

## EXECUTION PROCEEDINGS

By

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Adjudicatory bodies ensue the law, equity, principles of natural justice and good conscious. The word " Execution" is not defined in Code of Civil Procedure,1908 (herein after referred as CPC). The word " Execution" can, in this context, be understood as " a judicial act by which a public officer is empowered to carry judgments or orders into effect." In other words, it means the carrying into effect the judgment or order delivered in a court of law. In England, the usual mode of execution of money judgment is by writ of "fieri facias" (popularly known as fi. fa.). However, It is apt to say the process of administration of justice is known as " Execution".

In India, Order 21 of CPC consists several rules i.e Rules 1 to 106. Besides that the execution proceedings deal with various sections and the High Courts Amendments. Inasmuch as there are several rules, sections, and The High Courts Amendments, there is much confusion to understand all of them at once. For Example, to know whether Or.9 of CPC applies to execution proceedings or not, we cannot find any rule in Order 21 of CPC to answer the same. Yet, there is nothing in Order 21 of CPC, which deals with execution of decrees and orders, specifically empowering the Court to apply Order.9 of CPC to execution proceedings. Therefore, the provisions of Order 9 of CPC can apply, if at all, only by virtue of Section 141 of CPC. Several High Courts observed that Order 9 of CPC does not apply to execution proceedings and it was held that not to apply to proceedings under Order 21,R.2 ( see AIR 1969 Pat 79 at page 82), or Order 21, Rule 58 (see (1975) 2 Cut W R 107), or Order 21 , Rule 89 (see AIR 1926 Bom 377), or Order 21,Rule 90 (see AIR 1919 Pat 192, AIR 1931 All 594 DB, AIR 1927 Cal 938 DB), or Order 21, Rules 97 to 101 see AIR 1958 Orissa page 200.

Order 21 provides several issues such as " Courts executing decrees, Payment under decrees, Application and process for execution, Mode of execution, Stay of execution, arrest and detention in Civil Prison, Attachment of property, Adjudication of claims and objections, Sale generally, Sale of movable property, Sale of immovable property.

### **SECTIONS RELATING TO EXECUTION PROCEEDINGS:**

Section. 36: The main principle of this section is that "every Court has an inherent power to have its orders carried out, as otherwise the orders would be a mere farce". This provision is applicable to all orders which can be included in Sec 2,clause 14 and is not limited to orders made under the Code of Civil Procedure,1908.

Section. 37: Preliminary decree is a decree within the meaning of Section 2(2) of CPC. But it is not capable of execution normally till a final decree is passed. "Manifestly, a Court other than the Court which passed the decree is contemplated by section 37."

Section. 38:- 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: (Transfer of decree):- The provisions this section is permissive and not mandatory. The main test of applicability of this provision is to see if the CPC regulates the procedure of both the transferor and the transferee Courts. However, sections 43,44,44A and 45 are to be remembered. For transfer of decree to another Court for execution, the following two aspects must kept in mind, 1. that a D.Hr has a legal not merely an equitable right to have his decree transfered for execution. 2. at the same time, that the section is not mandatory but Court is given judicial discretion in the matter, as is shown from the word "may" in the section. In the case, Matha Gavarayya, it was held that "Injunction decree is not enforceable. However, it can be enforced by seeking police aid on necessary directions from the Court. Sub section (4) of this section says that nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local jurisdiction of its jurisdiction".

Section. 40: Where a decree is sent for execution in another State, it shall be sent such Court and executed in such manner as may be prescribed by rules in force in that State. The transferee Court has to execute the decree in following the procedure prescribed by rules in its own State.

Section. 41: This section makes it obligatory on the transferee Court to certify to the transferor Court the result of the proceedings before it.

Section. 42: This section confers on the executing Court all the powers of the Court, which passed the decree. There is no restrictions on the authority of the executing Court in that behalf.

Section. 43: Under Section 43 of the Code only those decrees can be executed which have been passed by Civil Courts established in parts of India to which the provisions of the Code do not extend or by the Courts established or continued by the authority of the Central Government outside India. The decree which can be transfered has to be a decree passed under the Code, and the Court to which it can be transfered has to be a Court which is governed by this Code.

Section. 44: Where there is no notification under section 44 of CPC the decree cannot be executed.

Section. 44-A: The distinction has to be borne in mind that reciprocating territories enjoy greater privilege regarding execution of decrees of their superior Courts in India than are enjoyed by the non-reciprocating territories.

Section. 45: It deals with to the execution of decrees passed by Courts in India in foreign territory.

Section. 46: The Court, which passed a decree, has discretionary power to issue a precept to any other Court which would be competent to execute such decree to attach any property of the J.Dr specified in the precept and situate within jurisdiction of the latter. The duration of attachment under precept is a period of 2 (two) months only. However, the Court passing decree has power to extend this period. A precept enables the D.hr to apply for execution only within two months in the Court to which the precept is sent.

