

# **EXECUTION**

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## **I. INTRODUCTION**

Execution is the last stage of any civil litigation. There are three stages in litigation:

1. Institution of litigation.
2. Adjudication of litigation.
3. Implementation of litigation.

Implementation of litigation is also known as execution. A decree will come into existence where the civil litigation has been instituted with the presentment of plaint. Decree means operation or conclusiveness of judgement. Implementation of a decree will be done only when parties has filed application in that regard. A decree or order will be executed by court as facilitative and not as obligation. If a party is not approaching court, then the court has no obligation to implement it *suo-motto*. A decree will be executed by the court which has passed the judgement. In exceptional circumstances, the judgement will be implemented by other court which is having competency in that regard.

Execution is the medium by which a decree-holder compels the judgement-debtor to carry out the mandate of the decree or order as the case may be. It enables the decree-holder to recover the fruits of the judgement. The execution is complete when the judgement-creditor or decree-holder gets money or other thing awarded to him by judgement, decree or order.

**MEANING:** The term “execution” has not been defined in the code. The expression “execution” means enforcement or implementation or giving an

effect to the order or judgement passed by the court of justice. Simply “execution” means the process for enforcing or giving effect to the judgement of the court.

Supreme Court in *Ghanshyam Das v. Anant Kumar Sinha* [(1991) 4 SCC 379 = AIR 1991 SC 2251], dealing with provision of the code relating to execution of decree and orders, stated as follows:-

*“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 judgement-debtors and decree-holders but also to claimant objectors, as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measures and appropriate time, the answer is a regular suit in the civil court.”*

## **PRINCIPLES WITH REGARD TO EXECUTION OF DECREE AND ORDER**

- Provision of CPC relating to execution of decree and order shall be made applicable to both Appeal and Suit.
- A decree may be executed by the court which passed the judgement and decree or by some other court which is having competency to implement the judgement passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree holder (a) by delivery of any property which was in possession of judgement-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgement-debtor (c) by arrest and detention (civil imprisonment) (d) by appointing a

receiver (e) in such other manner which depends upon nature of relief granted by the court.

- Upon the application of decree-holder, the court may issue “percept” to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the “legal representative” of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- A judgement-debtor may be arrested at any time and on any date shall required to be brought before the court which has passed the decree and his detention may be in civil prison of the district where decree shall have to be executed.
- Where immovable property has been sold by the court in execution of a decree such sell shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

## **PROCEDURE IN EXECUTION:**

Section 51 to 54 talks about procedure in execution or mode for execution:

- Section 51: this section gives the power to court to enforce the decree in general. This section defines the jurisdiction and power of the court to enforce execution. Application for execution of decree under this section may be either oral (order 21 rule 10) or written (order 21, rule 11). Party has to choose the mode of implementation of decree. Court may execute decree as per the choice prayed by the decree-holder or as court may thinks fit.
- Mode of executing decree under section 51: (a) By delivery of any property specifically decreed. Property may be movable or immovable (b) By attachment and sale of the property or by sale

without attachment of the property. (c) by arrest and detention. (d) by appointing a receiver. (e) is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d).

- Section 52 deals with a case where the decree is passed against the legal representative of the judgement-debtor.
- Section 52 (1) empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand. For application of this clause the decree should have passed against the party as the legal representative of the deceased person, and it should be for the payment of money out of the property of the deceased.
- Section 52 (2) empowers a creditor to execute his decree against the legal representative personally if he fails to accounts for the properties received by him from deceased person.
- Exception to section 52:
  1. Court can implement the decree against the personal property of the legal representative provided if he is avoiding, neglecting or evading to make the payment from the property of deceased.
  2. Where he has misutilized the property of deceased and where the legal representative has alienated the property of the deceased person.
- Section 53: Liability of ancestral property.

No legal representative should be held personally accountable where the suit has been filed against a joint Hindu family unless he has received some property of joint Hindu family.

Under pious obligation if has received the property of joint Hindu family then will be held liable. Where the decree has been passed against Karta, no execution be made against the son under pious obligation if the decree is passed after partition. Event after partition a son can be held liable if suit was pending before partition.

The son will be held accountable if after the death of Karta the decree has been executed and son has distributed the property

of Karta among themselves. The member of joint Hindu family will be held liable if Karta has taken debt for moral purpose or family purpose.

The nature of suits determines how decree should be implemented.

Illustration: a promissory note has been executed by the father for the purpose of borrowing money. After the death of father the creditor instituted proceeding against son.

