

## **EXECUTION**

The word 'execution' is not defined in the C.P.C. It simply means the process for enforcing the decree that is passed in favour of the decree holder.

As per Rule 2 (e) of Civil Rules of Practice "Execution Petition" means the Petition to the court for the execution of any decree or order.

As per Rule 2 (f) of Civil Rules of Practice "Execution application" means an application to the court made in a pending Execution Petition and includes an application for transfer, of a decree.

Execution of a decree or an order or implementation or enforcement of such decree or orders, these are important steps since they are concerned with realization of the fruits of the decree or the orders as the case may be. Quite often, it is said that the difficulty for the decree-holder would commence after obtaining decree since there would be several obstacles, the procedural technicalities, which may come in the way, several obstructions may be created for realization of the fruits of the decrees or the orders.

So far as execution application is concerned, the right accrues to a litigant on the date of filing on the execution application. An execution application is not continuation of suit. It is separate from and independent of a suit. The Full Bench of Allahabad High Court in **Pratap Narain Agrawal v. Raghu Prasad (1969 All LJ 244)** was called upon to consider the question as to the right of appeal in the matter of execution, where the Full Bench observed: "But the proceedings in execution of a decree are entirely independent of the suit. The right of appeal against decrees passed in execution would accrue on the date of the institution of the execution application."

Suit and execution proceeding:- Section 11, Civil Procedure Code deals with the doctrine of res judicata. The principle of res judicata is based on the need of a finality to judicial decisions. When a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. Even where Section 11 does not apply, the principle of res judicata has been applied by the Courts for the purpose of achieving finality in litigation. (**See Satyadhyan Ghosal v. Smt. Deorajini Debi, AIR 1960 SC 941**). This Section though uses the word 'suit' and not 'execution proceedings' would equally apply to the execution proceedings because the objections under Section 47 are also to be treated as a suit. Therefore, the principles of Section 11 will also be applicable to execution proceedings. The objectors did not previously raise this specific point which was raised in the last objection petition out of which the present appeal has arisen. It was for them to have raised the question of jurisdiction as also of limitation before the Court. Therefore, in these circumstances, the principles of constructive res judicata would definitely apply in the subsequent stages of the execution

proceedings if the objections could be raised but had not been raised in the previous objection petitions.

Execution application can be filed in Court to which local area was transferred:- It is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court. However, having regard to the object and purpose of Sections 37 to 39 and construing Section 37 and 38 according to the language used therein, the Section empowers the decree holder to file an execution application either to the Court that actually passed the decree or to the Court that can effectively execute it and in the later case, it is not necessary to comply with the provisions of Section 39 of the Code. The Court to whose jurisdiction the subject matter of the decree is transferred acquires inherent jurisdiction over the same by reason of transfer and if it entertains the application with reference thereto, it would be proper exercise of its jurisdiction. **Hamir Singh v. Bhawani Shankar, AIR 1980 Raj 134.**

Section 38: Court by which decree may be executed:- 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: Determination of jurisdiction:- For the purpose of determining the jurisdiction of the Executing Court it is only the amount involved in execution that has to be considered and not the value of the suit.

Distinction between Sections 24 and 39:- The distinction between the cases falling under Section 39 and those falling under Section 24 of the Code is that Section 24 refers the pecuniary jurisdiction and not territorial jurisdiction where as a decree is transferred under Section 24, the transferee Court can attach the property beyond its territorial jurisdiction Section 39, Civil Procedure Code, is not a bar to it. **P.M.Unuj v. M.J.Nadar, AIR 1973 Mad 2 (FB).**

## 1) Jurisdiction of the Court:-

Competency of the Court:- The general principle is that the judgment or decree of a Court which was not competent to entertain the proceedings in which such judgment or order has been made is not effective. **Tara Chand v. Misrimal, AIR 1970 Raj 53.**

Objection to the jurisdiction of the Court passing the decree:- When the 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 on the face of the record; where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions 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. **V.D.Modi v. R.A.Rehman, AIR 1970 SC 1475 : (1970) 2 SCJ 558 : (1970) 2 Andh WR (SC) 85.**

Questions relating to jurisdiction:- When the decree was passed after deciding the question relating to the jurisdiction and that the decision has become

final, the appellants cannot contend in execution proceedings that the decree was passed by an incompetent Court and that it is null and void. **Vassu Krishna v. Joao Baptista, AIR 1971 Goa 37.**

Powers of Executing Court to go behind decree:- Where a money decree was passed against both judgment-debtors and their liability was determined to be joint and several. The Executing Court had no jurisdiction to go behind the decree and apportion liability in the manner prayed for by the petition. **Raghunath Bedapanda v. Arakhit Sahu, AIR 1973 Ori 43 : (1973) 2 Cut WR 1192 : 38 Cut LT 812.**

Property outside territorial jurisdiction:- As a general rule, territorial jurisdiction is a condition precedent to a Court executing a decree and neither the Court which passed the decree nor the Court to which it is sent for execution can execute it in respect of the property lying outside its territorial jurisdiction. **Citi Bank, N.A. v. Indo-American Electricals Ltd., AIR 1981 Del 27.**

Competency of Court - Pecuniary jurisdiction:- Under Section 38 the primary Court which is competent to execute a decree is the Court which passed it. That Court remains competent to execute the decree even if the amount of the decree is at the time of execution goes up beyond the limits of pecuniary jurisdiction. The same principle, held, should also apply in considering what Court is competent to execute a decree. **Gordhan Lal v. C.P.Industries, Khandwa, AIR 1971 Raj 254 : 1970 Raj LW 231.**

Transfer of decree to Court in another State:- Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.

Result of execution proceedings to be certified:- The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Where a decree was sent for execution such Court will have same powers while executing the decree as if the decree was made by the said Court. **(AIR 1956 SC 359).**

A combined reading of Sections 42 to 45 of the Civil Procedure Code would show that the Indian Courts have power (1) to execute the decrees of those Indian Courts to which the Code does not apply, such as Scheduled Districts, (2) to execute the decrees of Civil Courts outside India which are established by the authority of the Central Government, (3) to execute the decrees of the revenue Courts in any part of India to which the provisions of the Code do not apply and (4) to execute the decrees of Indian Courts in the State to which the State Government has notified that Section 45 would apply. ( **AIR 1958 AP 407**)

Section 45 of the Code deals with execution of decrees outside India.

Section 47 of the Code deals with Questions to be determined by the Court executing decree. **In O.Sreenivasulu v. P.Santi - AIR 2007 A.P. 115** it was held that when once the decree is silent with respect to the payment of interest from the date of action or from the date of the institution of the suit, executing

Court cannot go beyond the decree and award interest as claimed in the execution petition.

It may not be out of context if Section 136 of the Code also is referred to at this juncture. Section 136 deals with procedure where person to be arrested or property to be attached is outside district. However, this procedure to be followed in cases not relating to the execution of decrees.

Section 47 of the Code is an important provision dealing with questions to be determined by the Court executing decree.