Section. 47: In the case *Prosunna vs Kad Das*, it was held that "the scope of section 47 is very wide and the Section should be construed liberally so that all questions capable of determination by the executing court may be brought before it and the parties should not be driven to the worries and expenses of an independent suit unless the case clearly falls outside the purview of Section 47. The executing court has been given exclusive jurisdiction under this Section as to all matters relating to the execution of the decree."

Section. 48: (Execution barred in certain cases): Repealed by the Limitation Act, 1963 (36 of 1963), Section 28 (w.e.f 01-01-1946).

Section. 49: It applies to a case where a transferee of a decree is brought on record in place of the original D.hr and is permitted to continue the execution started by the transferor. To understand this section, it may be compared with section 132 of T.P.Act, 1882 as it is based on the same principle.

Section. 50: This section enables a D.Hr to execute the decree against the legal representatives where J.Dr dies after the passing of the decree but before it is fully satisfied. Combined study of Section 52 and 53 and this section is needed to understand this section. Section 52 says where the debtor dies before the decree and the decree itself has been passed against the legal representatives. Section 53 extends the scope of sections 50 and 52 to ancestral property in the hands of its descendant which is liable under the Hindu Law for payment of debt of the ancestor. Section 50 is not exhaustive of the circumstances in which a decree can be executed against a legal representative.

Section. 51: (Powers of Court to enforce execution): This section provides 5 modes of execution. 1. by delivery of the property; 2. by attachment and sale or by sale without attachment of property; 3. by appointment of receiver; 4. by arrest and detention in civil prison not exceeding 3 months as per section 58 of CPC; 5. in such other manner as it thinks fit. This section should be read along with other sections of CPC. In *Jolly George Varghese's* case, the Hon'ble Supreme Court of India held that as long as there is no dishonesty and malafides on the part of the Judgment debtor to discharge his obligation, committing him to civil prison would amount to violation of Article 11 of International covenant on Civil and political Rights and Article 21 of the Constitution of India. Therefore, D.hr has to establish J.Dr has willfully with malafide intention to deprive the fruits of the decree is neglecting or refusing to pay the amount of decree in spite of having sufficient means to pay the decretal amount. Unless it is established, ordering arrest of J.Dr is improper.

Section. 52: (Enforcement of decree against legal representatives): In Smt D.Krishna Sachi's case, it was held that "where the D.hr intends to proceed against the estate of deceased Judgment/J.dr , then the need to follow the procedure under section 52 (2) is mandatory."

Section. 53: This section is an explanation to sections 50 and 52 of Code of Civil Procedure,1908.

Section. 54: (Partition of estate or separation of share ): This section does not apply to decrees other than decrees for partition, or separation possession of share of an undivided revenue paying estate. This section restricts the ordinary power of Civil Court to execute its own decrees.The interest of Govt as to the revenue assessed on the assets would better be safeguarded by the Collector executing the decree than the Court. The Revenue Authorities are better qualified to deal with such matters than Civil Court.

Section. 55: Arrest and Detention: The mere fact that a warrant for attachment of property has been issued may be a sufficient ground for refusing to issue warrant of arrest but when the judgment debtor has evaded payment it would not be sufficient ground to refuse warrant of arrest.

Section. 56: A Court cannot arrest a woman in execution of money decrees. It is pertinent to remember that before Code of Civil Procedure, 1908 was enacted, there was no rule prohibiting the arrest of women in execution of money decrees.

Section. 57: The State Government fixes scales, graduated according to rank, race and nationality,of monthly subsistence of J.Drs.

Section. 58: On failure of the decree holder to pay subsistence allowance the Judgment debtor should be released. D.Hr is entitled to a refund the balance subsistence money advanced by him, if J.Dr is released on the application of D.Hr.

Section. 59: (Release on ground of illness): the section is based on humanitarian grounds and if a J.Dr is suffering from serious illness, the Court would be well advised in ordering his release so as to escape from the moral responsibility in case anything should happen to him on being sent to jail. Humanitarian impulse of S.59 must not be lost sight of when applying it to the concrete facts of a particular case. Old J.Dr of 70 years seriously ill should receive serious consideration. It being beneficial provision should be construed liberal and not narrow way by executing Courts. Asthama and indigation are not sufficient grounds to enable the Court to cancel warrant of arrest issued against the J.Dr.

Section. 60: It provides a list of properties which are liable to attachment and sale. And also provides a list of properties which are not liable for sale.

The following properties are not attachable under this section:

1. The necessary wearing-apparel, cooking vessels, beds and bedding of the J.Dr, his wife and children and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman. (Ex. Mangalashtra cannot be parted with Hindu woman);

2. Salary to the extent of the first Rs 1000/- and also 2/3 of remainder.
3. Any right of personal service
4. tools of artisans. If J.Dr is an agriculturist, his implements of husbandry and such cattle, seed grain as may be necessary to enable him to earn his livelihood; and agricultural produce;
5. houses and other buildings which are necessary for their enjoyment belonging to an agriculturist or a labourer of a domestic servant.
6. books accounts;
7. a mere right to sue for damages;
8. stipends and gratuities of pensioners as mentioned in sub sec (1) proviso (g) of sec. 60;
9. political pension;
10. the wages of labourers and domestic servants, if payable in money or in kind;
11. all moneys payable under policy of insurance on life of the J.Dr.
12. any allowance forming part of emoluments of Govt servant which by notification on the Official Gazette may declare to be exempt from attachment by as mentioned in sub sec (1) proviso (l) of sec. 60; etc.

