

JUDICIAL DISTRICT BEED  
THIRD WORKSHOP

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SUMMARY OF PAPERS

SUBJECT ON CIVIL SIDE

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- Subject : Law of Execution
- a. Nature and scope of provisions U/Sec. 47 read with provisions of Order XXI Rule 97 to 101 of C.P.C.
  - b. Procedure to be followed while deciding objections in execution
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INTRODUCTION

01. The topic of today's work shop is two fold. The first part is relating to the questions which can be raised before the executing court and decided U/O. XXI read with Rule 97 to 101 of C.P.C. The second part deals with the procedure, which is required to be followed by the executing court while deciding the objections in the execution proceeding.

02. Plain reading of Sec. 47 of CPC, makes it clear that all the questions arising between the parties in the suit in which the decree is passed and relating to the execution, discharge or satisfaction of the decree are required to be decided by the executing court in the execution proceeding itself and not by way of separate suit. It is also clarified that whether any person is or is not the representative of a party, shall be determined by the

executing Court. In the explanation it is also made clear that a plaintiff, whose suit has been dismissed or a defendant against whom the suit has been dismissed, shall be deemed to be parties to the suit. Similarly a purchaser of a property of sale in execution of a decree shall be deemed to be a party to the suit. Besides the above all questions relating to the delivery of possession of such property to the purchaser or his representative, shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of Sec. 47 of CPC.

WORDS EXECUTION, DISCHARGE OR SATISFACTION

03. As per Sec. 2 of CPC, the words 'decree' and 'order' have been defined to mean a formal expression of an adjudication by which, the court expressing it, conclusively and finally determine the rights of the parties regarding all or any of the controversy in the suit. A decree can be preliminary or final or it can be partly preliminary and partly final. A decree can be declaratory decree only or it can be an executable decree. A decree can be a consent decree or compromise decree. Therefore, it follows that a decree can be executable decree or it can also be an unexecutable decree. However, it is settled principle of law that the Court is not expected to pass a futile decree.

04. Therefore, so far as execution proceedings are concerned, we can understand the above terms in their context i.e. to say "execution" of a decree is a process by which decree of a Court is enforced by taking legal steps. "Discharge" of a decree is another process by which the liability under decree is fulfilled or

put to an end by positive acts of the judgment debtor. Lastly “satisfaction” of the decree means “compliance” with the terms of the decree by the judgment debtor or complying with the order of the Court so as to give full and final relief to the decree holder.

#### OBJECT AND SCOPE.

05. The object of the provision of Section 47 is to provide cheap and expeditious remedy for determination of certain questions in execution proceedings without taking recourse to separate suit and thereby to prevent endless and unnecessary litigation. Section 47 has been enacted with a view to enable parties to obtain adjudication of question relating to execution without unnecessary expenses or delay which may cause by filing a fresh suit. Therefore, where there is an executable decree, no suit shall lie for the enforcement thereof, or for the determination of the questions specified in Section 47.

06. In N. S. S. Narayana Sarma & Ors Vs. M/s Gold stone Experts Pvt. Ltd. (AIR 2002 SC 251) while throwing light on this issue the Apex Court has painstakingly considered the Scope and Object and paved salutary guidelines to deal with such questions. Thus in the enlightened discussion it provides that rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from any person. The scheme is clear that the legislature has vested wide powers in the executing court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for

immovable property in his favour.

07. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

08. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Court seized of an execution proceeding.

SCOPE OF SEC. 47 C.P.C.

09. Objection to the decree as nullity could be raised under this provision. Objection to the decree as nullity on the ground that, it was passed without bringing legal representatives on record could be raised under this provision [*Vasudev Vs. Rajabhai (AIR 1970 SC 1475)*].

10. It is true that, an executing Court can't go behind the decree under execution. However, that doesn't mean that, it has no duty to find out the true effect of that decree. For construing a decree, executing Court can consider the pleadings as well as proceedings leading up to the decree. In order to find out meaning of the words employed in decree, the executing Court can ascertain the circumstances under which those words were used. That is the plain duty of the executing Court [*Bhavan Vs. Solanki (AIR 1972 SC 1371)*].

