

EXECUTION OF DECREE

(Ss. 36-74, O. 21)

Execution Defined - The process for enforcing or giving effect to the Judgment of the court.

- Declaratory decree is not capable of being executed.

Who can apply - Decree holder.

Against whom - Judgment debtor (JD) and if died, his LR- only against property which came from the JD, not against LR's person.

In which court -

- The court which passed decree.
- Appeal case - court of first instance

Which court can execute - **Sec. 38, O. 21, R. 5**

- The court passed decree, or
- To whom decree is sent for execution.

Mode of payment of money decree (Rule 1, 2)

- a) by depositing in the executing court, or
- b) out of court to decree holder, or
- c) as per direction of court which passed the decree.

Powers of court executing decree

1. Court can determine following question (Sec. 47)

- i. All question arising between the parties to the suit in which decree was passed or their representatives, and relating to the execution, discharge, or satisfaction of the decree and not by separate suit.
- ii. A question as to whether any person is or is not the representative of a party.
- iii. Any question regarding court fees between indigent person and SG. [O. 33, R. 13]

2. The executing court cannot go behind the decree, it has to execute the decree as it is.

- It cannot question correctness or otherwise of the decree.
- In following conditions can go behind the decree -

- a) terms of decree are vague/ ambiguous.
- b) where there is lack of jurisdiction.
- c) where decree is meaningless.

Power of court to whom decree is transferred -

- same as if decree is passed by the court itself.

PRECEPT (Sec. 46)

Precept means a command, an order, a writ, or a warrant.

A precept is an order or direction given by the court which passed the decree (on the application of decree holder) to a court which would be competent to execute the decree to attach any property belonging to the JD.

Attachment shall not continue for more than 2 months, unless -

- Period of attachment extended by the court which passed the decree, or
- before the determination of such attachment the decree has been transferred to the court by which attachment has been made, and
- decree holder has applied for an order for sale of property.

Execution of decree passed by court in reciprocating territory (Sec. 44A)

- Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by District Court.
- Together with certified copy of the decree, there shall be a certificate from such superior court stating the extent to which the decree has been satisfied or adjusted.
- Such certificate shall be conclusive proof of such satisfaction or adjustment.
- Provisions of Sec. 47 shall apply.
- If it is shown that the decree falls within Secs. 13(a) to 13(f) (*exceptions*), then court shall refuse execution.

Reciprocating Territory - Any country or territory outside India which the CG may, by notification in official gazette, declare to be a reciprocating territory, for the purpose of this section.

Cross Decree (O. 21, R. 18)

Where the same parties in separate suits hold decrees against each other and the decree holder in one suit, becomes the judgment debtor in other suit, such decrees are called "cross decrees".

Where applications are made to such court which is competent to execute both the decrees then -

- i. if two sums are equal - then satisfactions shall be entered upon decrees.
- ii. if two sums are unequal then balance shall be satisfied.

MODE OF EXECUTION

Following ways (Sec. 51)

- a) by delivery of property,
- b) by attachment and sale or by sale without attachment,
- c) by arrest and detention in civil prison,
- d) by appointing a receiver,
- e) other manner as the nature of the relief require.

Where the decree is for the payment of money >> execution by detention in prison shall not be ordered unless -

Court is satisfied –

- a) that the JD for obstructing or delaying execution of decree –
 - i. likely to abscond or leave the limits of court,
 - ii. has dishonestly transferred, concealed or removed property,
- b) refuses or neglects or has refused/neglected to payment,
- c) decree is for a sum for which the JD was bound in a fiduciary capacity of account. **(proviso to S.51)**

Decree for payment of money. (O. 21, R. 30)

- by detention in civil prison of JD, or
- by attachment and sale of property, or
- both

N.B.-decree for the payment of money as alternative is also included.

Legal Representative (Sec. 50) - where JD dies before the satisfaction of decree, the decree holder may apply to court to execute the same against LR of the deceased.

- LR shall be liable only to the extent of the property which has come to his hands and not been duly disposed of.