The ambit of Section 47 of the Code was well explained by the Apex Court in **Dhurandhar Prasad Singh v. Jai Prakash University, 2001 (6) SCC 534.**

**Section 51** of the Code deals with powers of Court to enforce execution.

#### **Procedure in execution**

**Section 51 CPC: Powers of Court to enforce execution:-** Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree -

- a) by delivery of any property specifically decreed;
- b) by attachment and sale or by the sale without attachment of any property;
- c) 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);
- d) by appointing a receiver; or
- e) in such other manner as the nature of the relief granted may require :

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.

Inherent lack of jurisdiction:- There is an essential difference between an inherent lack of jurisdiction and an erroneous exercise of jurisdiction vested in Court on account of some circumstances. An Executing Court can go behind the decree of original Court only if there was inherent lack of jurisdiction to deal with the matter by that Court. The proposition is so well settled that hardly any case law is required. In any case if any reference has to be made the same is found in **Hira Lal Patni v. Srikali Nath, AIR 1962 SC 199 and Vasudeo dhanji Bhai Mode v. Raja Bhai Abdul Rehman, AIR 1970 SC 1475. Ram Sarup v. Food Corporation of India, Patiala, AIR 1979 P & H 116.**

Execution Court cannot investigate the point of jurisdiction:- The Executing Court cannot investigate into facts to determine whether the relationship of landlord and tenant existed between the parties at the time H.R.C. Court entertained the landlord's the order of eviction had the jurisdiction to do so. **Narayana Gowada v. Krishna Madhyastha, AIR 1976 Kant 56 : (1975) 2 Kant LJ 40.**

Lack of jurisdiction:- Where a lack of jurisdiction is proved, the very order of execution would be nullity and in a situation like nature, held such a question relating to jurisdiction could be raised at any stage in the proceedings. As evident, the plea does not relate to wrongful exercise of jurisdiction but relates to absolute want of jurisdiction and such plea can be raised at the stage of execution. **P.L.Morada v. S.D.Bakshi, AIR 1974 HP 57 (DB) : 1974 RCR 299.**

Lack of inherent jurisdiction:- The Supreme Court pointed out (AIR 1962 SC 199) that the objection to local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction. It could be said that the Court, which has passed the decree, is lacking in inherent jurisdiction only when it could not have seisin 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 such other ground which would 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. **V.Appannammanayuralu v. B.Sreeramulu, AIR 1978 AP 160 (DB).**

Power of Executing Court:- The executing Court cannot go beyond the decree is the settled principle of law which flows from Section 38 of Code. In other words it means that the executing Court has to execute as it stands. **Hajra v. Abdul Majeed Matoo, AIR 1986 J & K 84 : 1986 Kash LJ 376.**

Suit treated as an execution application:- Suit for maintenance and permanent alimony was filed by the divorced wife and the same was decreed. The husband died. The divorced wife then filed another suit for declaration of charge on the estate of the deceased husband. It was contended that the subsequent suit is not maintainable. The Supreme Court directed to treat the subsequent suit as an

execution application under Section 47 of the Code. **Nand Rani Majumdar v. Indian Air Lines, AIR 1983 SC 1201 : (1983) 2 DMC 395 : (1983) 4 SCC 461.**

Section 47 & Order 21 Rule 37 - Prohibitory and Mandatory decree - One time barred - other executable - Section 47 and Order 21 Rule 37 - In an injunction suit prohibitory and mandatory, both kinds of decree had been passed. Mandatory decree became barred by limitation. Held prohibitory decree could be executed prohibiting obstruction to free access. **Firm S.V.Glass Works v. Firm S.V.C.Glass, Bangles Merchant, AIR 1986 All 1 : 1985 UPLBUC 237.**

Objection to execution - Evidence:- Where objection has been filed on the ground that the decree-holder is professional money-lender as such money-decree could not be executed but no evidence to support the contention was adduced. Objection held not maintainable. **Mandal Lal v. D.V.Pauri Garhwal, AIR 1988 All 40 : 1987 All WC 1337.**

Power of the executing Court:- The scope of objection by the judgment-debtor is pertaining to executing, discharge or satisfaction of the decree, and not to go behind the decree to question its validity on the grounds which were open to judgment-debtor at the appropriate stage before the decree was passed. What Section 47 contemplates is that the execution Court must take the decree as it is, according to its tenor and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in an appropriate proceeding in an appeal or revision. Even if it is erroneous, it is binding on the parties. An erroneous decree is as much binding on the parties as a legal decree. It need not be over emphasised, except in few cases where the decree is a nullity as without bringing the legal representative of a person who was dead on the date of decree, or in a case where the decree is passed by a Court having no jurisdiction to make it, other objections cannot be raised. **Hira Devi and others v. Harinath Chaurasia and others, AIR 1989 All 11 at p 13.**

The expression "execution, discharge or satisfaction of the decree":- The executing Court can go into all the questions between the parties relating to the executin, discharge or satisfaction of the decree and as such the Court has no power to amend, modify or substitute a decree or in other words cannot go behind the decree.

The same principle is applicable also in cases where a decree is a nullity or is unexecutable even if such a question is raised and decided or is deemed to have been decided on account of judgment being silent cannot exclude the executing Court to go into the question about the unexecutability of the decree or it having become nullity. This questin would be covered within the expression "execution, discharge or satisfaction of the decree" used in Section 47 C.P.C. **Union of India v. S.B.Singh, AIR 1988 All 225 at p 232.**

The principle of the Section 47, C.P.C is that all quesions relating to execution, discharge or satisfaction of a decree and arising between the parties to the suit in which the decree is passed, shall be determined in the execution proceeding, and not by a separate suit; it follows as a corollary that a question relating to execution, discharge or satisfaction of a decree may be raised by the decree-holder or by the judgment-debtor in the execution department and that

pendency of an application for execution by the decree-holder is not a condition of its exercise ground on which the executing Court dismissed the application is that a petition under Section 47 is not maintainable since the execution proceeding was not pending at the time of the filing of the petition. That this finding is without any substance.

It is thus clear that the petition under Section 47, C.P.C is maintainable.

**Gopalkrishna Kammath v. R.Bhaskar Rao, 1989 Ker 251 at p 252.**

Courts executing decrees: Lands situate in more than one jurisdiction:-

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Execution by High Court of decree transferred by other Court:-

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Execution in case of cross-decrees:-

Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then -

a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

b) if the two sums are unequal, execution may be taken out only by the holder of

the decree for the larger sum and for so much only as remains after deducting

the smaller sum, and satisfaction for the smaller sum shall be entered on the

decree for the larger sum as well as satisfaction on the decree for the smaller

sum.

2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself,

3) This rule shall not be deemed to apply unless -

a) the decree-holder in one of the suits in which the decrees have been made is

the judgment-debtor in the other and each party files the same character in

both suits; and

b) the sums due under the decrees are definite.

