

PAPER PRESENTATION ON EXECUTION

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SRIKAKULAM,

Definition

The word "**Execution**" is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree-holder by a competent court.

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

As per Rule 2(f) 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.

The Relevant Provisions on Execution in Code of Civil Procedure and Civil Rules of Practice are:

1. Sections 36 to 74, Sections 144, 146 & 148 Code of Civil Procedure and Order 21.
2. Chapter XVI Rules 205 to 285 of Civil Rules of Practice.
3. Articles: 125 to 129, 134 to 137 of Limitation Act

Jurisdiction

As per Section 37 of Code of Civil Procedure, the decree can be executed by the court which passed the decree and as per section 38 of Code of Civil

Procedure the court to which the decree is transferred, have jurisdiction to entertain the Execution Petitions.

Can the execution court go behind the decree?

No, the execution court can not go behind the decree

See →

Sunder Dass -Vs- Ram Prakash (AIR 1977 SC 1201)

Hira Lal Patni -Vs- Sri Kadi Nadh (AIR 1962 SC 199)

Vasydev Dhanjibhai Modi -Vs- Rajabhai-Abdul Rehman & Others (AIR 1970 SC 1475)

When there is a conflict between the judgment and decree, whether execution court can look into the judgment ?

Yes ; when there is a conflict between the judgment and decree and if the decree is not properly / happily drafted, the executing court can look into the judgment to know the intention of the court.

See →

G.Ramayya Vs. Y.Bayanna (1974 (2) An.W.R 14 (SN) –

(S.B.I, Petitioner Vs. Maa Sarada oil mills & others (A.I.R. 2003 Gau.22)

Whether The Executing Court can go through pleadings and proceedings upto decree to know the intention of the trial court in passing decree - Yes

Bhavan Vijaya and others Appellants Vs Solanki Hanuji Khodaji Mansang and another Respondent (AIR 1972 SC 1371)

If the trial court is not having inherent jurisdiction or if the decree is a nullity on the face of the record, the executing court can refuse to execute the decree.

No territorial or pecuniary jurisdiction, the decree is valid unless prejudice is caused.

Hasham Abbas Sayyad -Vs- Usman Abbas Sayyad AIR 2007 SC 1077

If the property situated in different courts – Or.21 Rule 3

Please Refer:

Mohit Bhargava Vs Bharat Bhushan Bhargava and other – (2007 (3) SCJ 735

IV - Transfer of Decree

Read Sec.39 C.P.C O.21 R.5 & 6 Procedure

Sec.39 (4) – Person and property outside the Jurisdictional court – cannot be executed.

Powers of the transferee courts Sec.42 C.P.C.

Form No.52 of Civil Rules of Practice Application Order Form-3

Appendix E of C.P.C

Rule 206 of Civil Rules of Practice (apart from sending the decree through a messenger, the copy of the decree and the decree transfer proceedings must be sent by post in confirmation of sending decree through a messenger)

Certificate of Non-satisfaction Form.no-4, Appendix.E of C.P.C

Certificate of Execution - Form no.5 of C.P.C

V- Stay of Execution

Order 21 Rule 26 to a **limited period** to facilitate the Judgement debtor to obtain necessary stay orders from the trial court, which passes the decree.

Meda Harikrishna –Vs- Akula Sehsmma

(2009 (1) ALT 846.)

A third party cannot file a petition to stay the execution U/O 21 R.26.

Order 21 Rule 29 grant of stay of execution under particular circumstances.

VI- Whether Caveat petition U/Sec 148-A C.P.C is maintainable -?

- No -

Eknath Kiva Akhadkar & Others -Vs- Administrative (A.I.R. 1984 Bom. 114)

Chloride India (L) -Vs- Ganesh Das Ramgopal (A.I.R 1986 Calcutta 74)

Kattil Vijalil Parkkum Kailoth -(Tribunal & D Etc)Moideen – Vs- Mannial Paadikayil Kadeesa Umma & Others (A.I.R. 1991 Ker. 411)

VII – Precepts

S.46 Form No.2 Appendix – E CPC

VIII Can the Execution Court grant Instalments? No -

As per Article 126 of Limitation Act, necessary application must be filed within 30 days from the date of the decree for grant of instalments.