Enforcement of decree against LR (Sec. 52)-

- i. where a decree is passed against a party as the LR of a deceased person, it may be executed by the attachment and sale of such property. (*Property of deceased*)
- ii. where no such property remains in the possession of the JD (*Property of deceased*) and he fails to satisfy the court that he has duly applied such property, the decree may be executed against JD as if the decree had been against him personally.

Difference between Sec. 50 and 52

- u/s 50 execution against the LR of J.D. is done, when J.D. dies without satisfaction of the decree (J.D.dies after the decree but before the execution.)
- u/s 52 decree is against the LR of the deceased person, that is, the LR is JD.

Decree for specific movable property (O. 21, R. 31)

1.
 - (i) by seizure and delivery to decree holder, or
 - (ii) by detention of JD in civil prison, or
 - (iii) by attachment, or
 - (iv) by both [(ii) &(iii)].
2. Where attachment has remained in force for 3 months>>
 - if the JD has not obeyed the decree, and
 - decree holder has applied to have the attached property sold,
 - such property may be sold and proceeds may be awarded to decree holder;
 - the balance will be paid to JD on his application.
3. The attachment shall **cease** -
 - if JD has obeyed the decree and paid all costs, or

- at the end of three months from the attachment, no application to have the property sold has been made.

Decree for specific performance for restitution of conjugal rights or for an injunction (Rule 32)

1. Where the party against whom a decree has been passed, has had an opportunity of obeying the decree and willfully failed to obey it, the decree may be enforced –

- a) restitution of conjugal rights >> by attachment of his property.
- b) specific performance of contract/ injunction –
 - i. by detention in civil prison, or
 - ii. by attachment of his property, or
 - iii. both. [Rule 32(1)]

2. If specific performance/injunction against corporation –

- i. by attachment of property, or
- ii. by detention in civil prison of director/principal officer, with leave of court, or
- iii. both. [Rule 32(2)]
 - where attachment remained for 6 months >> JD has not obeyed >> Decree holder has applied to have property sold>> may be sold >> proceeds be paid to decree holder>>balance to JD on application [Rule 32(3)]
 - obeyed the decree/no application to sale after 6 months or refused - attachment will cease [Rule 32(4)]
 - alternative action at the cost of JD by the decree holders. [Rule 32(5)]

ARREST AND DETENTION

Sec. 55 – A JD may be arrested in execution of a decree at any hour and on any day provided-

- i. No dwelling house shall be entered after sunset and before sunrise.
- ii. No outer door of a dwelling house shall be broken unless JD present or refuses access.

- iii. Where room is in actual occupancy of a *pardanasheen* woman, reasonable time and facility should be given to her to withdraw herself.
- iv. If JD pays the amount of the decree and the costs of the arrest to the officer arresting, such officer shall at once release him.
 - **No woman shall be arrested for the execution of a decree for money (Sec. 56)**
 - No JD shall be arrested unless the decree holder pays into court such sum as sufficient for the subsistence of JD. **(Rule 39)**
 - Govt. shall fix the scales of such allowances. **(Sec. 57)**
 - Where a JD is liable to be arrested for the execution of a decree of money, then before arrest, the court will issue a notice calling upon him to appear before the court and show cause, why he should not be committed to civil prison.
Except in following conditions (no notice required) –
 - i. by affidavit or otherwise court is satisfied that with the object/effect of delaying the execution of the decree JD –
 - a) is likely to abscond, or
 - b) leave the local limits of the jurisdiction of court. **(Rule 37)**

Detention and Release (Sec. 58)

The maximum period of detention of JD in civil prison -

- a) Decretal amount exceeds Rs. 5000 >> 3 months
- b) Rs. 2000 to 5000 >> 6 weeks
- c) Amount less than Rs. 2000 >> No civil prison.

N.B. – JD may be released before, on the ground of illness (Sec. 59)

- Sec. 58 only applies on execution of money decree.

Persons exempted from arrest (Sec. 135)

- i. No Judge/Magistrate/ judicial officer shall be arrested while going to/presiding in/ returning from his court.
- ii. Parties/pleaders/mukhtars/ revenue agents/recognised agents/their witnesses >> while going/attending/ returning from court during the pendency of their suit in court.

