery of possession need not be specifically asked for as it is a necessary corollary to the Decree for Specific Performance.

5. DECREE FOR POSSESSION OF THE IMMOVABLE PROPERTY:

Order XXI, Rule 35 of C.P.C. provides that in a Decree for delivery of any immovable property, then, the possession of the Property may be delivered to the Decree Holder, or to the Person appointed by him. If any Person bound by the Decree, refuses to vacate the Property, then, he may be removed. If the Decree is for joint possession of immovable property, then, the possession shall be delivered by affixing a copy of the Warrant at some conspicuous place in the property, and by proclaiming the substance of the Decree, by beat of drum, or other customary mode, at some conspicuous place.

If the possession of the Building or any enclosure is to be delivered, and the Person, bound by the Decree, does not afford the free access to the same, then, the Court, after due opportunities to the woman to leave the premises, may put the Property in possession of the Judgment Debtor, even by break opening the Locks or Door, as necessary, to put the Decree Holder in possession of the such Property.

Order 21, Rule 35 of the Code of Civil Procedure (CPC) deals with the execution of decrees for delivery of immovable property, specifying how actual physical possession, joint possession, and access via breaking locks should be enforced by the Executing Court.

In the Judgment given in the Case of Shreenath and Another Vs. Rajesh and Others (AIR 1998 Supreme Court 1827], the Hon'ble Supreme Court held that under Order 21, Rule 35(1), CPC, the Executing Court must

deliver actual physical possession to the Decree Holder, removing any person bound by the Decree, and that the resistance can be adjudicated under Rule 97.

In the Judgment given in the Case of Bhanwar Lal v. Satyanarain (AIR 1995 Supreme Court 358), the Hon'ble Supreme Court emphasized that procedural hurdles should not defeat execution, and that when an obstruction occurs during execution under Rule 35(3), the Provisions of Rule 97 are triggered to resolve the obstruction comprehensively, rather than dismissing the execution outright.

Joint Possession and Symbolic Delivery – In the Judgment given in the Case of Ram Singh v. Gurnam Singh (1994), it was held that for Decrees granting joint possession of immovable property, actual physical ouster is unfeasible; and thus, symbolic possession under Order 21, Rule 35(2)—by affixing a copy of the warrant and beating drums—constitutes valid delivery of possession.

Use of Police Assistance - In the Judgment given in the Case of Smt. Usha Jain v. Manmohan Bajaj (1980), the Hon'ble Madhya Pradesh High Court established that a Decree Holder, facing resistance or locked premises, is entitled to apply for police help under Section 151, read with Order 21, Rule 35(3) of the CPC to enforce the execution effectively.

6. DECREE FOR DELIVERY OF IMMOVABLE PROPERTY IN OCCUPATION OF A TENANT:

Order XXI, Rule 36 of C.P.C. provides that when the Decree is for delivery of possession of any immovable property, which is in the possession of a tenant, or other person, entitled to occupy the same and not bound by the decree to relinquish such occupancy, then, the Delivery shall be made by affixing a Copy of the Warrant in some Conspicuous place on the Property, and by proclaiming the substance of the Decree, regarding the Property, by beat of drum or other customary mode. It is called as Symbolic Delivery of Possession of Immovable Property. The said Provision governs the delivery of symbolic possession of immovable property when it is occupied by a tenant or another person not bound by the decree. The Court effects delivery, by affixing a copy of the warrant in a conspicuous place and proclaiming the substance of the decree by beat of drum or customary mode.

In the Judgment, dated 20.04.2015, given in the Case of Smt. Shakuntala Gupta v. Man Mohan Gupta, the Hon'ble Delhi High Court has elaborated on the distinction between Rule 35 (actual physical possession by removing persons bound by the decree) and Rule 36 (symbolic possession via proclamation and warrant affixation for properties occupied by unbound tenants/ third parties).

Execution of Decree for Mandatory Injunction and Permanent Injunction.

In respect of Decree for Mandatory Injunction, as per the Article 135 of the Limitation Act, the Limitation is 3 years. In respect of Execution of Decree for Permanent Injunction, there is no Limitation, as per the Proviso to Article 136 of Limitation Act. The Decree of Injunction can be executed against the Legal Representatives of the Deceased Defendant also.

In the Judgment given in the Case of Government of Orissa Vs. Ashok Transport Agency [(2002) 9 SCC 28], it was held that though the Decree for Injunction does not run with the land, such a Decree can be executed against the Legal Representatives of the Deceased Defendant. Any violation of the Decree for Injunction by the Legal Representatives can be stopped, by resorting to proceedings under Section 50 of CPC. Such liability would be limited to the attachment of property of the Deceased in the hands of the Legal Representatives. The other relief of Detention of the Legal Representatives under Order 21, Rule 32 of CPC, cannot be resorted or enforced against the Legal Representatives at all.

A Decree for Mandatory and Perpetual Injunction can be executed against the Judgment Debtor for continued obstruction, and the subsequent obstruction gives rise to take action under Section 22 of the Easements Act. After removal of obstruction by the Court, if there is any obstruction by the Judgment Debtor, the same can be removed. It is not necessary to file another Suit based on Easement. It was given in the Case of Jai Dayal vs. Krishan Lal Garg, reported in AIR 1997 SUPREME COURT 3765.