Please refer:

2002 (1) ALD 169 (D.B)

Seelam Ramadevi Vs Gandhi Raju Yanadi Raju (2008 (4) ALD 366)

Khadar Baba Fancy Stores, Visakhapatnam Vs GPG Chit Funds Pvt. LTD and other (2008 (5) ALD 711)

IX - Payment out of Court:

- Please see Order 21 Rule 2 (2) CPC

- Article 125 of Indian Limitation Act

P. Narasaiah -Vs- P. Rajoo Reddy (AIR 1989 AP 264)

Somu Adinarayana -vs- Balanagu Subba Rao (died) per LR
(2007 (2) ALT 638

Adjustment in any other decree must also be recorded within one month.

Padmaben Bansulal and another Vs Gogendra Rathod and
other (AIR 2006 SC 2161)

Simultaneous Execution – See Order 21 Rule 21

Gudivada Muneyamma -vs- Jawardhal (2006 (6) ALT 587)

Rapuolu Sudhar -vs- Govt. of A.P. (2007 (2) ALT 205)

**In a composite Decree whether DHR has to First exhaust
his remedy against the property before proceedings against
person – No**

Please refer:

State Bank of India Appellant Vs M/s Index port
Register and other Respondent (AIR 1992 SC 170)

CH.Sankar Reddy Vs Andhra Bank Rep. by its Manager
Darga Mitta, Nellore and others (2006 (4) ALT 427)

Execution of different kinds of decrees

- | | |
|---------------------------------------|------------------------|
| 1) <u>Simple money suit</u> :- | By arrest |
| 2) <u>Mortgage Decree</u> | By attachment and sale |
| 3) <u>Maintenance Decree</u> | |

Limitation 12 years – Art.136 of Limitation Act

The decree cannot be executed against the Government within 3
months from the date of decree under Sec.82 (2) C.P.C.

Mode of Execution

Arrest

Attachment & Sale

Arrest

Whether there are any limitations:

Women are exempted from arrest in execution of money decree (Sec.56 C.P.C)

Certain class of persons are exempted from arrest (Sec.55 (2) CPC)

If the decree is for not more than Rs.2000/-, arrest cannot be ordered.

For **restrictions** on arrest read Sec. 135 and Sec.135-A C.P.C.

Steps to be taken before ordering the detention of the J.Dr. in Civil prison.

(a) issue notice under Order 21 Rule 37 – Form No.12/Appendix E of CPC

(b) If J.Dr. fails to appear in response to Rule 37 notice; then Rule 37 (2) warrant must be issued for production of the J.Dr. – Form No.13/Appendix E of CPC

(c) If J.Dr appears in response to Rule 37 notice or if the J.Dr is produced on Rule 37(2) Warrant of arrest, means enquiry must be conducted under Order 21 Rule 40 CPC.

The Court has to inform the JDR that he is at liberty to file insolvency proceedings – Sec.55 (3) CPC

If the JDR expresses his intention to file I.P within one month he can released on security. Sec.55 (4) CPC

If the J.Dr is prepared to give security when he is produced under Rule 37(2) Warrant, he must be released.

If the JDR obtains protection order U/s 23 of Provincial Insolvency Act the JDR must be released.

If J.Dr has refused to give security, he can be kept under Court guard custody [O.21 R.40(2)] F/14A/Appendix E CPC and the Court should conduct **means** enquiry expeditiously.

The Court has to inform that the J Dr is at liberty to file insolvency proceedings.

(d) to order arrest of the J.Dr who is a Government Servant, a seven days prior notice must be given to the Head of the Institution. Rule 241 civil rules of practice

(e) The subsistence allowance must be paid by the D.Hr. see Rule O.21 R.39(1) of C.P.C.