4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

### **Illustrations**

- a) **A** holds a decree against **B** for Rs.1,000. **B** holds a decree against **A** for the payment of Rs.1,000 in case **A** fails to deliver certain goods at a future day. **B** cannot treat his decree as a cross-decree under this rule.
- b) **A** and **B**, co-plaintiffs, obtain a decree for Rs.1,000 against **C**, and **C** obtains a decree for Rs.1,000 against **B**. **C** cannot treat his decree as a cross-decree under this rule.
- c) **A** obtain a decree against **B** for Rs.1,000. **C**, who is a trustee for **B**, obtains a decree on behalf of **B** against **A** for Rs.1,000. **B** cannot treat **C**'s decree as a cross-decree under this rule.
- d) **A**, **B**, **C**, **D** and **E** are jointly and severally liable for Rs.1,000 under a decree obtained by **F**. **A** obtains a decree for Rs.1,000 against **F** singly and applies for execution to the Court in which the joint-decree is being executed. **F** may treat his joint-decree as cross-decree under this rule.

Execution in case of cross-claims under same decree:- Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then -

- a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
- b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross-decrees and cross-claims in mortgage suits:- The provisions contained in Rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simultaneous execution:- The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

**Explanation to Section 51 of CPC** will show that in the calculation of the means of the judgment-debtor for the purpose of clause (b) of the proviso to Section 51, any property which is exempted from attachment in execution of the decree either by law or custom having the force of law shall be left out. Thus even in cases where execution of a money decree was sought by arrest and detention and salary was shown as the means of the judgment-debtor an enquiry is certainly necessary as to what is the attachable portion of the salary in terms of Section 60(i) of the CPC and in terms of other provisions of law. In the instant case it is conceded that the salary of the petitioner is under attachment on other execution petitions

also. No enquiry has been conducted by the Munsiff as to what was the attachable portion of the salary of the petitioner. Since such an enquiry has not been conducted by the Munsiff, the impugned orders will have to be set aside. However, taking into account the totality of the circumstances which attend on these cases. **S.Balamurali v. K.V.Vikramanunni, AIR 2007 Ker 280 at 280; see also G.C.Consumer Financial Service Ltd., v. G.C.Thanekar, AIR 2008 Bom 4.**

In the case of **Promothanath Malia v. H.V.Low & Co.,** by the Division Bench of Calcutta High Court (Per Rankin, C.J.) that before appointment of receiver by way of execution a case should be made out that ordinary execution is not advantageous. That was a case of the property being outside the territorial jurisdiction of Calcutta High Court. It was observed that though the Court had power to appoint receiver by way of execution in respect of property situated in its territorial jurisdiction, it should be careful and sparing in exercise of this power and should exercise it only on a case being made out that the appointment is necessary or advantageous. **AIR 1930 Cal 502.**

In the case of **Sunder Singh Giyani v. Lala Ganga Ram,** it was held that in execution of a decree against a son on the death of his father, the Court could direct the receiver to take possession of the property in the hands of the son and hence order of appointment of receiver was held not ultra vires and Court could direct son to hand over the property to the receiver. **AIR 1938 Lahore 93.**

A reading of Section 51 of CPC, itself shows the specific instances in which the right mode of execution may be applied. It may be that the decree holder may be entitled to more than such a mode. He must nevertheless show cause as to how he has been entitled to more than one mode. The mode in Section 51(a) can be exercised only where delivery of the specific property is specifically decreed. In such a case, decree holder not having the property attached and sold, may apply for the receiver and to deliver it to him if it would be hazardous or arduous to have it delivered himself. Though mode of execution by attachment and sale is otherwise available, such a decree holder would not be allowed to execute the decree by attachment and sale of the property. Such cases can be multiplied. The series of cases require the Court to exercise itself the discretion to see which party deserves work of the Court officer. Consequently, in a case of simple money decree such as the above, appointment of Court Receiver for selling of property would tantamount to decree holder not taking out execution application for attachment and sale, of the property as required of all decree holders. Allowing such special treatment would be discriminatory. In the above case, there is absolutely no cause shown for exercising the option under Section 51(d). The ordinary remedy of execution under Section 51(b) is sufficient. **G.C.Countrywide Consumer Financial Services Ltd., v. Ganesh Jagannath Tharekar, AIR 2008 Bom 4**

Scope of the Section:- This Section defines the jurisdiction and the power of the Court in the execution of decree; the manner of executing the decree is laid down by the rules in the schedule. **AIR 1963 All 313 (315). See also AIR 1969 Mad 268 (269, 270).**

Section enumerates in general terms the various modes in which the court may order the execution of decree according as the nature of relief granted may require. **AIR 1942 Cal 587(592)(DB).**

Section 51 cannot be said to be unconstitutional on ground that it allows a decree-holder to arbitrarily choose one or other of the different modes of execution prescribed in Cls. (a) to (e) thereof, without any guidelines. Section 51 does not confer any power on the decree-holder as such, the power is conferred on the Court and that is "subject to such limitations and conditions as may be prescribed". **1982 Ker LT 274 (277).**

Powers of the Court in execution:- It is for the decree-holder to decide in which of the several modes mentioned in the section he will execute his decree. **AIR 1953 Cal 717 (718) (DB). (2003) 3 Mah LJ 801 (804) (Bom).**

A decree can be executed only to the extent of the property particularly and specifically described in the decree itself and not beyond that. 2004(23)All Ind Cas 222(224)(DB) (Cal)

A decree may, under the provisions of Order 21 Rule 30, be executed simultaneously against both the person and the property of the judgment-debtor though the Court has, under Order 21 Rule 21, a judicial discretion to refuse to order such simultaneous execution in proper cases. **AIR 1956 Hyd 7 (9) (FB). (1872) 17 Suth WR 459 (460) (PC). (1992) 3 SCJ 304 : 1993 Supp (1) SCC 693.** (Simultaneous proceeding against debtor for realisation of said amount whether should be permitted.) **AIR 1957 Mad 777 (779). AIR 1953 Cal 717 (718) (DB).**

Execution proceedings – Recovery of loan by Bank – Right to follow one or more modes separately or simultaneously – Does not extend to extent of selling different movable or immovable properties of debtor under different provisions and procedure without ascertaining whether amount due has already been realised by sale of property already attached. **(1992) 3 SCJ 304 : 1993 Supp (1) SCC 693.**

It is an important principle of law that rules of procedure are only handmade of justice and ought not to be used for obstructing justice. It is accordingly the duty of the Court executing the decree to aid the decree-holder in realising the amount due under his decree, and it should, therefore, offer him all

possible and reasonable facilities for realising the decretal amount in as short a time as possible. **AIR 1936 Cal 238 (239). AIR 1936 Pat 76 (77) (DB).**

Where the trial Court passed an order against the petitioner, who was not a party to the proceedings, directing him to handover the possession of the property in dispute, the order is without jurisdiction. **1986 (27) 2 Guj LR 1061 (1066) : 1981 Guj LH 159.**

In the proceedings for execution of money decree, the judgment-debtor filed objection stating that he had been adjudged as insolvent and hence the decree-holder is not entitled to bring mortgaged property to sale. The said objection cannot be accepted as ordinary rule or principle cannot be applied in case of secured creditors, and such creditor can realise his mortgaged debt without obtaining leave of insolvency Court. **2002 AIHC 1661 (1662) : (2001) 2 Andh WR 193.**

Section 51 refers to powers of Court to enforce the execution and prescribed certain procedure in execution. One of such modes is by attachment and sale. Whenever, a decree for money is passed, the decretal amount can be recovered by proceeding against the movable or immovable property of the judgment-debtor. **(2002) 4 Bom CR 169 (174) : (2002) 3 Mah LJ 455.**