Limitation for a Decree for Possession:

The limitation to execute the Decree for possession of immovable property is 12 years from the date of Judgment and Decree, and not from the date of engrossing of Decree on the Stamp Paper, as it relates back to the date of Judgment and Decree. It was held in the Case of Ram Bachan Rai vs. Ram Udar Rai [AIR 2006 SC 2248].

When a Decree Holder put in possession of land, it includes possession of standing crops, and in such an event, Decree Holder is to be directed to give the cost of the crop. It was held in the Case of Kamal Bai vs. Bhikchand Kishan Lal [(1982) 1 SCC 377].

7. DECREES IN PARTITION SUITS, WHERE THE PROPERTIES ARE TO BE DIVIDED AND SHARED BETWEEN THE SHARERS, ETC.

Generally, in the Suit for Partition, a Preliminary Decree will be passed, specifying the Share of the Plaintiff and the Defendants. But, the extent of their Shares will not be stated in the Preliminary Decree. For effecting the actual Partition, the Party has to file a Petition for passing of a Final Decree, by

appointing an Advocate Commissioner, to divide the Properties as per the Preliminary Decree, and to allot the Shares, as specified therein, and to put the Plaintiff in separate possession of his separate Share.

In such a Final Decree Petition, the Advocate Commissioner will be appointed, and he will divide the Properties, with the assistance of the Mandal Surveyer, and he will demarcate them, and then, he will allot the Shares, as per the Preliminary Decree, and put the Parties in possession of the same, and then, file his detailed Report before the Court. But, in some Cases, the Advocate Commissioners will not allot the Properties, and file the Report before the Court. In such a Case, the Court has to allot the Shares, by way of lotting of Plots in the open Court, and after the same, as per the lots drawn, the Shares will be allotted in the open Court, in the presence of both Counsels and Parties.

Then, basing on the allotment of Shares, as stated in the Report of the Advocate Commissioner, or the allotment of Shares by way of Lots in the open Court, the Court will pass Orders, and it will be specifically directed that the Final Decree shall be engrossed, upon deposit of the Requisite Stamp Papers.

However, in some Cases, though Partition is effected and Final Decree is passed, actual delivery will not be given to the Sharers, as per the Preliminary Decree, then, the Decree Holder will file an Execution Petition, seeking to put him in possession of the Property. For this purpose, the Provisions of Order 21, Rule 35 of C.P.C. will be followed.

In the Judgment given in the Case of Shreenath Vs. Rajesh [(1998) 4 SCC 543], the Hon'ble Supreme Court affirmed that Order 21, Rule 25[1], CPC, mandates the Executing Court to deliver actual physical possession to the Decree Holder, and it possesses the incidental power to remove any Person bound by the Decree or obstructionists refusing to vacate.

In the Judgment given in the Case of M.V.S. Manikayala Rao v. M. Narasimhaswami and Others (AIR 1966 SC 470), the Hon'ble Supreme Court has held that where a Purchaser or Co-sharer seeks Execution, regarding joint family properties or undivided interests, the joint delivery provisions under Order 21, Rule 35(2) of CPC, are applicable.

In the Judgment given in the Case of Rahul Bhoi Vs. Pareswar Bhoi (AIR 1992 Orissa 105), it was held that the actual physical possession must be delivered under sub-rule (1), if specific property is designated, whereas formal or symbolical possession is restricted strictly to the instances matching sub-rule (2) or Rule 36.

In the Judgment given in the Case of Madaswamy Vs. Govindaraj (2007 (1) MLJ 664), the Hon'ble High Court of Madras has held that the Power of the Executing Court under Order 21, Rule 35(3), CPC, includes the incidental and inherent authority to order the demolition or removal of any unlawful or illegal superstructures/ constructions raised pendente lite [during the pendency of the Suit, even if the original decree for possession or eviction did not contain a specific mandatory injunction for removal, so that the Partitioned Property can be effectively delivered.]”

CONCLUSION:-

Earlier, it is used to be said that the woes of the litigants start with the commencement of the Execution to realise the Decree. It is also said that the Execution Proceedings are more weighted in favour of the Judgment Debtor, than in favour of the Decree Holder. The Proceedings of Execution are taking more time, than the time taken for the disposal of the main Suit itself. It is making the Decree Holder unable to enjoy the fruits of the Decree. Considering all these aspects, the Hon'ble Supreme Court has directed in the Para No.75 of the said Judgment, dated 06.03.2025, given in the Case of Periyammal (Dead, Through L.Rs.) Vs. V.Rajamani and Another [2025 INSC 329], that “In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.”

In view of the above said Judgment, it is clear that the Execution Petitions must be disposed of within six months from the date of filing, failing which the Courts are duty bound to record reasons. It shows that the Courts should concentrate much upon the Execution Petitions. But, in most of the Cases, the Execution Petitions are being delayed due to continuous non serving of Notices upon the Judgment Debtors, and due to pendency of the Claim Petitions, Obstructions or Resistances during the Process of Execution, etc.,

In order to avoid such a delay, the Courts can take a few precautionary measures, like taking the address proof of the Parties, as soon as they appear before the Court in the Suit state or Interlocutory Stage, or Execution Petition stage. So also, the Advocates should ensure that the Parties shall produce the address of proof of their present Address, whenever they change the address during the pendency of the Proceedings. It would curtail the delay in the service of Notices, execution of the Warrants, etc., It would also enable the Courts to decide the Execution Petition speedily. We should keep in mind that the Fruits of the Decree can be realized by the Decree Holder, only the Execution Proceedings. He cannot be made to wait for the same for long periods.