(f) while conducting the means enquiry, Sec.60 of C.P.C. must also be taken into consideration

(g) enquiry as to means is necessary : read

R.V.J.Sastry Vs.Bank of India (1978 (2) A.L.T.335)

Kasi Subbaiah Mudali _vs_ Kasi Veraswamy Mudali & Others(2002(3) A.L.T. 240)

K. Manoharan -vs- A.V.Subbanna (AIR 2002 Mad. 340)

K.Harikrishna Vs.Dr.L.Raghunatha Rao 2004 (5) ALT 52)

No detailed enquiry is necessary as in a Civil suit. Please Read -

(K.Munirathnam Vs. D.Bhaskar Naidu)2006 (4) ALT 169

Challa Sivakumar Reddy Vs Kudumula Surender (2008

(1) ALT 335) (Standard of Proof)

(h) The grounds to detain the JDR in civil prison See Sec.51 proviso

(i) The period of detention in civil prison – Sec Sec.58 (1) CPC. If the decretal amount is between Rs.2000/- to Rs.5000/-, upto 6 weeks and if the decretal amount is more than Rs.5000/-, upto 3 months (maximum period of detention in a civil prison must not be more than 3 months)

(k) Even before sending the J.Dr to civil prison, J.Dr can be released on furnishing security and also can be kept in court guard custody for not more than 15 days, to enable J.Dr to pay the decretal amount.

O.21 R.40(3) proviso :

Warrant of Committal – Form No.14A/Appendix E of CPC
{A.P.Amendment}

When can be released

Read Sec.58 and Sec.59 release Order F/15/E/CPC

To whom subsistence allowance must be paid

Order 21 Rule 39 (2)

Order 21 Rule 39 (3)

Order 21 Rule 39 (4)

Under Sec.57 amount is to be fixed by the Government. If the scales are not fixed by the court - Order 21 Rule 39 (2)

J.Dr cannot be rearrested on release, for execution of the same decree.
See Sec.58(2) C.P.C

Expenses can be taken as costs of the suit (Or.21 Rule 39 (5))

J.Dr can not be rearrested for recovery of the said sum.

S.417 of Cr.P.C. --- J.D.R. is in Judicial Custody in Criminal Case.

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY:

i) The Court which can sell the immovable property – Small Causes Courts cannot sell the property, original courts only can sell the property.

If the decree of the Small Causes Court is to be executed by sale of the property, the same has to be transferred to the original court under Or.21 Rule 4 C.P.C.

ii) The property which cannot be sold in execution – See Sec.60 (1)

(c)

iii) The D.Hr can issue a notice to the J.Dr. to furnish the details of the property. The J.Dr can be examined. The J.Dr can be directed to file an affidavit in respect of his properties. If J.Dr. fails to file such an affidavit, he can be sent to civil prison upto three months.

Affidavit form No.16A – Apeendix E of CPC.

Such a notice can also be issued if the J.Dr is a corporation.

Read Order 21 Rule 41.

iv) Attachment - Fresh Attachment is not necessary if (a) the property is attached before the judgement (b) in the mortgage decree (c) the properties are charged properties.

How an attachment can be made:

Order 21 Rule 54 – A.P.Amendment, -FormNo.24/App.E/CPC

Order 21 Rule 55 – raising of attachment

As per Sec.64, sale is void during the subsistence of the attachment

Order 21 Rule 57- Order as to the raise of the attachment

Sec.63 : Attachment by several Courts:

Parachuri Veerayya -Vs- Yalavarti Veeraraghavayya (AIR 1961 AP 298)

Claim petition:

Order 21 Rule 58

See Rule 246, 247 of Civil Rules of Practice

Form No.66 of Civil Rules of Practice

As per Order 21 Rule 58 (2) C.P.C. the claim must be between the parties and their representatives and separate suit is not maintainable.

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

T.Nabi Sab Vs G.Venkateswrlu and another
2008 (4) ALD 770

The claim petition must be filed before the sale.