Section. 61: It deals with partial exemption of agricultural produce.

Section 62: It deals with seizure of property in dwelling house.

Section. 63: It deals with property attached in execution of decrees of several Courts.

Section. 64: It deals with private alienation of property after attachment to be void.

Section. 65: It is better to study this section along with Order 21, Rule 92. In Janak Lal's case, it was held that in view of 65 of Civil Procedure Code the property was deemed to have vested in the purchaser from the time when it was sold and not from the time when the sale became absolute and that in the interval between the date of the sale and its confirmation the auction-purchaser acquired substantial interest in the property.

Section. 66: This section is intended to put stop to benami purchasers at execution sales.

Section. 67: It deals as to "power of State Government to make rules as to sales of land in execution of decrees for payment of money."

Sections 68-72: (Repealed by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956). section 7)

Section. 73: Sannidhi Krishna Murthy and another vs Ponipireddy Venkata Rao and others, in this case, it was held that Decree holders of other decrees are not entitled to rateable distribution if they make applications after the property of J.Dr is already sold in execution of another decree. To know more as to sec. 73 is concerned, See Lanka Surya Prakash Rao's case. General principle is that debts due to the State are entitled to priority over all other debts. If a decree holder brings a judgment debtor's property to sale and the sale-proceeds are lying in deposit in court, The State may, even without prior attachment, exercise its right to priority by making an application to the executing Court for payment out.

Section. 74: It deals with resistance to execution. It provides an important provision as to detention of J.Dr or such other person who resists or obstructs for a term which may extend to 30 days.

Section 82 : It explains the procedure for execution of a decree for or against Govt. combined study of section 118 of C.P.C with this section is necessary.

### **ORDER 21 CONTAINS RULES 1 to 106:**

-Order 21, R.1: (Mode of paying money under decree):  
the Modes of paying money: 1. into the Court whose duty it is to execute the decree; or

2. to D.Hr, out of Court; 3. otherwise as the Court directs. Notice shall be given to D.Hr, if any payment is made under Rule 1 of (1) (a) of Order 21.

-Order 21, R.2: It deals with payment out of Court to decree-holder .

-Order 21, R.3: Where immovable property forms one estate or tenure 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. It is an exception to section 39 of Code of Civil Procedure, 1908.

-Order 21, R.4: ( Transfer to Court of Small Causes): This rule indicates that where the value of the suit in which the decree which is sought to be executed exceeds the amount Rs 2000 it would not be transferred to the Court mentioned in the rule. See ruling AIR 1951 All 380 (DB). Useful ruling as to this provision; AIR 2009 SC 250.

-Order 21, R.5: (Mode of transfer) : This rule provides for transfer to another Court whether or not it is situated in the same State. Where two Courts are in the same district one Court may transmit a decree for execution to the other Court direct without the intervention of the District Court.

See section 37 to know as to " Transfer of local jurisdiction". Also see sections 51 and 42 to understand " Power of Court to which decree is sent for execution".

-Order 21, R.6: the documents required to be transmitted by the Court sending the decree for execution to another Court are; 1. a copy of the decree 2. a certificate as required by clause (b) and 3. a copy of any order for execution that may have been passed.

-Order 21, R.7: No sooner does the copy of decree sent for execution to another Court is filed in the Court to which it is transferred than it has the same effect as decree of that Court.

-Order 21, R.8: Where the transferee Court is the District Court and not the Court of the subordinate Judge a transfer of the decree in accordance with this rule by the former Court is necessary to confer jurisdiction on the latter Court to execute that decree. An order of a District Judge transferring a decree for execution, signed by

the sheristadar " by order" of the District Judge, is a valid endorsement complying with the provisions of Rule 8 of this Order and is not vitiated by the absence of the signature of Judge. This rule and Rule 5 of Or 21 are distinct and independent. The provisions of both Rule 5 and Rule 8 are mandatory.

-Order 21, R.9: (Execution by High Court of decree transferred by other Court): it was held in AIR 1918 Madras 17 (DB) that "The functions of High Court , in respect of the execution of a decree of another Court, are limited to effecting execution and to the matters arising out of proceedings in execution and that the question whether or not the applicant has a right to obtain execution, must be judged by the Court in which the record was."

-Order 21, R.10: (Application for execution): Where an application for execution is withdrawn by D.Hr without leave from the Court to again, a second application is not barred. Section 141 cannot be invoked so as to apply Order 23, Rule 2, as that section does not to execution proceedings.