11. Executing Court is competent to examine whether the decree for eviction was nullity on the ground that the Civil Court had no inherent jurisdiction to entertain the suit in which eviction decree was passed. If the decree was a nullity, the executing Court can declare it to be such and decline to execute it against the respondent [*Sunder Vs. Ram (AIR 1977 SC 1201)*].

12. Suit relating to immovable property was decreed and the property was not definitely identified due to defect in Court record caused by over-looking provisions of Order VII - Rule 3 and Order XX - Rule 3 of C.P.C. It was held that, this defect is capable

of being cured under Sec. 47 of C.P.C. It was held that, after all a successful plaintiff should not be deprived of the fruits of decree when resort can be had to Sec. 152 or Sec. 47 of C.P.C. depending on facts and circumstances of each particular case [*Pratibha Vs. Shanti (AIR 2003 SC 643)*].

13. When the objection is raised to the execution of decree on the ground that, it was passed without jurisdiction and hence is a nullity, then, that objection must be such as could be determined by looking at the decree itself. In other words, it must be patent on its face. Normally, rule is that executing Court can't go behind the decree. Hence, nullity must be apparent on the face of decree. Only in such case, objection can be entertained [*Rafique Vs. Sayed Waliuddin (AIR 2003 SC 3789)*].

14. Jurisdiction under Sec. 47 is limited and narrow. Right to raise the objection doesn't mean that, objector can re-open the matter. That is not intended by the legislature. Jurisdiction being extremely limited and narrow, the objection must fall within the ambit and scope of the same. This jurisdiction can't be equated with that of an appeal or review. Executing Court has to go by the decree [*Savitribai Vs. Suman : 2009(5) Mh. L. J. 387*]

15. Tenability of independent suit brought by auction purchaser could be studied from *Waman Vs. Jagannath [2007(6) Mh. L. J. 498]*. Plaintiff was auction purchaser in execution of decree. Sale was confirmed. He brought the suit for possession. Trial court dismissed it holding that suit was not maintainable on the ground that, only remedy available for the plaintiff was to apply

under Rule 95 of Order XXI of C.P.C. It was held by Hon'ble High Court that, suit was maintainable.

16. Partition decree has been put to the execution. One judgment-debtor died. His heirs demanded share in same execution proceeding. This is not the scope of Sec. 47 [*Vijay Vs. Kamlabai :2011(3) Mh. L. J. 939*].

ORDER XXI - RULES 97 - 101 OF C.P.C.

17. There are two categories of aggrieved persons. First is a decree-holder or purchaser who at the time of execution of decree for possession has been obstructed and second one is a person who is not the real judgment-debtor but has been dispossessed in execution of possession warrant. Former has got remedy to apply under Rule 97 and later under Rule 99.

18. Now we will discuss the ingredients of Rules 97 and 99. When decree-holder or purchaser who is entitled to receive possession of immovable property is obstructed or resisted in getting possession, he may make an application under Rule 97 to the Court complaining of such obstruction. Upon getting such application, Court has to adjudicate it. Second situation is like this. Decree for possession has been passed. During its execution, decree-holder or purchaser obtains the possession, but person dispossessed is other than judgment-debtor. Such dispossessed other person may make application under Rule 99 to the Court complaining of such dispossession. Court has to adjudicate it.

19. Rule 101 : Upon receiving any application arising from Rule 97 or Rule 99, Court has to adjudicate it. All questions including right, title or interest in the property has to be determined by executing Court and not by separate suit.

20. Rules 98 and 100 : Questions referred under above Rule 101 will have to be determined by the Court. Upon such determination, Court may allow the application and to put the complainant / applicant in possession or dismiss the application.

- a. Under Rule 97, if decree-holder or purchaser has complained of obstruction, after determination of the questions, Court may put him in to possession or dismiss his application.
- b. Under Rule 99, after deciding the rights of person dispossessed other than judgment-debtor, Court may put him in to possession or dismiss his application.

### PROCEDURE

21. From above discussion it will become clear that when execution of a decree for possession is resisted or obstructed by the judgment-debtor or a third person not bound by decree and it is reported to the executing court either by the decree-holder or by the judgment-debtor or by the obstructionist/third party. At this stage the executing court is expected to go into the objection on its face value and has to decide-

- a) whether the objection requires detailed enquiry ? If yes, then parties are required to be called upon to prove their contentions on the basis of documents or if necessary by recording oral evidence.