Where suit is filed basing on promissory note first it will be seen that whether suit is maintainable or not- if it is filed within three year then the suit will be maintainable. General rule is that son will be held liable if they have received ancestral property.

Where the son is not having knowledge about execution of promissory note, in such case will not be held liable even though has received the ancestral property.

- Section 54: Partition of estate or separation of share.

Section 54 comes into play when a decree has been passed for partition, or for the separate possession of a share of an undivided state paying revenue to the government, that is the partition of the state or share will be made by the collector. However if the collector refuses to make the partition of the revenue paying property, the civil court can do so. To attract the provision of this section it is not necessary that the plaintiff should ask for the division of government revenue.

Section 54 deals with a case where though the civil court has the power to pass a decree yet it is not competent to execute the same. Under this section the execution of decree shall be made by collector.

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## **II. JURISDICTION**

Section 38 of the Code specifies 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 37 defines the expression 'Court which passed a decree' while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

U/s.37 the expression Court which passed the decree is explained. Primarily the Court which passed the decree or order is the executing Court. If order or decree is appealed against and the appellate Court passes a decree or order, even then the original Court which passed the decree or order continues to be treated as Court which passed decree. The Court which has passed the decree or order ceased to exist or ceased to have jurisdiction to execute the decree already passed, then the Court which will be having a jurisdiction upon that subject matter, when application of execution is made will be the competent Court to execute the decree.

Merely because the jurisdiction of the Court which has passed the decree is transferred to another Court due to transfer of territorial area, the jurisdiction to execute the decree passed by such a Court is not ceased. However, the Court to whom the transfer of territorial area is made, will also have a jurisdiction to conduct the execution of decree or order. (Sec.37). Sec. 38 contemplates that a decree may be executed either by the Court which passed it, or by the Court which it is sent for execution. However the execution on judgment debtor is criteria of executing Court of territorial jurisdiction.

As a general rule territorial jurisdiction is a condition precedent for a court to execute decree. Neither the court which passed the decree nor the court to which it is sent for execution can execute it in respect of property lying outside territorial jurisdiction. However if the bond is executed before a court it remains in operation till formally discharged by registrar of concerned court. Another important point is that a decree passed by court without jurisdiction is nullity and its invalidity can be set up whenever and wherever it is sought to be enforced even at the stage of execution. A defect of jurisdiction whether pecuniary or territorial strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by consent of parties. Generally an executing court is not required to go behind the decree and it has to execute the decree as it is. It can however examine the issue whether the decree was passed by a court without jurisdiction and may not execute the decree if it finds so. The objection as to dispute on jurisdiction has to be taken at earlier stage and when the judgement debtor did not raise objection on receiving execution application, the execution can be proceeded with. From the point of view of delays the opportunity to challenge at the stage of execution sometimes opens another round of litigation. Objections as to such jurisdictions are raised in mechanical manner, which deprives the decree holder of the fruits of the decree. In respect of territorial jurisdiction, if it is lacking the decree cannot be executed. The court which passed a decree may on the application of the decree holder send it for execution to another court of competent jurisdiction under the provisions relating to transfer of decree.

## **TRANSFER OF DECREE**

Situations warrant that the decree may have to be transferred to some other court for the purpose of execution. The court which passes a decree may on application of a decree holder send it for execution to another court under following circumstances: -

1. If the person against whom the decree is passed actually and voluntarily resides or carries on business or personally works for gain within the jurisdiction of such other court.
2. If the person does not have property within the local limits of the jurisdiction of the court, which passed the decree sufficient to satisfy such decree and has property within local limits of jurisdiction of such other court.
3. If the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the court.
4. If the court which passed the decree considers for any other reason to be recorded in writing the decree should be executed by such other court.

The word Court means court of competent jurisdiction. The court to which decree is transferred for execution shall have same powers as the original court and persons disobeying or obstructing the execution of decree are punishable in the same manner. The transferee court however cannot travel beyond the decree. If the matter is transferred from one court to other for administrative reasons say from second court to fourth court both courts are competent.

