

All About Execution of a Decree under

Order 21, Code Of Civil Procedure

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EXECUTION:

When a person obtains a decree from a court of law against another person, his next step is to get the decree satisfied. The proceeding by which he moves the court for satisfaction of decree is called execution proceedings.

Execution is the medium by which a decree holder constrains the judgment-debtor to do the command of the decree or order as the case may be. It empowers the decree holder to recover the products of the judgment. The execution is finished when the judgment-creditor or decree holder gets cash or other thing granted to him by judgment, decree or order.

The term “execution” has not been defined in the code. The expression “execution” simply means the process for enforcing or giving effect to the judgment of the court. The principles governing execution of decree and orders are dealt with in Sections 36 to 74 and Order 21 of the Civil Procedure Code.

The classification of Order 21 is as follows-

- Applications for execution and the process to be applied.
- Stay of executions.
- Mode of executions.
- Sale of immovable property and movable property.
- Adjudication of the claims and objections.
- Resistance and delivery of possession.

APPLICATIONS FOR EXECUTION

Q.1) Who can make application for execution?

Ans: Application for execution can be made by

- The decree holder himself.
- His legal representative if the decree holder is dead.

- Any person claiming under the decree holder.
- Transferee of Decree holder who has given notice to transferor and judgement debtor.
- Any one or more of the Decree holders where it is for benefit of all and no contrary intention is indicated.

Q.2) Against whom the application for execution can be made?

Ans: Execution decree can be made only against the judgement debtor if he is alive or against legal representatives of judgement debtor.

Q.3) what are the decrees that may be executed?

- The decree of a court against which no appeal has been made shall be executed after expiry of the limitation period.
- Where a decree is reversed, modified on appeal, the only decree capable of the execution is the appellate decree, but exceptionally where the appellate judgment simply dismisses the appeal. General rule that the appellate decree alone is to be executed, does not apply and the court should look at the later decree for the information of its contents.

MODES OF EXECUTION

Q.4) What are the modes of execution of a decree?

Ans: The code sets down different methods of execution. After the decree holder files an application for execution of decree, the executing court can implement execution.

A decree can be enforced by:

- By delivery of any property specifically decreed.
- By attachment and sale or by sale without attachment of the property.
- By arrest and detention.
- By appointing a receiver.
- By effecting partition.
- Any such manner which the nature of relief requires.

Section 51 of C.P.C lays down the court may on the application of decree holder subject to such conditions and limitation as may be prescribed, the court may on the application of the decree holder order execution of the decree.

Q.5) How is decree related to payment executed?

Ans: By going through Order 21 rule 30 of C.P.C, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by detention in the Civil Prison of the judgment debtor or, by the attachment and sale of his property, or by both.

Q.6) How is decree related to Specific movable property executed?

Ans: According to Order 21 rule 31(1) of C.P.C, when the decree is for any specific movable property, the execution can take place in any of the following made:

- By seizure and delivery of the property.
- By detention of the judgement debtor.
- By attachment of his properly.
- By attachment and detention both.

Q.7) What powers does the court have regarding the execution of Immovable Property?

Ans: According to Order 21 rule 35 sub-rule-1 of C.P.C, A court executing a decree has the power to attach the property and sell the property or portion thereof which is sufficient to satisfy the decree. After such attachment the first step is issuing proclamation of sale. Such a proclamation shall be prepared after notice to both the sides and shall comprise of following details: -

- Time and place of sale.
- Details of property or part thereof to be sold.
- Revenue if any attached to property.
- Encumbrance to which the property is liable.
- Amount to be recovered under the decree.
- Such other particulars which court considers material.

Service of notice is a mandatory requirement and non-compliance will vitiate the entire proceedings.

Q.8) How is decree for specific performance for restitution of conjugal rights or for an injunction executed?

Ans: According to Order (21) rule (32) of C.P.C, “Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for an injunction, stay has been passed, has had an opportunity of obeying the decree and if he has wilfully failed to obey it, the decree may be enforced, in the case of a decree for restitution of conjugal rights:

- By the attachment of his property, or in the case of a decree for specific performance of a contract or for an injunction.
- By his detention in Civil Prison.
- By his detention in Civil Prison.
- By the attachment of his property.

STAY OF AN EXECUTION OF A DECREE OR AN ORDER

Q.9) What are the objectives and conditions preceding the stay of an execution?

Rule 5 of CPC provides for the stay of an execution: Where the suit is pending in any Court decree-holder and judgment-debtor in such circumstances if the Court is found the rights of parties are required to be adjudicated by the Court where such suit is pending and unless the rights are to be determined, the decree cannot be executed in such circumstances, Court can stay the execution proceeding. Also, when an appeal has been filed by either of the parties, the appellate court may order stay of proceedings or stay on an execution of such decree.

The objective is: to protect the interest of both the parties i.e. the decree-holder and the judgement-debtor. In case the order gets reversed by the appellate court, the disputed subject matter will stay the same, thus protecting the interest if both the parties.

The conditions preceding the court’s order regarding the stay on execution of decree:

1. The application has been made without unreasonable delay.
2. The applicant might suffer from a substantial loss, unless such stay is applied.

3. Security has been given by the applicant for the due performance of the decree.

This decree is usually passed when both the parties are heard. However, under Rule 5(3): court have a power to make ex-parte orders in case of stay of an execution.

EXECUTION OF CLAIM AND OBJECTIONS

Q.10) When does the court adjudicates upon the claims to and objections with respect to the property?

The court adjudicates upon the claims to or objections in respect of attachment of property in execution of decree. Such objections are raised by judgement debtors or third parties on the ground that property is not liable to attachment. It is necessary to observe and adjudicate upon these claims before ordering for the sale of the property as there would be no claim if the property in dispute is already sold off.

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 relating to adjudication of claim or objection shall be dealt with by the court dealing with the claim and not by separate suit.

The court satisfy all the claims and objections raised, and further allow the property to be:

1. Allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit, or
2. Disallow the claim or objection.
3. Continue the attachment subject to any mortgage, charge or other interest in favour of any person, or
4. Pass such order, as in the circumstances of the case it deems fit.

RESISTENCE TO SALE

Q.11) Remedies provided if there is any resistance to sale.

Ans: Where the holder of a decree for possession of immovable property or purchaser of any such property sold in execution of decree is resisted or obstructed by any person in obtaining possession of property, he may make an application complaining of such resistance or obstruction and the court shall proceed to adjudicate upon the application in accordance with

the provisions of the Act. The person in possession cannot file application under this rule but can defend his conduct when application is moved against him. The right to move such application is conferred on decree holder or judgement purchaser