

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 21 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**.

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.**

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 Order 21 Rule 99 CPC	30 days from the date of dispossession (Article 128 Limitation Act)
For removal of resistance or obstruction to delivery under Order 21 Rule 97 CPC	30 days from the date of resistance 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 in Court premises under custody of Officer of Court	Not exceeding 15 days. 1 st proviso to Order 21 Rule 40 CPC. Form No. 14 A
Time limit for deposit of 1/4 th sale proceeds	Immediately after declaration of sale. If DH is the purchaser may be dispensed with
Time limit for deposit of 3/4 th 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 batta in execution except sale warrant batta	Within 2 days or period if so fixed by the Judge (Rule 144 C.R.P.)
Time for payment of sale proclamation batta along with S.P copies and Tom Tom Charges. (Movables)	Within 2 days from the date of order. Mandatory provision. Rule 187 CRP.
Time for payment of sale warrant batta	A week before date fixed for sale. Mandatory provision. Rule 187 CRP.
Return of decree of other Courts entered in CR 15 if execution is not levied in execution Court	Within 3 days after expiry of 1 year time from the date of receipt of other 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.