- b) If the objection is found to be frivolous or by way of dilatory tactics which do not require detailed enquiry then executing court may pass necessary order and reject the same.

22. In case the Court is of the view that a detailed enquiry is required in respect of the objection raised by the judgment-debtor or the third party, then the trial Court has to try those objections like a suit and pass appropriate orders and decide the same. Here the question may arise whether or not the executing Court is required to frame issues while deciding such objections. It is well known that it is a general practice to frame the issues and decide the same because adjudication under these provisions is adjudication of right, title or interest of the parties which is required to be tried as a suit. Another reason for this is that filing of a separate suit raising such objections is clearly barred U/O. XXI Rule 101 of CPC. Similarly as per Rule 103 of the said order, orders made by the Court while adjudicating such objections shall have the same effect and subject to the same condition as if it was a decree.

23. A claim petition under Order 21, Rule 97 or 99, of the Code of Civil Procedure as the case may be, is required to be decided not in a summary manner. All the questions relating to right, title and interest in the property, which is subject matter of execution may have to be decided by the Court. For that purpose, the parties may have to be given an opportunity to lead evidence, both oral and documentary. The executing Court is required to appreciate such evidence as may be led in by the parties and record its findings on all the questions that may arise for

consideration. The claim petition is required to be heard and decided as if it is a suit as discussed above [*Arif Vs. S. Maheshwar Rao : 2001(1) Bom. C.J. 1306*].

24. At the time when executing Court is determining above referred questions, if suit is pending, the order of executing Court shall be subject to decision of the suit [Rule 104]. Hearing of such complaint / application is to be taken by fixing the date [Rule 105]. Lastly, Rule 103 provides that, any order made under Rule 98 or 100 has to be treated as decree and regular appeal will lie against it.

25. It is not necessary that, obstruction under Rule 97 should be only while execution of possession warrant by bailiff. Resistance could be raised even before issuance of possession warrant [*Shripati Vs. Chandrakant : 2011(2) Mh. L. J. 689*].

#### FRAMING OF ISSUES

26. In view of R.103 of Order 21 of the C.P.C. adjudication upon all such questions shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. But such adjudication is not strictly on the same footing upon which any suit is adjudicated.

27. O.14 of the C.P.C.( which deals with framing of issues) is inapplicable to the execution proceedings. It is governed by O.21 of the C.P.C . Executing Court is not under any obligation to frame issues on the questions which has been raised before it. Framing of issues by the executing court would at the best be a matter of

prudence but not a rule. So the adjudication is not improper or illegal *per se* if the same is not followed after formal framing of issues [*C. V. Joshi V/s. Elphinstone : 2001(2) Mh.L.J.195*]

CASES OF SILVERLINE FORUM AND BRAHMDEO

28. Facts of *Silverline* case are like these. Suit property was owned by one Arun Jalan. In the year 1975, he tenanted it to Rajiv Trust. Rajiv Trust sub-let the building to first sub-tenant M/s. Accounting and Secretarial Services Pvt Ltd. This first sub-tenant created second sub-tenancy in favour of M/s. Capstain Shipping Estate Private Limited. Arun conveyed this property to Silverline Forum Private Ltd. Silverline Forum became owner of the suit premises. Tenant Rajiv Trust impaired condition of building and hence, Silverline Forum filed ejectment suit. In the year 1995, suit was decreed *ex parte*. Before Silverline commences execution, second sub-tenant (M/s. Capstain) filed declaration and injunction suit. Interim injunction was refused. Suit remained pending.

29. Now, decree-holder Silverline Forum filed execution application for possession. On 20.03.1996, when bailiff tried to deliver the possession, second sub-tenant (M/s. Capstain) resisted. Court directed to effect the delivery of possession with police-aid. Possession could not be delivered because mean-time executing Court stayed the execution.