Pl.refer for meaning of "**Sold**"

M/s Magunta Mining co -vs- M. Kondaramireddy and antoher
(AIR 1983 A.P. 335)

Kancherla Lakshminarayana -vs- Mattaparthi Shaymala &
others (AIR 2008 S.C. 2069)

The attachment made before the judgment can be questioned in
E.P Please refer

Alladi Eeswarappa Vs M.Krishna Reddy and another (1963 (2)
An.W.R 348)

Stay of Sale is under Order 21 Rule 59 under circumstances

Along with the attachment, notice must be sent to J.Dr for his
appearance as per Order 21 Rule 54 (1-A)

Filing of the Petition – Rule 258 and Form No.67 of C.R.P.

There must be **test** by Amin/bailiff if the properties are

- 1) Charged properties
- 2) Mortgaged properties &
- 3) Attached before judgment

Order 21 Rule 66 – Rule 259 of C.R.P.

Form No.30 of Appendix –E of C.P.C.

Mode of proclamation – Order 21 Rule 67, Rule 274 and Form No.70 of
C.R.P.

Rule 272, Form No.68 of Civil Rules of Practice.

If the properties are mortgaged with L.M.Bank – See Rule 276

Documents to be filed:

- 1) Sale Affidavit
- 2) E.C. for 12 years
- 3) Arrears of Taxes
- 4) Sale papers

Leave to bid by D.Hr.

Order 21 Rule 72 (1) (3) C.P.C.

Order 21 Rule 72 A (1) (2) (in case of mortgage decree holder)

Rule 277 of Civil Rules of Practice

Upset price can be reduced – Dr.A.V. Natarajan & Others -vs- Indian Bank Madras (AIR 1981 Mad.151)

Even in Mortgage decree, upset price can be reduced (under certain circumstances) See Federal Bank Ltd -Vs- K. Sreedharan & Others (AIR 2003 Kerala 199)

Dr. Prabhakar Naidu -Vs- T. Raghava Reddy (2009 (1) ALD 76)

Mortgage Decree - Reduction of upset price.

Court cannot reduce the upset price – P. Rama Reddy -Vs- P. Sundara Rama Reddy & Others (AIR 1986 AP 29)

Private Sale of Property by J.Dr to raise the amount

Order 21 Rule 83 and its proviso

In case of mortgaged and charged property, the provision is not applicable.

Appendix -E, Form No.35 C.P.C.

Adjournment of Sale

Order 21 Rule 69

Time of Sale

Proclamation must be 15 days prior to the date of sale in case of immovable property and 7 days in case of movable property.

With the **written consent** of the J.Dr, the sale can be on earlier date under order 21 Rule 68.

Somisetti Ganga Raju -Vs- Dr. Ramalingam (AIR 2007 AP 198)

Proclamation not containing valuation of either party but only decree amount , such proclamation is not valid.

Normal steps for sale are:

Proclaim and sale call on	01-05-2009	Proclamation of sale
Further hearing date	08-05-2009	Form 29/App.E/CPC
Publish in <u>Janatha</u> Daily		

Sale Warrant preparation batta must be paid one week prior to the date of sale.

On the date of the sale, the sale must be knocked down in favour of highest bidder. If D.Hr is the auction purchaser, he is entitled for set off.

Immediately after the sale, 25% of the sale amount must be deposited under Order 21 Rule 84.

As per the Process Fee Rule III(5) a fee by way of poundage shall be levied on purchase money for each lot separately at the following rates

- (i) On the first Rs.500, Rs 0.10 paise in the rupee
- (ii) On the next Rs.500 Rs 0.05 paise in the rupee
or part thereof
- (iii) On any sum exceeding Rs.1000 Rs 0.03 paise in the
rupee

As per Rule 278 of Civil Rules of Practice the court officer who conducted the auction has to purchase court fee stamp for the value of the poundage.

Even if the D.Hr is the auction purchaser he has to pay the poundage. (These amounts can be taken as cost of E.P.)

Payment made by cheque or bankers cheque is valid Akula Srinivasa Rao & Others petitioners Vs G.Venkateswara Sarma Respondent

– AIR 2003 AP 407

The balance to be deposited within 15 days under Order 21 Rule 85 C.P.C. As per A.P. Amendment, the amount for purchase of the stamps must also be deposited.