-Order 21, R.11: If an application for execution complies with the requirements of O.21 , Rules 11 to 14, it is in accordance with law. However, Rule 14 is merely permissive and not mandatory like Rules 11 to 13.

-Order 21, R.12: It deals with " application for attachment of movable property not in judgment debtor's possession.

-Order 21, R.13:: It deals with " application for attachment of immovable property to contain certain particulars.

-Order 21, R.14: It deals with " Power to require certified extracts from Collector's register in certain cases." where an application for sale is made in pursuance of a mortgage decree, a preliminary attachment of the mortgaged properties is not necessary, and , therefore, this rule does not apply to such a case; and a Court cannot dismiss the application for failure to produce the certified extract.

-Order 21, R.15: It deals with "application for execution by joint decree-holders". This rule is based on equity and good conscience for saving J.Dr from harassment. It is not incumbent upon the applicant to expressly state that he is applying on behalf of all the others.

-Order 21, R.16: It deals with " Application for execution by transferee of decree." This provision is not applicable to a decree of a foreign Court which has been transferred for execution to a District Court in India under section 44A. (See High Court Amendments also ).

-Order 21, R.17: It deals with " Procedure on receiving application for execution of decree ". (See High Court Amendments also ).

-Order 21, R.18: It deals with" Execution in case of cross-decrees".(See High Court Amendments also).

-Order 21, R.19: It deals with " Execution in case of cross-claims under same decree"

-Order 21, R.20:It deals with" Execution in case of cross decrees and cross-claims in mortgage suits"

-Order 21, R.21:It deals with" Simultaneous execution". Rule 30 entitles the D.Hr to execute his decree against the person, or the property,or both, of the J.Dr. But, the power to order execution against the person and property simultaneously within the discretion of the Court.

-Order 21, R.22: It deals with " Notice to show cause against execution in certain cases".(See High Court Amendments also ). Where an application for execution is made more than 2 years after the date of the decree or the legal representatives of a party to the decree, or where an application is made for execution of a decree filed under O.21, Rule 44A or against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, notice under Rule 22 of Order 21 shall be issued. (see Order 21, Rule 22 to know more.)

-Order 21, R.22A:It deals with " sale not to be st aside on the death of the judgment debtor before the sale but after the service of the proclamation of sale".

-Order 21, R.23:(Procedure after issue of notice): if J.Dr does not appear after receiving notice under Rule 22 or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. If J.Drs offers any objection, the Court shall consider such objection and make such order as it thinks fit. (See Or 21, R.23 of CPC).

-Order 21, R.24: It deals with "Process for execution". (See High Court Amendments also )

-Order 21, R.25: It deals with "Endorsement on process". (See High Court Amendments also )

-Order 21, R.26:(When Court may stay execution): The execution Court may order stay of execution: a) to enable the J.Dr to get the decree passed ex parte against him set aside; b) to enable the J.Dr to get the decree amended; c) to enable J.Dr to show the decree is fully satisfied; d) to enable the J.Dr to show the decree was not existing; e) to enable the J.Dr , for deciding if the decree is barred. To know more see AIR 1937 Rang 477; (1899) Pun Re No.78, page 294; AIR 1927 Rang 104 DB; 1974 Rajadhani L R 682; (1882) 4 Mad 324 DB.

-Order 21, R.27: This rule says that no order of restitution or discharged under Rule 26 shall prevent the property or person of a judgment debtor form being re-taken in execution of the decree sent for execution.

-Order 21, R.28: It deals with " Order of Court which passed decree or of appellate Court to be binding upon Court applied to.).

-Order 21, R.29: Order 21, Rule 29 requires that the suit should be pending in the Court, which passed the decree the execution of which sought to be stayed. See AIR 1963 Raj 4. (See High Court Amendments also )

-Order 21, R.30: It deals with " Decree for payment of money".(See High Court Amendment also ).

-Order 21, R.31: It deals with " Decree for specific movable property".(See High Court Amendments also )

-Order 21, R.32: (Decree for specific performance for restitution of conjugal rights, or for an injunction): Police assistance can be considered to enforce decrees of permanent injunction or orders of temporary injunctions. See AIR 1993 Ker 62, (See High Court Amendments also). Where the J.Dr has already been detained for a period of three months and the order of the Court below ordering detention till he obeys the decree was held contrary to the provisions of Section 51 and 58 r/w Or.21 of R. 32 of CPC. See Dodal Narayana's case, AIR 1990 AP 147. As to know limitation, see 1995 (2) CCC 83 (at pages 85,86) Madras. Useful rulings as to this provision; AIR 1982 Delhi 245(Distg); AIR 2008 AP 286.

-Order 21, R.33: It deals with " Discretion of Court in executing decrees for restitution of conjugal rights".

-Order 21, R.34: (Decree for execution of document, or endorsement of negotiable instrument): see the case Darshan Kaur vs Gurdial Singh and others, Reported in AIR 1990 P&H 231.