30. This second sub-tenant (M/s. Capstain) filed Misc. Case no. 556/1996 before executing Court quoting Order XXI - Rule 101 and Sec. 151 of C.P.C. raising the contention that the

decree was passed without making him party and alleging that decree was obtained in collusion between Silverline Forum and Rajiv Trust. Executing Court ordered an inquiry under Sec. 151 of C.P.C. Said order was challenged before High Court by both the sides. Calcutta High Court concurred with the view of executing Court that grievance of M/s. Capstain can't be canalised through Order XXI - Rule 101 and inquiry could be made under Sec. 151 of C.P.C. Before Hon'ble Supreme Court, contention of Silverline Forum was that, second sub-tenant has admitted his sub-tenancy through first sub-tenant and hence, he can't even be heard on the point that the decree was collusive and nullity. In this reported decision, Hon'ble Supreme Court laid down scope of Rules 97 and 99.

31. Rule 97 specifically provides that, when the decree-holder is resisted or obstructed by any person in obtaining possession of the property, such decree-holder has to make an application complaining the resistance. Conversely, Rule 99 doesn't come in to play until any person is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that, all questions 'arising between the parties to a proceeding on an application under Rule 97 or Rule 99' shall be determined by executing Court. Most significantly, such questions must be relevant to the adjudication of the application. Hon'ble Supreme Court laid down as under.

*The words 'all question arising between the parties to a proceeding on an application under Rule 97 or 99' would envelop only such questions as would legally*

*arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because the resistor raised it. Questions which executing Court is obliged to determine under Rule 101 must possess two adjuncts. First is that such questions should have legally arisen between the parties; and the secondly, such questions must be relevant for consideration and determination between the parties, e.g. if obstructor admits that he is transferee pendente lite, it is not necessary to determine question raised by him that he was unaware of litigation when he purchased the property. Similarly, a third party who questions the validity of transfer made by decree-holder to an assignee can't claim that the question relating its validity should be decided during execution.*

32. It was further held that, it is necessary that, the questions raised by the resistor or obstructor must legally arise between him and decree-holder. In adjudication process provided by rules, executing Court can decide whether the question raised by resistor or obstructor has legally arisen between the parties. If answer is yes, then Court has to adjudicate the question. In otherwise situation, adjudication is not expected.

*Silverline Forum Vs. Rajiv Trust (AIR 1998 SC 1754)*

*Brahmdeo Vs. Rishikesh [1997(1) Mh. L. J. 817]*

### TRANSFEEEE PENDENTE LITE

33. Most common obstructionist in the execution of decree for possession is the transferee *pendente lite*. Our Courts are flooded with the applications by such persons to resist execution of such decree on this ground. It was observed by our legal system that such a dilatory tactic is commonly aimed at frustrating the decree-holder by procrastinating his fruits under the decree.

Hence while dealing with such issues in the light of Rule 101 and 102 in *Silverline Forum Pvt.Ltd.Vs. Rajiv Trust and Anr.( 1998) SCC 723* the Apex Court have emphasized to flush away such application for the reasons expounded therein.

34. Thus, it is observed that, Rule 101 stipulates that all questions arising between the parties to a proceeding on an application under Rule 97 Rule 99 shall be determined by the executing court, if such questions are relevant to the adjudication of the application. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102.

35. A purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court [*Usha Vs. Dina : 2008(5) Mh. L. J. (SC) 483*].

#### CONCLUSION

36. In view of above discussion regarding the nature and scope of provisions under Sec. 47 read with O. XXI Rule 97 to 101 of CPC, it can be summarised that O.XXI of CPC is an independent

Code in itself and it not only provide procedure to be followed by the decree-holder to get the fruits of the decree, at the same time it provides an opportunity to the judgment-debtor or the third party/objection petitioner to raise the grievances or objection in the execution proceeding itself. Recourse to independent proceedings by filing a separate suit is clearly prohibited. Therefore, objections if any, are raised by the judgment-debtor or the third party in execution proceedings, the same are required to be adjudicated by executing court following the same procedure as if it were a suit and the orders by the executing court having the force of a decree.

Considering the importance of the topic of execution of decree, it is necessary for all the Judicial Officers to pay special attention to the execution proceedings and for that purpose one has to go into the depth of the topic and have clear notions about all relevant provisions.

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