Whether **the Court has power to extend the time for deposit of the balance amount and the amount for purchase of the stamps - No**

Please refer (Mudragada Satyanaraya Murthy Vs. Southern Agencies (AIR 1962 A.P. 271)

W. Veerabhadra Rao -vs- Nedungadi Bank Ltd Vijayawada and others (1998 (6) ALT 216)

(Kudiyala Ramana Vs. Vattikolla Somaraju) (AIR 2003 A.P. 215)

If the mistake lies with the Court-

Please refer:

Ambati Raghavulu -vs- Mova Venkamma and others
(AIR 1962 AP 334)

Rosali V. Vs Taico Bank and others (AIR 2007 SC 998)

Steps to be taken after the sale

There must be Nazir's report vide Rule 276 of C.R.P. Form No.71 of C.R.P.

E.P. must be called on further hearing date.

In default of payment of balance amount, the amount paid shall be forfeited under Order 21 Rule 86. E.P. must be posted for fresh sale.

If the amount is paid, the E.P must be posted after 60 days for confirmation of sale.

Retenable Distribution (S.73 CPC)

Pl.Refer

Thummlapenta Dhana Lakshmi, Petitioner Vs Pulipati Subbarayudu Resondent (AIR 1954 Madras 581

Jagadish Vaisnav -Vs- Farpos Heading Cateror
(2002 (4) ALT 718)

Kanakam Srinivasa Rao -Vs- Ganga Venkateswar Rao
(2002 (6) ALT 201)

E.Subba Reddy -Vs- G. Dhanunjaya and Others

(2006 (6) ALD 244)

Claim Petitions

i) Under Order 21 Rule 89 C.P.C. payment can be made by J.Dr or other persons. He has to pay auction amount and another 5% of the amount.

Rule 278 and Form No.72 of Civil Rules of Practice.

As per Art.127 of the Limitation Act, a petition can be filed within 60 days and the deposit must be within 60 days from the date of the sale. O.21 R.92(2) CPC.

Please refer

P.K.Unani -vs- Nirmal Industries and others
(AIR 1990 SC 933.)

ii) **Claim Petition under Order 21 Rule 90** on the ground of material irregularity – Form No.36 C.P.C. Appendix E CPC.

iii) **Claim petition can be filed under Order 21 Rule 91** by purchaser that J.Dr has no saleable interest – Form No.37 C.P.C. Appendix E CPC.

Sale shall not be set aside on the death of the J.Dr. before the sale, but after the service of proclamation of sale (O.21 R22-A).

Confirmation of the Sale:

The Bench Clerk has to put up a note that

- i) No application under Order. 21 Rule 89, under Order 21 Rule 90 or Order 21 Rule 91/ is filed and dismissed.
- ii) Balance sale consideration is paid
- iii) Money for purchase of stamps paid

Next step will be **sale is confirmed** :-Order 21 Rule 92

Issue sale certificate: Order 21 Rule 94

Appendix –E Form No.38 C.P.C.

Rule 282 of C.R.P.

U/s 17 (2) (XII) and U/s 89 of Registration Act,Registration of the Sale certificate is not compulsory registrable document. But, the document must be sent to Sub-Registrar for necessary entries.

Delivery :

O.21 R.95
Order 21 Rule 96; tenant
Appendix-E, Form No.39 C.P.C. - AP Amendment.

Limitation: one year (Art.134 of Limitation Act)
(Patnam Khader Khan Vs. Patnam Sardar Khan) (1996 (5)
SCC 48)

Resistance: Order 21 Rule 97, Form No. 40 Appendix E CPC
Sec.74 CPC – 30 days imprisonment
Order 21 Rule 98, Warrant; Form No.41/App.E/CPC
Enquiry O.21, 99, 100 and 101.

The properties that cannot be attached.

Pl.Read Sec.60 CPC under which certain properties are exempted from attachment and sale.