When a decree is transferred by the Court which passed it to another Court for execution, the documents mentioned in Order XXI, Rule 6, must be sent to the latter Court. The work in connection with the

preparation of these documents should be done by Court officials holding permanent appointments, on payment, in the first instance, by the person applying for the transfer of the decree of a fee of Rs.1/-. The amount so recovered shall be credited to Government under the head "XXI-A—Law and Justice—Courts of Law—General Fees, Fines, and Forfeitures—Fees levied by Courts". A decree-holder, however, may at his option file with application a copy of his decree duly stamped in accordance with Article 7 of Schedule I, to the Court-fees Act, VII of 1870, and when he does so, he shall be exempted from the fee of Rs.1/-, prescribed in this paragraph, the remaining documents being prepared by the officials of the Court without further payment by the decree-holder.

Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, the Court passing the decree, shall send the same directly to the former Court. But, where the former Court is situate in a different district the Court, which passed the decree, shall send it to the District Court of the district in which the decree is to be executed. (Order XXI, Rule 5 of the Code).

Under Order XXI, Rule 8 of the Code of Civil Procedure, 1908, a decree sent under the provisions of Section 39 for execution to another district may be executed either by the District Court to which it is sent, or by any Subordinate Court of competent jurisdiction to which the District Court may refer it, and, under Section 42, the Court executing the decree has the same powers of execution as if the decree had been passed by itself. The execution files of such cases should remain with the record of the Court by which the decree is executed, and should not be returned to the Court by which the decree was passed.

A certificate showing the extent to which the decree has been executed is required, by Section 41 of the Code of Civil Procedure, 1908 to be sent to the Court which passed the decree, as to execution so certified, and the particulars should be entered in that Court's register of Civil suits under the head „Return of Execution“ in order to prevent a “double execution” being taken out in any other district.

To ensure compliance with order XXI, Rule 6 of the Code the High Court has prescribed a register in Form XXXVIII of part A-IV of High Court Rules and Order, Volume VI-A, Decrees transferred to other courts and those received by transfer are shown on the two sides of the same page in the register.

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### **III. ATTACHMENTS**

#### **Attachment of property:**

A decree may also be executed on the application of the decreeholder by attachment and sale, or only sale without attachment of property. Sale of property without attachment is not void and attachment is not a condition precedent for sale. 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 JDr's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.Dr. 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.Dr 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.Dr. 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.Dr. 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.Dr. 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 by attachment against the Agriculturist:**

Before ordering attachment in livestock, the D.H.R. 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.R. 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.Dr. 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.Dr. may be allowed to cut and gather the crop and if he fails the D.Hr. 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. When decree is satisfied the attachment is removed. When the execution application is for any reason dismissed the court has to indicate the period upto which the attachment shall continue. If the Court fails to pass such orders, attachment shall cease at the expiry of period of appeal.

### **Sale of property:-**

A decree may be executed by attachment and sale or sale without attachment of any property. Section 65 to 73 and rules 64 to 94 of Order 21 deals with the subject relating to sale of movable and immovable property. Before ordering sale, the court has to decide whether it is necessary to bring entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and decree to be satisfied is small the court must bring to sale only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder. 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.

### **Attachment of decrees:-**

As per Order 21, R.53 decree for mesne profits if ascertained or unascertained, decree for arrears of rent, any order for restitution of costs (however, a right to recover mesne profits by way of restitution by reason of reversal of the decree in appeal cannot be attached under this rule) which are held to be money decree and hence those decrees can be attached under this provision. A decree for possession of immovable property, or a decree for foreclosure or a preliminary decree for partition, shall be attached under this provision. A decree for partition, mesne profits and costs comes within the purview of Order 21, Rule 53 (4). This rule makes a distinction, as to attachments, between decree for the payment of money or for sale in enforcement of a mortgage or charge, and other decrees. A mere order for attachment will not effect the attachment of a decree under this provision. Where an exparte which has been attached in execution of another decree is set aside on the application of the J.Dr and a fresh decree in favour of the plaintiff is passed after trial on the merits, the original attachment must be taken to be revived as soon as a fresh decree on the merits is passed.

### **Attachment of immovable property:**

As per Order 21, R.54 deals with attachment of immovable property and the directions as to the mode of attachment mentioned therein are not merely directory but mandatory. This provision deals with the word "attachment" mentioned in Or 21, Rule 64. Attachment before Judgment is actually not an attachment in execution as there is no decree in existence on the date of attachment. Yet, such attachment become an attachment in execution after the decree has been passed and after an application to

executed such decree is made. An omission to have the drum beaten as required by the rule is material irregularity which will vitiate the execution sale. If a copy of proclamation order should be affixed on a conspicuous part of the property. If this is not done, it is also a ground to set aside sale, as it is a material irregularity. Any defect or error in the mode of attachment is only an irregularity which does not render the sale *ipso facto* void.