-Order 21, R.35: (Decree for immovable properties): A person who establishes that he is not bound by decree passed against any other person, cannot possibly be dispossessed in execution of that decree( See Inder Singh's case, AIR 1993 P&H 83 at page 85). to know more, see also M.V.S.Manikyala Rao's case reported in AIR 1966 SC 470. Useful ruling as to this provision; 2009 (NOC) 82 (Kar).

-Order 21, R.36: (Decree for delivery for immovable property when in occupancy of tenant): "No judgment debtor can defeat the claim of the decree holder by bringing third parties to possession".

-Order 21, R.37: A Court issues a warrant either under sub rule (1) or sub rule (2) of Rule 37, not for committing the person against whom the warrant issued to prison, but only for securing the presence of such a person in Court. In such a case, the provisions of Section 51, or Order 21, Rule 40 do not apply.(also see High Courts Amendments). Some useful rulings: AIR 1974 MADRAS 1; AIR 1973 Gauhati 84; AIR 1969 SC 682; AIR 1972 Madras 292; AIR 1961 Mys 94; 1964 Cr L J 668; AIR 1947 Cal 262; AIR 1961 Bom 23.

-Order 21, R.38: (Warrant for arrest to direct judgment debtor to be brought up.)(Also see High Courts Amendments). Some useful rulings: AIR 1957 Orissa 224; 1968 All W R (HC) 629;

-Order 21, R.39: (Subsistence allowance:) J.Dr shall not be arrested in execution unless D.Hr pays into Court such sum for the subsistence of the J.Dr. Court shall fix J.Dr's subsistence such monthly allowance as he (J.Dr) may be entitled to according to the scale fixed u/sec 57 of CPC. The monthly allowance should be paid in advance before 1<sup>st</sup> day of each month. ( See also High Court amendments). Despite the sums disbursed by D.hr for Subsistence of J.dr in the civil prison is deemed to be cost of the suit, J.Dr shall not be either detained or arrested on account of any sum so disbursed. Some useful rulings: AIR 1914 Madras 24; (1870) 5 Beng L R App 80.

-Order 21, R.40: A J.Dr released under this rule may be re-arrested. D.Hr shall pay traveling and subsistence expenses of J.Dr and escort. (See High Court Amendments also ).

-Order 21, R.41: It deals with examination of judgment debtor as to his property.

-Order 21, R.42: The Hon'ble Division Bench High Court of Madras declined to invoke the inherent powers under section 151 of CPC., inter alia, on the ground that it was found not expedient in the interest of justice to attach properties pending disposal of the appeal.

-Order 21, R.43: It deals with attachment of movable property, other than agricultural produce, in possession of judgment debtor. (See High Court Amendments also).

-Order 21, R.44: It deals with attachment of agricultural produce. (See High Court Amendments also)

-Order 21, R.45: It deals with provisions as to agricultural produce under attachment. (See High Court Amendments also)

-Order 21, R.46: As per Or 21, R 46-A, it is open to a garnishee to contend that he does not have any money belonging to the Judgment-debtor or due to the Judgment-debtor. If such a contention is raised a appropriate stage in response to notice under Rule 46 A of Order 21, the Court has a duty to consider the same. . For better understanding this provision, it is necessary to see High Court Amendments of respective States concerned.

-Order 21, R.47: It deals with attachment of share in movables.

-Order 21, R.48: It deals with attachment of salary or allowances of servant of the Government or railway company or local authority. (See High Court Amendments also).Useful decision as to this provision: 2005 AIR SCW 3827 (G).

-Order 21, R.48-A: It deals with attachment of salary or allowances of private employees.

-Order 21, R.49: It deals with attachment of partnership property. Rule 49 of Order 21 CPC does not apply to dissolve partnership but it applies to the existing one.

-Order 21, R.50: The proceedings have to be treated as a miscellaneous proceedings in a Court of Civil Jurisdiction . So, as per Section 141 of CPC the procedure prescribed therein regard to suits shall apply. Order.30 of CPC prescribes the procedure in the matter of suits by ORDER 21, Rule 50 of CPC. Decree holder can with leave of Court, execute a decree obtained against a firm or against a partner of the firm who was not served with summons in the case if the Court which passed the decree gives him leave. (See High Court Amendments also).

-Order 21, R.51: It deals with attachment of negotiable instruments.

-Order 21, R.52: It deals with attachment of the property in custody of Court or public officer.(See High Court Amendments also).

-Order 21, R.53: (Attachment of decrees). Decree for mesne profits if ascertained or unascertained, decree for arrears of rent, any order for restitution of costs (however, a right to recover mesne profits by way of restitution by reason of reversal of the decree in appeal cannot be attached under this rule) which are held to be money decree and hence those decrees can be attached under this provision<sup>54</sup>. A decree for possession of immovable property, or a decree for foreclosure or a preliminary decree for partition, shall be attached under this provision. A decree for partition, mesne profits and costs comes within the purview of Order 21, Rule 53 (4). This rule makes a distinction, as to attachments, between decree for the payment of money or for sale in enforcement of a mortgage or charge, and other decrees. A mere order for attachment will not effect the attachment of a decree under this provision. Where an exparte which has been attached in execution of another decree is set aside on the application of the J.Dr and a fresh decree in favour of the plaintiff is passed after trial on the merits, the original attachment must be taken to be revived as soon as a fresh decree on the merits is passed.