An order appointing a receiver under clause (d) must be distinguished from an order under clause (b) for sale without attachment of the properties charged by the decree though the sale is directed to be held by the receiver. The object of appointing a receiver under clause (d) is to preserve the property of the judgment-debtor, whereas the object of clause (b) is to dispose of the property for the judgment-debtor's failure to pay the decree. Where, therefore, a receiver is appointed to sell the property, the order will be one under clause (b) and not under clause (d). **(1963) 67 Cal WN 350.**

There are two stages in the process of execution of a decree so far as Section 51(c) is concerned that is arrest and detention in civil prison and the Court must be satisfied with the conditions enumerated therein only when an order for detention in civil prison is made by the Court. **(1986) 99 Mad LW 48 : (1986) 1 Mad LJ 214 (215). (1999) 2 Cur CC 563 (565) (Kant).**

The executing Court before passing of an order of arrest must specify that the judgment-debtor is delaying the execution of the decree or is likely to abscond from the local limits of Court or dishonestly transferred or removed any part of his property after institution of suit etc. The order passed without following procedure laid down under Order 21 Rule 40 of C.P.C and without considering said conditions is bad.

The other modes of execution than those specified in clauses (a) to (d) of Section 51 are as follows:-

Section 54 - Partition of estate or separation of share of such estate to be made by the Collector or any gazetted officer subordinate to the Collector.

Order 21 Rule 31(2) - Award of compensation to decree-holder for disobedience of decree to deliver specific movable property.

Order 21 Rule 32 - Enforcement of decree for specific performance, for restitution of conjugal rights or for an injunction.

Order 21 Rule 33 - Special procedure for execution of a decree for restitution of conjugal rights.

Order 21 Rule 34 - Execution of decree for execution of a document or endorsement of a negotiable instrument.

Order 21 Rule 53 - Attachment of decrees.

Order 21 Rule 56 - Delivery of attached coins or currency notes to the party entitled under the decree. **AIR 1940 Pat 557 (558) (DB)**.

The Section provides that the Court can act only on the application of the decree-holder. The reason for this requirement is that it concerns the parties alone and that the Courts need execute their decrees only if the parties entitled thereto want it. In view of Order 21 Rule 11(2) such application need not necessarily be in writing it may be oral. **AIR 1920 Lah 443 (446)**. (Court cannot appoint receiver unless asked.)

This Section requires that the application must be made by the decree-holder. A stranger to the suit or decree cannot apply for execution though there may be a benefit conferred on him by the decree. **AIR 1917 Oudh 182 (184, 185) (DB)**.

## 2. **Attachments:**

Attachment is part of execution process under Sec.51 of C.P.C. **(AIR 2004 SC 3992)**

Section 51, Cl.(b) empowering the court, in general terms, to attach and sell in execution any property must be interpreted to mean that the Court has jurisdiction to attach and sell in execution any property which the decree holder puts forward as property of his judgment debtor. **AIR 1927 Mad 394 (394,395) (DB)**

The provisions of C.P.C which deals with are as follows:-

## ATTACHMENTS

1. Before Judgment Order 38, Rule 5 C.P.C.
2. After the Judgment before  
filing of Execution Petition Section 46 C.P.C.
3. In execution proceedings

**III. The property that can be attached:**

1. Movable.
2. Immovable.

**IV. In whose possession:**

1. J.Dr./Defendant.
2. Third party.
3. Garnishee

**V. Attachment by several courts: Section 63 C.P.C.****VI. If the property is situated in local jurisdiction of several courts:**

Order 21, Rule 3 C.P.C., Order 38, Rule 5 C.P.C.

**Chimandas Methuram and others Vs. Messrs Manger Mahadevappa Firm and others** [AIR 1961 AP 417]

**A.K. Sarayanan Vs. Surendra Singh** [2016 (6) ALT 283].  
[2007 (3) SC] 753].

**VII. The properties that cannot be attached - Section 60 (1) (c) C.P.C.:****VIII. The properties that can be attached.**

- (a) **Immovable property:** Order 21, Rule 54 C.P.C.  
A.P. Amendment - Form 24/Appendix E - C.P.C.
  - Order 21, Rule 13 Details of the property particulars.
  - Order 21, Rule 41 - Execution of J.Dr. for attachment of the properties.
  - Form 16 (A) Appendix E - C.P.C.
  - Order 21, Rule 55 raise of attachment.
  - Order 21, Rule 57 C.P.C. orders as to raise of attachment.
- (b) **Movable Property:**
  - Warrant of attachment - Form 48/Appendix E - C.P.C.
  - Procedure Rule 252 Civil Rules of Practice.
  - Rule 253 Civil Rules of Practice attachment of cash and jewellery.
  - Section 62 seizure of property in dwelling house.

- Payment of charges Rule 252 of Civil Rules of Practice.
- Custody of fire arms – Rule 254 Civil Rules of Practice.

(c) **Attachment of standing crops and agricultural produce:**

- Section 61 C.P.C.
- Order 21, Rule 44 and Rule 45 C.P.C.

(d) **Attachment of debt/share/other properties noting possession.**

**J.Dr.** (Garnishee procedure).

- Order 21, Rule 46, 46 A to 46 I C.P.C.

(e) **Attachment of decree:**

- Order 21, Rule 53 – Form No.22/Appendix E – C.P.C.
- Notice Form 23/Appendix E – C.P.C.
- Rules 243, 244, 245 of Civil Rules of Practice.
- Form Nos.63, 64 and 65 of Civil Rules of Practice.
- Form 62/Civil Rules of Practice – Rule 242 of Civil Rules of Practice.

- Prohibitory order whether the property consist of money or of security in the hands of court of justice or office of Government.

(f) **Attachment of salary:**

- Form No.19/Appendix E – C.P.C.
- Order 21, Rule 48 C.P.C. - J.Dr. **Government servant.**
- Order 21, Rule 48 C.P.C. - If J.Dr. is **a private employee.**

Salary particulars can be called for – **M.G. Brothers Finance Limited Vs. J. Badarinath and others** [2006 (6) L.S. 421].

**Janapathi Jaipal Reddy Vs. Sunnitha Chit Funds Private Limited, represented by it's Foreman, Karimnagar and others** [2008 (5) ALT 17].

- 2007 (2) ALT 554.

(g) **Negotiable Instruments:**

Order 21, Rule 54 C.P.C. or in Form 20/Appendix E – C.P.C.

(h) **Decree for rent and future mesne profit**

- Order 21, Rule 42 C.P.C. – Attachment in case of decree for rent and mesne profits or other matter, amount of which to be subsequently determined.

**IX. Implementation of decree in simple injunction suit:**

Order 21, Rule 32 C.P.C.

1. **by attachment.**
2. detention in civil imprisonment.
3. by both.

No limitation is prescribed under Article 136 of Limitation Act. Issue of attachment - Attachment can be from 3 months to 1 year - the D.Hr. has to apply for sale and sale process must be paid towards compensation.