### **Removal of attachment after satisfaction of the decree—**

As per Order 21, Rule 55, in the following circumstances, the attachment may be terminated:

- (1) When all the costs and charges of the decretal amount are paid into the Court.
- (2) Satisfaction of the decree is otherwise made through the Court or certified to the Court.
- (3) The decree is set aside.
- (4) On furnishing the required security by the J.Dr.
- (5) By compromise between the parties.
- (6) By an express order withdrawing or putting an end to the attachment.
- (7) By sale of the attached property in execution of the decree.
- (8) By abandonment of the attachment by the decree-holder.

The modes in which various properties may be attached are as given below:-

<b>TYPE OF PROPERTY</b>	<b>MODE OF ATTACHMENT</b>
1. Movable property in possession of judgement debtor	by actual Seizure and sale if the property is subject to speedy and natural decay.
2. Movable property not in possession of judgement debtor	by order prohibiting person in possession from giving it to

	judgement debtor.
3. Negotiable instrument	by actual seizure and bringing it to court.
4. Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.
5. Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.
6. Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.
7. Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.
8. Partnership property	by making an order of <ol style="list-style-type: none"> <li>1. Attaching the interest share of the partner and partnership.</li> <li>2. Appointing a receiver of the share.</li> <li>3. Directing production of accounts.</li> <li>4. Ordering sale of such interest.</li> </ol>
9. Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court
10. Decree for payment of money or Sale in enforcement of a mortgage or a charge.	By an order of such court.
11. Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.
12. Immovable property	By an order prohibiting judgement debtor from charging or transferring it.

Attachment has been described as seizing another's property and involves the act or process of taking, apprehending or seizing the property and bringing the same in custody of the court. It is mainly used to seize the debtor's property in order to secure the claim of the creditor. The orders of attachment if promptly passed may effectively prevent the judgement debtor from transferring his property and expedite the compliance of decree including payment of money.

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#### **IV. CLAIM PETITIONS**

As per Order 21, R.58, Where claim petition is filed, the sale may be postponed. The claimant or objector should satisfy the Court that at the date of the attachment, he had some interest in, or was possessed of, the property which has been attached. If the Court considers that the claim application was designedly or unnecessarily delayed, no such investigation shall be made. The order made under this rule shall have the same force as if it was a decree. If the property attached has already been sold, no such claim or objection shall be entertained. Under this rule, all questions (including questions relating to right, title or interest in the property attached) arising between the parties or their representatives, relevant to the adjudication of the claim or objection, shall be determined the Court with the claim or objection and not by separate suit. Useful rulings as to this provision. If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable. Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment.

Objection to attachment of property under Order XXI, Rule 58, are frequently responsible for great delay in the disposal of the execution cases. Such objections are at times collusive and should be scrutinised with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Rules 58 and 59 of Order XXI. Adjudication of any claim or objection is appealable like a decree. When the Court dismisses any claim or objection under Order 21 Rule 58(1), the party may file an application under Section 151 CPC for restoration and for re-investigation or he may also file a suit under Order 21 Rule 58(5) within one year from the

date of dismissal for default. It should be noted if an objection appears to have been "designedly or unnecessarily delayed" (or where, before the claim is preferred or objection is made, the property attached has already been sold), the Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 28 CPC for the purpose.

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## **V. LIMITATION**

### **EXECUTION PROCEEDINGS – LIMITATION PRESCRIBED UNDER THE LIMITATION ACT 1963**

Art No.	Description of application	Period of limitation	Time from which period begins to run
1	2	3	4
124	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or order.
125	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, such date.

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

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## **VI. CONCLUSION**

From the above discussion it clearly appears that execution is the enforcement of decrees and orders by the process of court, so as to enable the decree-holder to realise the fruits of the decree. The execution is complete when the judgement-creditor or decree-holder gets money or other thing awarded to him by the judgement, decree or order.

Order 21 of the code contain elaborate and exhaustive provision for execution of decrees and order, take care of different type of situation and provide effective remedies not only to the decree-holder and judgement-debtors but also to the objectors and third parties.

A decree can be executed by various modes which include delivery of possession, arrest and detention of the judgement-debtor, attachment of the property, by sale, by appointment of receiver, partition, cross-decrees and cross-claims, payment of money etc.

On exceptional situation, where provisions are rendered ineffective or incapable of giving relief to an aggrieved party, he can file suit in civil court.

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