-Order 21, R.54: (Attachment of immovable property): attachment is a step in execution designed for the protection of the D.hr. An attachment is a necessary preliminary to execution proceedings. This rule deals with attachment of immovable property and the directions as to the mode of attachment mentioned therein are not merely directory but mandatory. This provision deals with the word " attachment" mentioned in Or 21, Rule 64. Attachment before Judgment is actually not an attachment in execution as there is no decree in existence on the date of attachment. Yet, such attachment become an attachment in execution after the decree has been passed and after an application to executed such decree is made. An omission to have the drum beaten as required by the rule is material irregularity which will vitiate the execution sale. If a copy of proclamation order should be affixed on a conspicuous part of the property. If this is not done, it is also a ground to set aside sale, as it is a material irregularity. Any defect or error in the mode of attachment is only an irregularity which does not render the sale ipso facto void. Useful ruling as to this provision; AIR 2009 RAJ 33.

-Order 21, R.55: (Removal of attachment after satisfaction of decree). An attachment will automatically cease on payment of made under clause (a) of this rule. If defendant furnishes security, attachment will be removed, by an order for

withdrawal under Or 38, Rule 9 of CPC. If the decree is set aside, the attachment shall be deemed to be withdrawn.

-Order 21, R.56: It deals with Order for payment of coin or currency notes to party entitled under decree.

-Order 21, R.57: It deals with determination of attachment.

-Order 21, R.58: (Adjudication of claim to, or objections to attachment of, property). Where claim petition is filed, the sale may be postponed. The claimant or objector should satisfy the Court that at the date of the attachment, he had some interest in, or was possessed of, the property which has been attached. If the Court considers that the claim application was designedly or unnecessarily delayed, no such investigation shall be made. The order made under this rule shall have the same force as if it was a decree. If the property attached has already been sold, no such claim or objection shall be entertained. Under this rule, all questions (including questions relating to right, title or interest in the property attached) arising between the parties or their representatives, relevant to the adjudication of the claim or objection, shall be determined the Court with the claim or objection and not by separate suit. Useful rulings as to this provision; 2009 (NOC) 61 AP (A); 2009 (NOC) 61 (B).

-Order 21, R.59: It deals with stay of sale. Order 21, Rule 59 (b) says that if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the may be sold but the sale shall not be confirmed.

-Order 21, R.60 to 63 are omitted by the Code of Civil Procedure (Amend.) Act,1976.

-Order 21, R.64: In the case, *Ambati Narasayya vs M.Subba Rao and another*, it was held that "there is a duty cast upon the Court to sell only such property or a portion thereof as necessary to satisfy the decree."

-Order 21, R.65: Save otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed. See *Gulab Singh's case* to know more. Note: see High Court Amendments also.

-Order 21, R.66: (Proclamation of sales by public auction): Service of notice under Order 21, Rule 66 (2) on J.Dr is a fundamental step in the procedure of the Court in execution, unless waived by appearance or remained ex-parte. Power to adjourn the auction sale in the execution proceedings is concerned, see the Ruling AIR 1961 All 198. Note: see High Court Amendments also.

-Order 21, R.67: Every proclamation shall be made and published,as nearly as may be, in the manner prescribed by Rule 54, sub rule (2). Note: see High Court Amendments also.

-Order 21, R.68: (Time of sale): No sale shall, without consent in writing of the J.Dr, take place until after the expiration of at least 15 (fifteen) days in the case of immovable property, and of at least 7 (seven) days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale. However, proviso to Rule 43 shall not be forgotten.

-Order 21, R.69: (Adjournment or stoppage of sale): sale may be adjourned by the an officer conducting any sale but longer than 30 days. Reasons shall be recorded for such adjournment. To know more see Bhasin Film Co.'s case. If sale is adjourned not exceeding 30 days, no fresh proclamation is required.

-Order 21, R.70: Repealed bu the Code of Civil Procedure (Amendment) Act,1956 (66 of 1956), section14.

-Order 21, R.71: (Defaulting purchaser answerable for loss on re-sale): it provides an expeditious remedy to D.Hr or J.Dr who has suffered a detriment due to the default of the auction purchaser. see Gopal Krishanan's case to know more.

-Order 21, R.72: ( Decree holder not to bid for or buy property without permission): D.Hr can apply to Court to participate in the sale. On express permission of the Court, D.Hr can bid for or purchase the property. It is pertinent to note that auction purchaser cannot claim protection under auction sale. Note: see High Court Amendments also. Rule 72A deals with " Mortgagee not to bid at sale without the leave of the Court."