**X. Execution of decree under Rent Control Act:**

- Section 15 of A.P. Rent Control Act.
- Rule 33 Limitation 6 notice.
- Delay Petition 23 proviso
- No notice is necessary to J.Dr.
- If against L.R. - Notice is mandatory.
- Enquiry on resistance Rule 23 (7).
- Break open - Rule 23 (6).
- Execution of orders under Section 14 (6), 21, 22 of Rent Control Act by **attachment** and **sale** or by arrest.

**TYPES OF PROPERTY - MODE OF ATTACHMENT**

<b><u>PROPERTY</u></b>	<b><u>MODE OF ATTACHMENT</u></b>
<b>1.</b> Attachment of movable property other than agricultural produce in the possession of JDR . <b>O 21 R 43 CPC.</b>	<b>1.</b> The attachment is by actual seizure. The property shall be kept in possession/ custody of the attaching officer of his subordinate. If the property is perishable in nature of where the expense to keep it - exceeds the value of the property - it could be sold out. <b>Form No. 8 Appendix E. CPC.</b> <b>Form No. 15( A) A.P. Appendix E. CPC.</b>
<b>2.</b> Attachment of Agricultural produce <b>O 21 R 44 CPC.</b>	<b>2.</b> The attachment shall be made by affixing a copy of the warrant of attachment.  * <i>Where the agricultural produce is a growing crop on the land.</i> * <i>.Where such produce has been cut and gathered- The place where it is kept. And another copy of on the out door or on some other conspicuous part of the house of the JDR.</i>

<p><b>3.Attachment of debt not secured by Negotiable Instrument O 21 R 46(1) (a).</b></p>	<p><b>3.Attachment shall be made by a written order prohibiting the creditor for recovering the debt or the debtor from making the payment until further orders. Form No.16 Appendix E. CPC.</b></p>
<p><b>4.Attachment of share in the capital of a company or the corporation O 21 R 46(1)(b) CPC.</b></p>	<p><b>4.The person in whose name the share may be standing from transferring the same or receiving any dividend thereon. Form No.18 Appendix E. CPC</b></p>
<p><b>5.Attachment of movable property not in possession of JDR. O 21 R 46(1)(c) CPC.</b></p>	<p><b>5.The person in possession of the same not from giving it over to the JDR. Form No.18 Appendix E. CPC</b></p>
<p><b>6.Attachment of share of movable O 21 R 47 CPC.</b></p>	<p><b>6.By notice to the JDR prohibiting him from transferring the share or interest or charging it in any way.</b></p>
<p><b>7.Attachment of salary or allowances of the Government or Railway or local authority or of private employees. O 21 Rule48 &amp;48A CPC.</b></p>	<p><b>7.A notice of attachment to the disbursing officer and he should remit the same to the court or to the decree holder at the order of the court. However, where any other claim is already there the officer should inform the court about it. Form No.19 Appendix E. CPC</b></p>
<p><b>8.Attachment of partnership property O 21 R 49 CPC.</b></p>	<p><b>8.Attachment is made by an order charging the interest of the partner to the partnership property and profits. Either in the same order or by a separate order a receiver may also be appointed to determine the right of the partner or for the subsequent acts.</b></p>
<p><b>9.Attachment of Negotiable Instrument O 21 R 51 CPC.</b></p>	<p><b>9.The attachment shall be made by the actual seizure and this instrument shall be brought into court.</b></p>
<p><b>10.Attachment of the property in custody of court or public officer O 21 R 52 CPC.</b></p>	<p><b>10. The attachment shall be made by a notice to such court or to the public officer requesting that such property any interest or dividend may be held subject to further orders.</b></p>
<p><b>11.Attachment of decrees O 21 R 53 CPC.</b></p>	<p><b>11. Attachment by issuing a notice to such court requesting to stay the execution Form No.22 Appendix E. CPC.</b></p>
<p><b>12.Attachment of immovable property O 21 R 54 CPC.</b></p>	<p><b>12.Attachment by an order prohibiting the JDR from transferring or charging the property in any way. The order shall be proclaimed at same place an adjacent to such property by beat of drum or any other customary mode. A copy of attachment shall be affixed on the outer door or any other conspicuous place at the house of JDR. Form No.24 Appendix E. CPC.</b></p>

**Case laws on attachments:-**

Attachment or sale:- Section 60(1) of the Code contemplates both the case of attachment as well as sale. If there is no question of attachment then the sale under Section 60(1) cannot be said to be prohibited at all. When the word 'and' has been used in section 60(1), the Legislature will have to be credited with some wisdom and thus it will have to be held that the word "or" was intended by the Legislature to be "and". In the case of a mortgage-decree there is no question of attachment at all. First a preliminary decree is passed calling upon the judgment-debtor to pay the money due under the decree by a particular time and failing which it is ordered that the property should be sold.

**Laxman v. Subana, AIR 1988 Kant 40 : 1987 Bank J 332 : (1987) 2 CCC 818.**

Attachment in execution:- Residential house can be exempted from the attachment in execution a decree for recovery of rent of agricultural land.  
**Swaran Singh v. Financial Commissioner, AIR 1986 P & H 283 : 1986 (1) 89 Pun LR 342 : (1986) 1 Cur LJ 582.**

Attachment of salary - exemption:- All moneys payable under the policy of insurance on the life of the judgment-debtor and not moneys payable to the policy of insurance are exempt from attachment, monthly contributions made to the insurance cannot be excluded in reckoning the attachable portion of salary.  
**Sreedharan v. Krishnan : AIR 1986 Ker 195 : 1986 Ker LT 9 : 1985 Ker LJ 1010.**

Property liable to be attached and sold:- Mortgage decree is outside of the purview of the phrase "property liable to be attached and sold", as there is no need for any attachment and sale of mortgage decree, which is a settled view by a long line of decisions. **A.Nabisa Beevi v. Manager, Canara Bank, Nagarcoil, AIR 1984 Mad 249 : 1985 (1) Civil LJ 183.**

Attachment of bonus in execution of decree:- The Kerala High Court observed that so far as salaried persons are concerned in Section 60(1)(i) C.P.C., is the only provision which enables the Court to determine the limit of the attachability. There is no provision in the C.P.C which would enable the revision-petitioner to contend that his bonus cannot be attached. As the revision-petitioner gets monthly salary he cannot contend that the bonus due to him is not liable to be attached. So far as persons who get salary are concerned there is no provision which bars the Court from attaching the bonus due to him. **Shreedharan v. Krishnan, AIR 1986 Ker 235 : 1986 Lab IC 1145.**

Bonus can be attached:- Section 60(1)(i) is the only provision which enables the Court to determine the limit of the attachability. **Bonus can be attached. Sreedharan Peethambaran v. Krishnan Sanku, 1986 (1) CCC 753 (Ker).**

Exemption from attachment of insurance policy:- Monies payable under an insurance policy on the life of a judgment-debtor are entirely exempted from attachment and sale by virtue of clause (kb) of Section 60(1) C.P.C., irrespective of the circumstance as to whether the Insurance Policy matures during the lifetime of the assured or the monies become payable after his death. **Federal Bank Ltd v. Indira devi Kunjamma : AIR 1986 Bom 101 : 1984 MLJ 942 : 1985 Mah LR 43 : ILR (1985) Bom 1590.**

Exclusion - Dearness Allowance - Provident fund:- It cannot be disputed that the Dearness Allowance is granted to provide relief against increased cost of living.