The properties that can be attached:

a) Immovable properties (O.21 R.54)

b) Movable properties: Warrant of attachment – Form No.8/app.E/CPC
Bond for safe custody of]
Of movable properties] - Form No.15 A/app.E/CPC
attached]

O.21 Rule 43

Rule 252 of CRP (procedure for attaching movables)

Rule 253 of CRP (attachment of cash and jewels) Sec.62 CPC

Rule 254 of CRP (custody of fire arms)

**c) Attachment of standing crops and agricultural produce Sec.61
CPC**

Order 21 Rules 44 & 45

**d) Attachment of debt/share/other property not in possession of
J.Dr.**

(Garnishee procedure) O.21 Rule 46, 46-A to 46-I

e) Attachment of Decrees

O.21 Rule 53 – Form 22/App.E/CPC – Notice u/Form 23/App.E/CPC

Rules 243, 244, 245 of C.R.P.

Form Nos.63, 64 & 65 of Civil Rules of Practice

f) Attachment of salary: Form 19/App.E/CPC

O.21 Rule 48 Government Servant

O.21 Rule 48-A Private Employee

Salary particulars must be called for – M.G.Brothers Finance Ltd
–Vs- J.Badharinath & Others (2006(3) L.S.421)

O.21 R.48 (1) – Attachment of salary of Govt.Servant residing in another town – Attachment can be made in view of Sec.39 (4) CPC - Yes

Please Refer:

Selam Advocate Bar Association, Tamilnadu Vs Union of India (AIR 2005 SC 3353)

Janapathi Jaipal Reddy –Vs- Sunnihitha Chit Funds Pvt Ltd, rep.by its Foremen, Karimangar and others(2009 (5) ALT 17)

Amount payable under voluntary retirement scheme (VRS) is not exempt from attachment Repati Venkata Ramana –Vs- K.

Venakteswararao Patnayak {1993 (2) A.L.T. 393}

Pension amount deposited in the bank is liable for attachment

S.Nagappa –vs- KP Hanumappa {2004 (2) A.L.T. 364}

Pension and gratuity once reached the hands of employee concerned, the exemption ceases. Bandi Chinna Ramalinga Reddy @ Chinna

Ramalingaiah –Vs- Nellory Srinivasulu & others {2006 (3) A.L.T. 205}

Please Refer:

(Union of India Vs Jyothi Chit Funds and Finance and others (1976) 3 SCC 607)

Union of India Vs Wing Commandar R.R Hingorani (1987) 1 SCC 551

Radhe shyam Gupta Vs Punjab National Bank and another
(2009 (1) ALD 79 (SC))

Memo Dt.10-07-2009 issued by the Government

g). Negotiable instruments

O.21 Rule 51 – Order in -Form No.20/App.E/CPC

h). Decree for rent and future mesne profits

O.21 Rule 42

4) . Execution of Decree for possession of movable and immovable properties.

O.21 Rule 31 – Possession of movables – Form 9/App.E/CPC

O.21 Rule 35 – Possession of Immovable properties - Form
No.11/App.E/CPC

Delivery can be made even if there are constructions made during the
pendency of the suit

Please Refer:

B.Gangadhar Petitioner Vs B.G.Rajalingam Respondent (AIR
1996 SC 780)

Kotakadi Lakshmi Devi Vs Badam Nageswara Reddy (1999
(3) ALT 278)

O.21 Rule 36 – Delivery of immovable property when in occupancy of
Tenant.

5) . Decree in partition suit

In the first instance, a Preliminary Decree shall be passed. Later on
application of either party, a Final Decree will be passed allotting
particular property to a particular party.

Pl.Refer : Dr.Chiranji Lal (D) by LRs Appellants -Vs- Hari Das
(d) By LRs Respondents. (AIR 2005 SC 2564)

On the filing of E.P. the particular property that was allotted, will be
delivered through the process of Court by issuing Delivery warrant.

6) Execution of Decree in simple injunction suit:

- O.21 Rule 32
1. by attachment
 2. detention in Civil prison or
 3. by both

No limitation is prescribed U/Art. 136 of Limitation Act.

Issue attachment – the attachment can be from 3 months to one year –
D.hr. has to apply for sale- Sale process must be paid towards
compensation.