N.B. – This exemption is not to JD. (Sec. 135)

- iii. Members of legislative bodies in the continuance of any meeting of such body,
- iv. Member of any committee of legislative body during meeting of such committee,
- v. During continuance of joint sitting, meeting, conference of such body.
 - And during 40 days before and after such meeting, sitting or conference (Sec. 135A)

ATTACHMENT

Attachment of movable property (O. 21, R. 43)

- Attachment shall be made by actual seizure,
- attaching officer shall keep the property in his own custody/his subordinate.
- If subject to speedy and natural decay/ expenses of keeping in custody exceeds its value, then sell it at once.
- No attachment of agricultural produce.
- Application for attachment is made u/o 21, R. 12.

Attachment of immovable property (O. 21, R. 54)

Attachment by an order prohibiting the JD –

- a) from transferring or charging the property,
- b) from taking benefit from such transfer/charge.

Order shall be proclaimed at some place/adjacent to such place –

- By beat of drum / customary mode,
- affixing on a conspicuous part of property,
- affixing on a conspicuous part of court house,
- If property paying revenue, then in the office of Collector also (*affix*).

N.B. – Application is made u/o 21, R. 13 with all details necessary to identify property.

Removal of attachment (Rule 55)

- i. Amount of decree + cost + all charges + expenses >> paid into court.

- ii. Satisfaction of the decree otherwise made through the court/ certified to the court.
- iii. Decree is set aside or reversed.
 - Private alienation of property after attachment to be void to the extent of decree (**Sec. 64**)

N.B. – Salary >> to the extent of first Rs. 1000, and

2/3 of the remainder **shall not be attached** in execution of decree, **except** –

Maintenance >> 2/3 may be attached, 1/3 not attached. (**Proviso Sec. 60**)

Adjudication of claims and objections (O. 21, R. 58)

- Claim/objection is made on the ground that property is not liable to such attachment.
- Court shall proceed to adjudicate on such claim/ objection, but will not entertain if-
 - a) property attached has already been sold, or
 - b) was designedly/ unnecessarily delayed.
- All question arising between parties relevant to the adjudication of claim/objection, shall be determined by the court dealing with claim/objection, **and not by separate suit.**
- Where court refuses to entertain, suit may be instituted, subject to the result of such suit, order so refusing shall be conclusive.

Stay of sale (O. 21, R. 59)

If the property attached had already been advertised for sale, the court may –

- a) Movable property >> postpone the sale pending the adjudication of the claim/objection.
- b) Immovable property >> order that property -
 - shall not be sold pending the adjudication of claims/ objections.
 - May be sold but shall not be confirmed.

SALE OF PROPERTY

- Court executing the decree may order sale of property/ part of property, necessary to satisfy the decree and proceeds shall be paid to the decree holder. (**Rule 64**)

- Sale shall be conducted by an officer of the court/ appointed in this behalf by court. **(Rule 65)**

Proclamation of sale (Rule 66) -

- After notice to the decree holder and JD (time and place of sale + details of property).
- Proclamation shall be in the language of the court.

N.B. - Without proclamation sale is void.

Mode of Proclamation (Rule 67)

As given under O.21, R 54(2), by -

- a) affixing at conspicuous part of property.
 - b) affixing at conspicuous part of court house.
 - c) if property giving revenue, then at the Collector's office.
- And if court directs then - publish in official gazette/ local newspaper.

Time of Sale (Rule 68) - From date of affixing of proclamation -

- movable property >> after 7 days (Minimum)
- immovable property >> after 15 days (Minimum)

- Consent of JD in writing is necessary.

Exception - where property is subject to speedy and natural decay, be sold at once.

Adjournment or stoppage of sale (Rule 69)

1. Court in its direction, may adjourn.

- officer conducting sale may adjourn after recording reasons.
- If sale in court house, no adjournment without leave of court.

2. Where adjournment for a period longer than 30 days, then fresh proclamation, unless JD consents to waive it.

3. Sale shall be stopped if, before the lot is knocked down, the debt and costs are tendered to the officer conducting sale or paid into court.