According to the Notification issued by the Central Government under Section 60(1)(i) C.P.C Dearness and House Rent Allowance granted to the Central Government servants have to be excluded in reckoning the attachable portions of salary. But the contribution which the petitioner has agreed to make towards Provident Fund cannot be excluded in reckoning the attachable portion of the salary. **Kousalya Devi v. Praveen Bankers, AIR 1980 Ker 148.**

Amount payable under deed of maintenance:- The amount, which is payable under deed of maintenance, is not liable to attachment under Section 60, Civil Procedure Code. **Kuppayee v. Guruswami, AIR 1975 Mad 267 : (1975) 2 MLJ 12.**

Section 60(1)(i):- Under insolvency proceedings the entire salary or personal earnings of an insolvent after adjudication does not vest in the Receiver but only so much of the salary or personal earnings as are not exempt from attachment under Section 60, Civil Procedure Code. **Devayee v. S.Ramaswami, AIR 1977 Mad 162 (DB). Relied on - Hemavathamma v. Kumaravelu, AIR 1968 Mys 111 : (1967) 1 Mys LJ 35.**

Arrears of salary:- The Supreme Court has observed that salary is not attachable to the extent provided in Section 60, C.P.C., clause (1), but there is no such exemption as regards arrears of salary. **Vide - Union of India v. Smt. Hira Devi, AIR 1952 SC 227.** Following the Supreme Court's decision, it was held that the amount attached represents the arrears of salary due to the judgment-debtor on account of the revision of the scale of pay, the exemption laid down by Section 60(1), C.P.C., does not apply to such amount. **P.K.Lakshminarayan v. P.Narsingha Bhatta, 1985 (2) CCC 468 (Kant).**

Wages and labourer:- "Wages" includes bonus and "labourer" includes a skilled, unskilled or semi-skilled labourer. **Sreedharan Peethambaran v. Krishnan sanku, 1986 (1) CCC 753 (Ker).**

**Property attached in execution of decrees of several Courts:-**

Several decree-holders in the execution of their respective decrees got attached the amount of the judgment-debtor. Such case is governed by the provisions of Section 63 as well as Section 73 of the Code. The Court having custody of the assets has jurisdiction to distribute the amount among all the decree-holder rateably. **Laxmi Narain v. Firm Ram Kumar, AIR 1971 Raj 3 (DB).**

Only in cases where the property attached is not in the custody of Court, the question of the Court of higher grade having procedure over a Court of the lower grade in determining any claim regarding the property so attached would arise. The question of priority or title has to be determined only by the Court which has custody of the property attached where more than one persons claimed title to the property attached. In such cases Section 63, Civil Procedure Code is not attracted. **M.P.Pillai v. M.P.P.Gounder, AIR 1975 Mad 245.**

When attachment ceases:- An attachment before judgment becomes an attachment in execution when a decree is made in the suit. Such attachment ceases to submit when an execution application is dismissed for the decree-holder's default. **Byrappa v. S.Mani, AIR 1970 Mys 152.**

Duration of attachment before judgment:- Where attachment before judgment has been made, no fresh attachment may be made of the same property after the passing of the decree and the same attachment may become an attachment for the purposes of the execution of the decree immediately on the date of the application to execute it. But by no stretch of any reasoning can attachment of property be treated as an attachment in execution of a decree on a date on which the decree is not in existence. **Ram Chandra v. Ram Chandra Biswal, AIR 1970 Ori 164.**

For the protection of attaching creditor:- Section 64 is intended for the protection of the attaching creditor only who has taken out the execution. The object of the law evidently is that no private transfer or delivery of possession of property shall be allowed to take effect against the interests of the attaching creditor after it has been attached. **Mohinder Singh v. Nanak Singh, AIR 1971 P & H 381.**

Sale of property-during pendency of attachment before judgment:- Section 64 of the Civil Procedure Code specifically provides that where an attachment has been made any private alienation of property after attachment would be void.

A careful reading of the provision of Section 64, Civil Procedure Code, indicates that a private transfer or delivery of the property attached is not wholly void. It is void against all claims enforceable under the attachment and not otherwise. If the intention of the Legislature had been to declare the transfer to be

completely void, the words “as against all claims enforceable under the attachment” would not have found a place in the Section.

Section 64, Civil Procedure Code, has been incorporated to safeguard the interest of the creditors. It is not meant to deprive the owner of the interest of the property under attachment. As against the attaching creditor a private sale would not be effective but if the order of attachment is withdrawn or the claim of the creditor is otherwise satisfied, the sale deed executed would convey good title to the transferee. **Official Receiver, Muzaffarnagar v. Chandra Sekhar, AIR 1977 All 77.**

Compliance of attachment provisions:- No doubt the provisions of Section 64, Civil Procedure Code are mandatory but where the compliance of Order XXXVIII, Rule 5 and Order XXI, Rule 54 was not done the order of the conditional attachment was held to be ineffective. **Vasavamba v. P.S. & Sons, AIR 1973 Mys 291.**

Provisions are meant to safeguard the interest of the creditor:- It is clear on plain construction and interpretation of Section 64 that an alienation of immovable property made after attachment shall be void against all claims enforceable under the attachment to the same extent as an alienation made after the attachment under a decree. Provisions of Section 64 are meant to safeguard the interest of the creditor. As against the attaching creditor a private sale would not be effective, but if the order of attachment is withdrawn or the claim of the creditor is otherwise satisfied, the sale deed executed would convey good title to the transferee. **Rushi Mahakur v. Dibya Shankar Padhan and another, AIR 1988 Orissa 145 at p 146 : (1988) 2 Orissa LR 245.**

Question of applicability of principle of res judicata:- In the present case two proceedings were going on, one before the executing Court and the other before Insolvency Court. An application moved by the judgment-debtor or by the interim receiver would not in any way affect the jurisdiction and the powers of the Insolvency Court. When no benefit can be availed under Section 51 of the Provincial Insolvency Act by any person the executing Court would not in any way affect the proceedings of the Insolvency Court. All rights over the properties of the debtors vest in the Insolvency Court after the admission of the insolvency petition and so the question of applicability of principle of *res-judicata* does not arise in the present state of facts. **Dharamveer Agarwal v. Kailash Chand, AIR 1989 Raj 17 at p 22.**

Resistance to execution:- Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court

may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined:- Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment of share in movables:- Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

### **3. Claim petitions:**

Order 21 Rule 58 : Adjudication of claims to, or objections to attachment of property :

- \* Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained;

Provided that no such claim or objection shall be entertained :

(a) Where, before the claim is preferred or objection is made, the property attached has already been sold, or

(b) Where the Court considers that the claim or objection was designedly or unnecessarily delayed.

- \* All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to 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 questions referred to in sub-rule (2), the Court shall, in accordance with such determination.