-Order 21, R.73: It deals with "restriction on bidding or purchase by officers". No officer or other person having any duty to perform in the sale, shall bid for,acquire or attempt to acquire any interest in the property sold either directly or indirectly.

-Order 21, R.74: It deals with "sale of agricultural produce".

-Order 21, R.75: It deals with "special provisions relating to the growing crop." Note: see High Court Amendments also.

-Order 21, R.76: It deals with " Negotiable instruments and shares in corporation".

-Order 21, R.77: It deals with sale of public auction. The officer conducting sale has power to grant time to pay the price to the auction purchaser. In the absence of such a facility being given, the auction purchaser must pay the full price at the time of the sale. Otherwise the property is liable to be re-sold.

-Order 21, R.78: Under this provision, no irregularity in publishing or conducting the sale of movable property shall vitiate the sale, yet any person injured may institute a suit for compensation or for the recovery of the specified property and for compensation in default of such recovery.

-Order 21, R.79: It deals with delivery of movable property,debts and shares.

- Order 21, R.80: It deals with transfer of negotiable instruments and shares.
  
- Order 21, R.81: A mortgagee of movable property cannot follow the property in the hands of an auction purchaser.
  
- Order 21, R.82: A court having small cause jurisdiction cannot order the sale of immovable property in execution of decree.
  
- Order 21, R.83: A Court has to exercise its discretion in making an order for postponement of the sale to enable the J.Dr to raise money by private alienation.
  
- Order 21, R.84: It deals with " Deposit by purchaser and re-sale on default". The distinction between this rule and rule 85 is that the deposit of 25 per cent of the purchase money must be paid to the officer conducting sale, under this rule, whereas under R.85 the full amount of the purchaser-money must be paid in Court.
  
- Order 21, R.85:(Time for payment in full of purchase-money):In calculation the period of fifteen days, the date of sale should be excluded. Where on an execution sale being confirmed in appeal, the purchaser who had withdrawn the purchase-money on the sale being set aside in the lower Court, is ordered to re-pay it, the time limit of fifteen days provided by this rule does not apply. Payment into Government Treasury is equivalent to payment into Court for the purposes of this rule. Yet, where the money is sent through the Post Office, it will not be sufficient compliance with this rule if it does not reach the Court in time, for the Post Office is not an agent of the Court.
  
- Order 21, R.86: It deals with "Procedure". In default of payment within the period mentioned in the last proceeding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum of which it may subsequently be sold.
  
- Order 21, R.87: It deals with " Notification on re-sale". This Rule is applicable to re-sale under Rule 86 of Order 21 but is not applicable to a case where property is re-sold under Rule 84. see AIR 1937 All 556.
  
- Order 21, R.88: It deals with " Bid of co-sharer to have preference". The main object of this rule is to enable the co-sharers in the undivided immovable properties to keep out strangers if they so desire.
  
- Order 21, R.89: An application to set aside under this rule is a proceeding in execution and consequently the provision of Order 9 of CPC do not apply. The provisions of this rule are in the nature of an indulgence to the Judgment debtor; they give a last chance of getting the sale set aside before confirmation upon the terms of satisfying the decretal debt and of paying compensation to the auction purchaser for the loss of bargain. An application under this rule to set aside a sale is governed by Art 127 of Limitation Act,1963 and must be made on or before the thirtieth day from the date of sale. Important decisions as to this provision: AIR 2010 (NOC) 31 AP (B). AIR 2009 SC 709.

-Order 21, R.90: the J.Dr or any other person whose interest are affected by sale , can apply to the Court to set aside the sale on ground of a material irregularity or fraud in publishing the sale. An application to for setting aside a sale on the grounds falling within Order 21, Rule 90 of Civil Procedure Code has to be filed under Article 166 of the Limitation Act,1908 **within thirty days from the date of sale** . Article 99 of the Limitation Act will not govern cases, where strangers seek to set aside a Court sale pursuant to decrees, to which they were not parties. What they can seek and should seek are declaration to avoid the effect of the decree or sale, so far as it concerns them.

To know more as to " when sale becomes absolute", it is apt to see the ruling of the Hon'ble Supreme Court, in the case, Pattam Khader Khan vs Pattam Sardar Khan and another. The period of one-year limitation, now prescribed under Article 134 of the Limitation Act,1973, in substitution of a three-year period prescribed under Article 180 of the Indian Limitation Act,1908, is reflective legislative policy of finalising proceedings in execution as quickly as possible..." Since sale is subject to the final result of the petition filed by the Judgment debtor under Order 21 , Rule 90, Civil Procedure Code, the confirmation of sale and the consequent issue of the sale certificate should all be taken to be subject to the result of the petition under Order 21, Rule 90, civil Procedure Code. Therefore, the vesting of title on the auction purchaser resulting from the issue of a sale certificate should be taken to be subject to the result of the petition under Order 21, Rule 90, civil Procedure Code. This is obvious from the fact that if the appellate Court were to set aside the sale under Order 21, Rule 90, civil Procedure Code, the sale will stand set aside as also the subsequent confirmation of sale and the issue of sale certificate. Important rulings as to this provision; 2009 (NOC) 1764 (Ker) (DB) (A); 2009 (NOC) 1764 (Ker) (DB) (B).