J.Dr. can be sent to civil prison.

Whether the Civil Court can grant Police Aid for execution of decree in a
Suit of Permanent Injunction – No

Please Refer:

Galikota Reddy Vs Gali Rajagopla Reddy (2000 (6) ALD 449)

Palavarapu Nagamani and others Vs Paruchuri Koteswara

Rao and other (2010 (2) ALD 41 (DB)

D.Tulijadevi and other Vs Margam Sankar and another (2010
(2) ALD 732

Maximum period of civil imprisonment must not be more than 3 months
(though no period is fixed under Order 21 Rule 32)

Refer

Dodda Narayana Vs. Velti Reddemme (AIR 1990 A.P. 147)

If J.Dr. is a corporation, then the decree can be executed by attachment
and sale of the properties of the corporation. Further with the leave of
the Court, the Directors and other principal officers can be detained in the
civil prison.

7) Execution of the Decree for Mandatory Injunction.

**8) Execution of Decree for specific performance of Agreement of
sale and endorsement.**

In execution of decree for specific performance of agreement of sale, whether I.A. is to be filed in the same suit u/Sec.28(3) of Specific Relief Act, 1963 ?

Or

An Execution petition to be filed u/O.21 Rule 34 CPC

Execution Application is to be filed.

Please refer

Cherukuri Venkat Rao Vs. Brahmajoshula Bala Gangadhara
Sarma & others (1987 (2) ALT 229)

Raman Kutti Guptan Vs. Joseph {AIR 1997 Ker.301}

Balasa Sarada Vs. Talluri Anasuyamma (died) & others
(2007 (2) ALD 802)

Pratibha Sinh & another Vs. Shanti Devi Prasad & another
(AIR 2003 SC 643)

In the plaint the possession was not pleaded, no relief was granted. Whether the possession can be granted by the executing court – Yes

Suluguri Vijaya and others Vs Pamuleti Manjula
(2007 (3) ALD 657)

O.21 Rule 34

Rule 219, 220 of C.R.P & Forms 54 & 55 of C.R.P.

Whether the documents executed by the court is compulsorily attestable –

No – Sait General –Vs- Pachigolla China Ramaswamy (AIR
1960 A.P. 465)

The sale deed executed by the Court must be presented before the Registrar for registration. Registration fee will be collected on the value of the property on the date of the presentation of the document.

Rule 221 (endorsement on negotiable instruments)

Decree for cancellation of the document:

Rule 149 of Civil Rules of Practice

9) Execution of decree for restitution of conjugal rights:

O.21 Rules 32 & 33 (The J.Dr. cannot be detained in civil prison)

10) Execution of Decree under Rent Control Act:

Sec.15 of A.P.Rent Control Act

Rule 23 Limitation 6 months
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 the orders under Sec.14(6), 21, 22 of Rent Control Act
- By attachment & sale or by arrest.

XV. Whether Sec.5 of the Limitation Act is applicable to the proceedings under Order 21 CPC?

As per Sec.5 of the Limitation Act, the provision is not applicable to proceedings u/O.21 CPC.

- But there is an amendment in the year 1992 adding sub Rule 4 to Rule 106 of O.21 C.P.C. In view of the same, Sec.5 of Limitation Act is applicable to orders under O.21 Rule 105 C.P.C. and for the petitions filed u/O.21 Rule 58 C.P.C. also.

Please refer –

Sale Rangaswamy Vs. Spl.Collector-cum-Land Acquisition Officer SSP, Kurnool {2004 (3) ALD83}

State Bank of India Vs. Muffar Ali Khan & others
{2004 (6) ALT 17}

Please also refer –

Damodaran Pillai Vs. South India Bank Limited (AIR 2005 SC 3460)

Thatipalli Vajramma Vs. Revuri Devayya & others
{2008(1) ALT 442}

Habiba Babu -Vs- B. Choudesh (2009 (1) APLJ 369)

The Law is finally settled by full bench of our Hon'ble High Court in

Ch.Krishnaiah Vs Ch. Prasada Rao (2009 (6) ALT 82 FB)

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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