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it things fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

\* Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

\*

\* Where a claim or an objection is preferred and the Court, under the proviso to sub-rule(1), refuses to entertain it, the party against whom such order is made any institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

**ORDER 21, RULE 58-A**  
**HIGH COURT AMENDMENT**

**Madras** :-- In Order 21, after Rule 58, insert the following rule as Rule 58-A:--

**“58-A. Order of attachment to be communicated to the Registering Officer:--** Any order of attachment passed under Rule 54 of this Order raising the attachment by removal, determination or release passed under Rules 55, 57 or 58 of this Order, shall be communicated to the Registering Officer within local limits of whose jurisdiction the wyhole or any part of the immovable property comprised in such order is situate.” - (29-6-1987).

**SYNOPSIS:**

- \* This rule deals with adjudication of claim or objection, in relation to execution of a decree.
- \* The application filed under this rule to be tried as a suit.
- \* Appeal is only maintainable.
- \* Petition is maintainable only when there was attachment of property.
- \* Claim petition is not maintainable after sale of the property.
- \* The claimant must have valid preexisting right over the property.

- \* Resjudicata will be applicable to the petitions filed under this rule.
- \* Attachment before judgment can be questioned even in execution.
- \* J.Dr need not be made a party to the claim petition. But it is advisable to implead him as a party to the petition and if he is made a party, the decision would also bind on him.
- \* Court can decide the validity of title.

### **Case laws:-**

Order XXI Rule 58 of the Code is not discretionary in nature and therefore not ultra-vires the Constitution – **AIR 1986 Madras 301**.

Order XXI Rule 58 is a provision dealing with any claim or objection that may be preferred or any objection that may be made to the attachment of any property in execution of a decree. However, after the sale becomes absolute on the Court refusing to set aside the sale at the instance of the judgment-debtor, no second application is maintainable – **AIR 1987 SC 1443**.

There is no bar to second application under Order XXI Rule 58 being filed if the first execution application had been dismissed and no Appeal was filed against such dismissal – **AIR 1978 Delhi 122**.

In view of the amended provisions of Order XXI Rule 58 of the Code, the question of filing a separate suit is barred – **AIR 1989 Madras 311**.

In **2004 (6) ALT 111 = 2004 (6) ALD 175 (F.B.)** the Full Bench while dealing with Order XXI Rules 58(4), 98 and 100 of the Code came to the conclusion that against order passed under Rule 58(3) and Rules 98 and 100, regular appeals under Section 96 would lie but not miscellaneous appeals under Section 104 r/w Order XLIII Rule 1 of the Code and it was held that the view expressed in **AIR 1994 A.P. 334** does not represent the correct position of law.

**Case laws on adjudication of claims and objections:-** Where property is attached in execution of a decree and a party or his representative has any objection to such attachment the question is one falling within Section 47 and therefore, must be decided by the Court executing the decree and not by a separate suit. **AIR 1935 Mad 923 (924)**.

Order XXI Rule 58 provides for all questions including questions relating to right, title or interest in the property attached, to be decided by the executing Court. To prevent protraction of litigation all questions would be settled finally in

execution proceeding itself, instead of the earlier procedure of a separate suit under Order 21 Rule 63. **(1989) 2 ACC 335 (335) : (1989) 2 Kant LJ 106.**

The remedy of the party aggrieved by the order is by way of appeal. **AIR 1956 Bhopal 62 (64). AIR 1951 Trav-Co 237 (238) (DB).**

The executing Court under sub-rule 2 of Rule 58 of Order 21, cannot declare the validity and legality of a judgment and decree, passed by a competent Court of law in the original suit proceedings. **(2004) 2 Andh LT 751 (756).**

The pendency of a claim petition operates as stay of the execution of the decree in order to attract the provisions of Section 15(1), Limitation Act. **AIR 1955 Mad 67 (67) (DB).**

An application under Order 21 Rule 58 is required to be adjudicated as though it is an independent suit. The fact that the same rule bars independent suit on such claim mandates that the enquiry into an application should be elaborate and exhaustive. If the application is defective, it should be returned or rejected if the situation so warrants. **(2004) 5 Andh LD 82 (83).**

A claim petition filed under Order 21 Rule 58 only to screen petition schedule property from purview of execution is liable to be rejected. **(2004) 5 Andh LD 497 (500) : (2004) 5 Andh LT 534.**

Order 21 Rule 58 is a material provision relating to any claim that may be made to the attachment of any property in execution of a decree. Any sale that is held would undoubtedly, be subject to the order that may be passed under Order 21 Rule 58. **AIR 1987 SC 1443 (1449) : (1987) 3 SCJ 363.**

In deciding objections to the attachment of the property, it is the bounden duty of the Court to see as to whether the judgment debtors are or are not the owners of the property in dispute. **1992 Bank J 23 (24) (Him Pra).**

Where the property attached before judgment is sold in execution of another decree, the claim of the auction-purchaser in respect of the attached property falls under Section 47 and not under this rule. **AIR 1961 Andh Pra 298 (300) (DB).**

Where no order of attachment before judgment had been passed by the Civil Court, objection under Order 21 Rule 58 that property cannot be re-attached in execution of the award by the labour Court is liable to be rejected. **(2003) 2 JLJR 9 (11) : (2003) 97 Fac LR 925 (Jhar).**

Where there was no question of attachment of property in execution proceedings of eviction decree, the objection petition filed under Order 21 Rule 58 would not be maintainable. If at all the objector wants to file objections, claiming the disputed property to be his own he could do so under Rule 97 of Order 21. **AIR 1990 P & H 235 (236) : (1989) 96 Pun LR 98. 1989 Har Rent 32 (P & H).**

Where a third party whose property is sought to be attached in execution, in order to avoid the attachment, pays into the Court the decretal amount and then seeks for a refund of the money on the ground that his property was not liable to attachment the Court has inherent power to order such refund. **AIR 1940 Sind 191 (192).**

In a claim petition, the burden was on the claimant to prove that on the date of the attachment he had some interest in, or was in possession of the property attached and if the claimant proves that, then the burden of proving that he was not the owner or holds it in trust for the judgment-debtor will shift to the decree-holder. **AIR 1966 All 278 (279).**

The cause of action for filing an application under Rule 58 of Order 21 would arise only when attachment is effected and in the absence of an effective attachment there is no occasion to file such an application. **(2005) 1 Andh LD 729 (732).**

The word 'property' in Order 21 Rule 58 is wide enough to include a debt. Where debt due to the defendant judgment-debtor from another person is attached in execution of the decree against the judgment-debtor the other person from whom the debt is due can apply under Order 21 Rule 58 to have the attachment removed. **AIR 1988 Kant 44 : 1988 Bank J 355.**

In a suit to recover money the order of interim attachment of the debt due to the defendant from a third person obtained by the plaintiff is only in the nature of a prohibitory order and would not prevent the debt being subsequently attached in execution of another decree and payment being made to the decree-holder. **AIR 1988 Kant 44(48) : 1988 Bank J 355.**

Where a receiver in insolvency after adjudication of the judgment-debtor seizes properties as belonging to the insolvent, claims preferred by third persons to such property fall under Section 4 of the Provincial Insolvency Court although the procedure to be followed is that prescribed by this rule. **AIR 1914 All 264 (265) (DB).**

Where a property has been attached in execution of a decree, the mere fact that subsequent thereto the judgment-debtor becomes an insolvent and his properties become vested in the Official Receiver or the Official Assignee, will not disentitle a claimant from preferring an objection under this rule. **AIR 1928 All 158 (159) (DB).**