- No decree holder shall, without the permission of court, bid or purchase property. **[Rule 72(1)]**
- The same applies to mortgagee.

- But where the decree holder get permission to purchase, court will apply reserved price. **[Rule 72(2)]**
- If mortgagee and decree holder are same, then no need to take permissions separately.

SALE OF MOVABLE PROPERTY

Where the property to be sold is a negotiable instrument or share in a corporation >> instead of public auction, authorise sale through a broker. **(Rule 76)**

When sale becomes absolute

- On the payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.
- When same bid amount, co-owner shall be given preference. **(Rule 77)**
- Irregularity in sale shall not vitiate the sale, but any person injured by such irregularity may sue. **(Rule 78)**

SALE OF IMMOVABLE PROPERTY

Sale of immovable property in execution of decrees may be ordered by any court but not by a court of small causes. **(Rule 82)**

Deposit by purchaser and re-sale - on every sale the person declared to be purchaser shall pay immediately 25% of purchase money to the officer conducting sale. If default, then re-sold on the expenses of such declared purchaser. **(Rule 84)**

- Full amount to be paid within 15 days from the date of sale, this cannot be extended. **(Rule 85)**
- If default of payment u/r 85, the deposits may be forfeited to the government and property shall be re-sold, defaulter will pay the cost of such re-sale. **(Rule 86)**
- When bid amount is same, co-sharer shall be given priority. **(Rule 88)**

Setting aside sale of immovable property

- i. owner of property, or
 - ii. person having interest in property
- before such sale/ at the time of making of application,

may apply in court to set aside the sale,

by depositing -

- i. 5% of purchase money to the purchaser, and
- ii. amount specified in the proclamation to the decree holder. **(Rule 89)**

Limitation - 60 days within the date of sale >> Art. 127 Limitation Act.
(Application + deposit in 60 days)

Setting aside on ground of irregularity

- i. decree holder, or
- ii. purchaser, or
- iii. any person entitle to share in a rateable distribution of assets, or
- iv. any person whose interests are affected by sale,

may apply to the court to set aside the sale, on the ground of -

- material irregularity, or
- fraud, in publishing/conducting it. **[Rule 90(1)]**
- No sale shall be set aside unless court is satisfied that irregularity/ fraud resulted in substantial injury. **[Rule 90(2)]**
- No application to set aside shall be entertained on any ground which could have been taken before/ on the date proclamation was drawn up. **[Rule 90(3)]**

Purchaser's Title - Where immovable property is sold in execution and sale has become absolute, the property shall be deemed to be vested in the purchaser from the time when the property is sold and not from the time when it becomes absolute. **(Sec. 65)**

RATEABLE DISTRIBUTION OF ASSETS (Sec. 73)

To claim a rateable distribution, following conditions must exists -

- a) there should be more than 1 decree holders of JD,
- b) the assets for which rateable distribution is claimed must be held by court,
- c) such application should have been made prior to the receipt of assets by the court,
- d) decree should be for the payment of money. **(Sec. 73)**

Assets - Any property of a person, which can be used to satisfy the present debts of such person.

- Under auction sale, there is no warranty of title, purchaser is with all the defects in title. (*Ahamdabad Muncipal Corporation vs Maji Abdul AIR 1971 SC*)
- The debts due to the state are entitled to priority over all other debts. (*UOI vs Somasundaram Mills (P) Ltd. AIR 1985 SC 407*)

GARNISHEE ORDER

[O. 21, Rule 46(a-n)]

Garnishee - means a judgment debtor's debtor. He is a person who is liable to pay a debt to a judgment debtor or to deliver any movable property to him other than mortgage, charge or negotiable instruments.

Notice to Garnishee - (Rule 46A)

-Upon the application of the creditor

-issue notice to garnishee

- i. either to pay in court, the debt due from him to the JD, or
- ii. deposit so much as may be sufficient to satisfy the decree or costs of execution, or
- iii. to appear and show cause why he should not do so.

Order against garnishee (Rule 46B) -

Failure to follow notice - execution order against him as if decree is against him.
