

## **INTRODUCTION**

Execution is the last stage of any civil litigation. There are three stages in litigation- a. Institution of litigation, b. Adjudication of litigation, c. Implementation of litigation. Implementation of litigation is also known as execution. Decree means operation or conclusiveness of judgment. A

decree will be executed by the court which has passed the judgment. In exceptional circumstances, the judgment will be implemented by other court which is having competency in that regard. Execution enables the decree-holder to recover the fruits of the judgment.

## **EXECUTION- MEANING**

The term “execution” has not been defined in the code. The expression “execution” simply means the process for enforcing or giving effect to the judgment of the court. The principles governing execution of decree and orders are dealt with in Sections 36 to 74 and Order 21 of the Civil Procedure Code. Hon'ble Apex Court in Ghanshyam Das v. Anant Kumar Sinha (AIR 1991 SC 2251)

dealing with provision of the code relating to execution of decree and orders, observed in following words -

“so far as the question of executability of a decree is

concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgment- debtors and decree-holders but also to claimant objectors,

as the case may be”

## **ATTACHMENT**

A decree may also be executed on the application of the decree-holder by attachment and sale, only sale without attachment of property. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void.

A decree may have to be executed by attachment and sale of JD's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.D. to comply with the decree, or to expose him to a penalty in case of disobedience.

Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the J.D. has attachable interest in the property, and that the property is not exempt from attachment. While ordering attachment of salary regard may be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment.

In execution of a decree for maintenance one third of the salary of J.D. is exempted from attachment. In other money decrees salary to the extent of first four hundred rupees and two third of the remainder are not liable to

attachment. Thus, if the J.D. gets a salary of Rs. 1000/- the first Rs. 400/- plus two third of the remainder or two thirds of Rs. 600/- i.e. Rs.400/- in all Rs. 800/- would be un-attachable, leaving only Rs. 200/- available for attachment. Pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment.

### **The Court must then determine the mode of attachment.**

Attachment can be made by seizure or by an order prohibiting the J.D. or other person from dealing with the property or by charging the debtor's interest in the property. When movable property other than agricultural produce is to be attached., it should be actually seized and kept in custody of the attaching officer, except when the property is subject to speedy and natural decay, in which case it may be sold at once. Property which cannot be conveniently removed may be left at the place of attachment in the custody of a respectable person.

### **Execution against the Agriculturist**

Before ordering attachment in livestock, the the D.H. should be asked to deposit sufficient sum for removal of property to Court premises or other place as the Court may direct and also for its maintenance and guarding . Property attached may be placed in custody of D.H. for removal and conveyance to the place appointed by the Court.

Growing crop shall not be attached at any time less than 20

days before it is likely to be fit to be cut or gathered. When crop is attached warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been cut or gathered, on the threshing floor, on the house in which the J.D. resides, and shall also be sent to the Collector.

Order for attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered. The J.D. may be allowed to cut and gather the crop and if he fails the D.H. may be allowed to do the needful.

All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by executing Court and not by a separate suit.

### **Properties which are liable to attachment and sale in execution of a decree :-**

1. Lands 2. Houses or other buildings 3. Goods 4. Money 5. Banknotes 6. Cheques 7. Bills of exchange 8. Hundis 9. Promissory notes 10. Government securities 11. Bonds or other securities for money 12. Debts 13. Shares in corporation and 14. All other salable property whether movable or immovable.

### **Objection of parties**

Whereas an objection to attachment or claim to attach property if made by a third party, the objector may either proceed by an application under this rule before the executing Court or he may bring a suit to establish his objection. His failure to proceed by an application under this rule is no bar to a separate suit. The object of this rule is to give a speedy and summary remedy, but this rule does not deprive him of his remedy by way of suit.

### **Custody and disposal of movable properties**

A decree may have to be executed by attachment and sale of J.D.'s property.

The attachment of movable property, other than agricultural produce, in possession of judgment debtor is to be made as per provisions of O.21 R 43 of C.P.Code by actual seizure.

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. However, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

When the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment debtor or of the decree holder or of any other

person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person as the “custodian

However, if the custodian fails, after due notice, to produce

such property at the place named by the court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(a) the custodian shall be liable to pay compensation to the decree holder, judgment debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced—

(i) at the instance of the decree holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree. When the decree directs delivery of specific movable property, the court would have indicated the amount to be recovered as an alternative if delivery of specific movable property can not be effected. If delivery of

such property can not be effected by seizure or by detention of JD in civil prison or attachment of his other property, the court may award to the D.H. the amount indicated in the decree. If no such amount is indicated in the decree, the executing court would fix such compensation as it thinks fit and award to D.H.

### **Conclusion :**

From the above discussion it clearly appears that attachment is one of the mode for execution of a decree or order by the process of the court so as to enable the Decree holder to realize the fruits of the decree.