The provisions of this rule do not apply to claims or objections relating to properties ordered to be sold under a mortgage decree. **AIR 1958 Andh Pra 722 (723) (DB).**

Under Proviso 1(a) of the rule no claim can be entertained in respect of property already sold. The executing Court had no jurisdiction even under its inherent powers to entertain and decide the claim after the execution sale is confirmed. **AIR 1976 Pat 321 (322).**

Whenever a claim is preferred under Order 21 Rule 58 against attachment of immovable properties, the fact that the properties are sold or the sale confirmed will not deprive the Court of its jurisdiction to adjudicate on the claim. The inquiry into the claim can be proceeded with by the trial Court or the appellate Court (under the Amended Code) and in the event of the claim being allowed, the sale and the confirmation of sale shall to that extent be treated as a nullity and of no effect. **AIR 1983 Andh Pra 335 (338) (DB).**

An objection by a person who subsequent to the attachment purchases the property privately or in execution of another decree is not one within this rule. The Court has, however, inherent power to deal with such an objection. **AIR 1961 Andh Pra 298 (300) (DB).**

A co-operative society has an interest in the shares of a member as these shares form part of its capital. Hence, where these shares are attached in execution of a decree against the member, the society has locus standi to object to the attachment under this rule. **AIR 1939 Lah 305 (306).**

For raising a claim under Order 21 Rule 58, the claimant should possess valid and substantial right in the property, which is sought to be attached or otherwise proceeded with, in execution. Claims, which are not recognized in law, cannot be permitted to be raised. **(2004) 3 Andh LD 260 (262) : (2004) 18 All Ind Cas 127.**

In a claim application filed by purchaser of property for raising attachment, the Court is entitled to consider and decide whether transaction is a collusive, fraudulent and whether it is intended to defeat the creditor or cause delay. **(2004) 1 Andh LT 655 (658) : (2004) 1 Andh LD 416.**

Where agreement to sell was executed subsequent to the date of attachment and it was not a genuine transaction, dismissal of claim petition for raising the attachment was proper. **(2004) 1 Andh LT 651 (655).**

Where the Court finds that the claimant has a half share in the attached movable property, the proper course is to release the entire property, and to proceed by way of attachment under Rule 47. **ILR (1955) Mys 461 (462) AIR 1932 Cal 408.**

A, a Hindu debtor, dies leaving B, a daughter, and C a daughter's son. A's creditor sues C alone and obtains a decree against A's assets in his hands. In execution of the decree, property in the hands of B (the daughter) is attached as

being the assets of the deceased B objects on the ground that the property is her personal property and does not form part of the assets of the deceased. B's objection was one by a stranger and as such came within this rule and not under Section 47. **AIR 1932 All 263 (264) (DB).**

A simple mortgage can order a claim under this rule. **AIR 1918 Mad 1054 (DB). AIR 1927 All 593 (594) (DB).**

Arrears of income-tax due to the Government have priority over other prior debts. But it cannot be said to be a charge on the property so as to enable the Court to sell the property subject to the claim for arrears of the tax. **(1966) 1 Andh WR 453.**

Proclamation of sale pending claim petition:- A Court cannot order the issue of a proclamation of sale while a claim petition is pending. **AIR 1940 Mad 6 (7).**

The claim order is conclusive between the parties to the proceedings only as regards the particular property in dispute. **AIR 1917 Cal 669 (670) (DB).**

Where claim petition filed at the stage of attachment before judgment is dismissed for default, the remedy of defeated claimant is to file an appeal against the order and not to the claim adjudicated by a separate suit. **(1991) 2 Ker LT 447 (451) : ILR (1991) 3 Ker 869.**

#### **4. Limitations for several applications during Execution:**

For delivery of possession by Court Auction Purchase under Order 21 Rule 95 CPC	One year from the date of confirmation of sale
For enforcement of a decree granting Mandatory Injunction under Order 21 Rule 32 r/w 35 CPC	3 years from the date of decree or date fixed for performance. (Article 135 Limitation Act)
For execution of any decree other than maintenance decree, mandatory and perpetual injunction u/O.21 R.32 CPC	12 years from the date of decree or Order becoming enforceable (Article 136 Limitation Act)
To record an adjustment or satisfaction of a decree under Order 21 Rule 2 CPC	30 days from the date of payment or adjustment (Article 125 Limitation Act)
For the payment of the amount due under decree by installments under Order 21 Rule 11(2) CPC	30 days from the date of decree (Article 126 Limitation Act)
To set aside sale in execution of decree including E.A by JD. Order 21 Rule 89, 90 and Section 47 CPC	60 days from the date of sale (Article 127 Limitation Act)
<u>Note:</u> For an EA under Order 21 Rule 89 CPC the time for deposit is 30 days from the date of sale	Supreme Court decision in 1990 (1) M.L.J. 36 to 40 AIR 2001 SC 2699
To set aside sale in cases relating to debts due on mortgage deed	Any time before confirmation of sale as per Order 34 Rule 5 CPC

For redelivery of possession under dispossession Order 21 Rule 99 CPC	30 days from the date of (Article 128 Limitation Act)
For removal of resistance or obstruction resistance to delivery under Order 21 Rule 97 CPC	30 days from the date of or obstruction (Article 129 Limitation Act)
For execution of decree granting perpetual injunction	No time limit prescribed
Time limit for detention of an arrested JD proviso to in Court premises under custody of Officer 14 A of Court	Not exceeding 15 days. 1 <sup>st</sup> Order 21 Rule 40 CPC. Form No.
Time limit for deposit of 1/4 <sup>th</sup> sale proceeds sale.	Immediately after declaration of If DH is the purchaser may be dispensed with
Time limit for deposit of 3/4 <sup>th</sup> sale proceeds and S.C charges (Rule 94) or amount required for stamps	15 days from the date of sale Order 21 Rule 85 CPC
Time limit for payment (deposit) of any fixed batta in execution except sale warrant batta	Within 2 days or period if so by the Judge (Rule 144 C.R.P.)
Time for payment of sale proclamation batta along with S.P copies and Tom Tom CRP. Charges. (Movables)	Within 2 days from the date of order. Mandatory provision. Rule 187
Time for payment of sale warrant batta sale.	A week before date fixed for Mandatory provision. Rule 187 CRP.
Return of decree of other Courts entered in year CR 15 if execution is not levied in execution other Court	Within 3 days after expiry of 1 time from the date of receipt of Court decree. (Date of transmission is not the criteria. Rule 138 CRP)
Time for sale (Order 21 Rule 68 CPC)	For immovables after expiry of 15 days from the date on which the copy of proclamation is affixed on the Court notice board. For movables it is 7 days.

This is my humble submission of the topic "Execution i.e., 1)Jurisdiction of the Court; 2)Attachments; 3)Claim peltitions anmd 4)Limitations for several applications during execution" designated to me.

I thank one and all.

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- 2) Execution under the Code of Civil Procedure at Nalsar University on 06.05.2007  
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Justice P.S.Narayana;
- 3) Text Book - Commentary on the Code of Civil Procedure, 1908 by U.M.Pandit,  
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