-Order 21, R.91: A purchaser at a sale can move an application under this provision to set aside the sale, on the ground that J.Dr had no saleable interest in the property sold. The provisions of that rule are not available to the decree holder or judgment debtor . A separate suit is barred. Where a sale in execution of a mortgage decree is objected to on the ground that Judgment debtor has no saleable interest in the property, such an objection does not come under section 47 of the Code as it is an attack on the decree itself .

-Order 21, R.92: According to this rule, it is vividly known that if no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute. Yet, if claim petition or any objection to the attachment is pending, the Court shall not confirm such sale until the final disposal of such claim or objection. An order under the proviso to sub rule (1) of Rule 92 of Order 21 is only an interim order. See also provisos of sub rule (2) of Rule 92.( The deposit under this sub-rule may be within sixty days in all such cases where the period of thirty days, within which the deposit has to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act,2002). Some important rulings: AIR 1968 SC 86; AIR 1976 Del 230; AIR 1996 SC 1551. AIR 1988 MP 100.

-Order 21, R.93: (Return of purchase money in certain cases): conditions to apply this rule are 1). there must have been an application to set aside the sale under Rule

90 or Rule 91; 2). the sale must , on such application, have been set aside under Rule 92. see AIR 1930 Madras 856. AIR 1918 Madras 1286. AIR 1943 Bom 288.

-Order 21, R.94: Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

-Order 21, R.95: (Delivery of property in occupancy of judgment debtor ): An auction purchaser to whom a sale certificate has been granted under Rule 94 has to apply this rule or under Rule 96 to obtain delivery of possession. Unless the delivery of possession through Court to the auction-purchaser is effected in one of the modes prescribed under Rules 95 and 96, no possession can be deemed to be given. See AIR 1920 Lah 30. So, if a person is dispossessed otherwise than in due course of law as provided by these rules, he may institute a summary suit to recovery of possession.

-Order 21, R.96: It deals with "Delivery of property in occupancy of tenant."

-Order 21, R.97: It deals with "Resistance to delivery of possession to decree-holder or purchaser". Important decisions as to this provision: 2009 (NOC)661 (GUJ); AIR 2010 (NOC) 33 (AP) (A);

-Order 21, R.98: It deals with "Orders after adjudication". Some useful decisions: AIR 2010 (NOC) 94 (Pat) .

-Order 21, R.99: Section 5 of the Limitation Act,1963 will not apply to any of the provisions of Order 21. Important decisions as to this provision: 2009 (NOC) 649 (Bom); 2009 (NOC)76 (Gau) (A); AIR 2010 (NOC) 94 (Pat) .

-Order 21, R.100: (Order to be passed upon application complaining of dispossession): Unless there is determination of the questions arising between the parties an order under this rule cannot be passed.

-Order 21, R.101:(Questions to be determined): To know more as to this provision, see AIR 1974 MP 26, 1972 MPLJ 254, AIR 1980 MP 146 (FB), AIR 1985 Mad 318, AIR 1996 SC 780. Important ruling as to this provision; AIR 2009 SC 250.

-Order 21, R.102: Rules not applicable to transferee pendete lite. Important ruling as to this provision; AIR 2009 SC 250.

-Order 21, R.103: Orders to be treated as decrees: Any party not being a judgment debtor against whom an order is made under Rules 98,99,101 may institute a suit to establish the right which he claims to the present possession of the property but, subject to the result of such suit (if any), the order shall be conclusive. Important ruling as to this provision; AIR 2009 SC 250.

-Order 21, R.104: Order under rule 101 or 103 to be subject to the result of pending suit. To know more see Shaik Aman Saheb's case. Important ruling as to this provision; AIR 2009 SC 250.

-Order 21, R.105: application under Order 21, Rule 90 is dismissed for default and application under Order 21, Rule 105 for restoration is also dismissed for default. The later order is appealable under Order 43, Rule 1.

-Order 21, R.106: An application under sub rule (1) of Order 21, Rule 106 shall be made within thirty days from the date of the order; or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant has knowledge of the order. Important ruling as to this provision: AIR 2008 (NOC) 503 AP, Held per in curiam, relied on 2004 AIHC 2954 (AP), See AIR 2009 AP 134, where it was also observed that " Apparently sub-rule (4) of Rule 106 of Order 21 of C.P.C as inserted by AP.Amendment was not brought to the notice of this Court in Tatipalli Vizramma's case.(AIR 2008 (NOC) 503) (supra). Therefore it is per in curiam".

In our country, despite the provisions of CPC are applicable in all civil cases, different enactments provide the "Modus Operandi" of execution of the rulings rendered thereunder. I hope this article is useful to Judicial Officers, lawyers, law students and others who seek information about execution proceedings.

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