

EXECUTION OF DECREES

- Para- Execution is the most important aspect of Civil Justice.
graphs 345 success or failure of system of Civil justice depends on
To 449 Ch. success in executing decrees of Civil Courts. The fact
XXI C.M. that the legislature has carved out a Code in the form of
O.XXI inside the Code of Civil Procedure illustrates the
importance of this topic. Hundred and six Rules of this
Order, and equally large, hundred and five paragraphs
devoted to this topic in the Civil Manual, besides 34
Sections (i.e. Ss.36 to 74) may make a beginner feel that
the work is complicated. But a look at those rules and
paragraphs would show that they are so drafted as not
to leave the Judge without guidance in variety of
situations that may present themselves in an execution
proceeding. In addition to decrees, some orders can also
be executed by following the same procedure for
execution as is applicable to execution of decrees.
- S.36
C.P.C.
- S.47 O. All the questions arising in execution of decree have to be
XXI rr. decided by the executing court itself and not by separate
58, 101 suit. However, an executing Court can not go behind the
C.P.C. decree nor can it question its legality or correctness. But
there is one exception to this general rule; that a decree
passed by a Court without jurisdiction is a nullity and its
invalidity could be set up whenever and wherever it is
AIR 1977 sought to be enforced or relied upon, even at the stage of
SC 1201 execution. But where the objection as to the jurisdiction
AIR 1954 of the Court to pass the decree does not appear on the
SC 340 face of the record and requires examination of the
questions raised and decided at the trial, or which could
AIR 1970 have been, but have not been raised, the executing Court
SC 1475 will have no jurisdiction to entertain an objection as to the
validity of the decree, even on the ground of absence of
jurisdiction.
- Paras The general procedure in execution is just like that
345, 355 applicable to Civil Suits. Consequences of appearance
and 363 or non-appearance of parties are governed by Rules 105
of C.M. and 106 of O.XXI.
In the course of our duties some frequently arising
situations necessitate a frequent resort to a few Rules. It

is proposed to discuss some features of such rules with reference to case law that has developed.

VOLUNTARY COMPLIANCE

AIR 1972 SC 239 C.S., Angedi V/s. Y.S. Pianyyt. Voluntary compliance of a decree by a J.D. would obviate the need to take out an execution proceeding. In a money decree, it could be ordered that by a particular date, the J.D. should pay the amount to the D.H. or that J.D. should deposit it in Court. When amount is to be Deposited in Court by a particular date and that day happens to be a holiday, the decree could be complied with by depositing the amount on the next working day.

As regards a decree which merely directs the J.D. to pay D.H. by a certain date and that date happens to be a holiday as J.d. could have paid or at least offered the amount to D.H. without the assistance of any agency like Court or Bank. The fact that Court or Bank were closed on that day should be irrelevant as defence to the allegation of breach.

O.XXI R.2, Limitation Act. AIR 1989 AP 264 When a decree is satisfied either fully or partly, through Court or otherwise, the Court would so record. When a decree is satisfied out of Court, this must either not be disputed by the D.H. or established by documentary evidence. Application for certification of satisfaction must be made within 30 days of payment. Satisfaction which is not certified by the court is not recognized by Executing Court.

TRANSFERRING DECREES

Ss. 38 to 46 and O.XXI rr. 3 to 9 CPC Paras 381 to 387 C.M. AIR 1970 SC 1525 When the decree is not satisfied, an execution proceeding has to be taken out, either in the Court, which passed the Decree or a transferee Court. Ordinarily, the Court will refuse simultaneous transfers to different Courts of different aspects of the decree. Though simultaneous execution proceeding in more places than one is possible, the power is used sparingly in exceptional cases by imposing proper terms, so that hardship does not occur to the J.D. by allowing several attachments to be proceeded with at the same time.

O.XXI r.6 CPC When an application for transfer is made, the Court has to send to the transferee Court, a copy of the decree along with certificate of non-satisfaction. The transferee Court
S.41 CPC has to communicate the result of execution on conclusion of proceedings before it.

ASSIGNMENT OF DECREES

S.49 O. XXI r.16 CPC A decree holder can transfer his decree to any other person and Rule 16 enables such a transferee to file an application for execution of a decree. However, it is necessary that notice of this transfer by assignment has to be given to the J.D. The decree can not be executed unless objections of the J.D. to its execution are heard.

AIR 1942 Bom. 134 = 44 BLR 164. A notice under Rule 22 would also serve the purpose of notice under Rule 16. Omission to give a notice need not lead to dismissal of the darkhast, only the steps in execution taken without hearing the objections will become invalid. Partial assignment of a decree is permissible, except in case of money decrees.
AIR 1949 Bom. 63 = 50 BLR 598.
AIR 1954 Bom. 273

AIR 1969 SC 73 Rule 16 merely enables a transferee to file an application for execution. Whether transfer divests the D.H. of his right to execute the decree by himself would depend on the nature of transfer. If the transfer is coupled with assignment of interest, the D.H. may not be able to execute the decree himself after its transfer.

INITIATION OF PROCEEDINGS

Also Para 399 C.M. Rule 11(1) permits oral application for execution of a money decree by arrest of J.D. who is present within the precincts of the Court at the time of passing the decree. It is, however, not advisable to order arrest of J.D. on such an oral prayer. Rule 11A requires that an application for the arrest and detention of J.d. in Civil prison must state the grounds on which arrest is sought. Further under amended Rule 37, the Court is obliged to issue a show

cause to a J.D. whose arrest is sought, before ordering his arrest.

O.XXI Unlike other application filed in Court, an application for
R. execution has to be made in the prescribed tabular form.
Para The tabular form makes it easy to check up the execution
347 C.M. application with reference to record and registers kept by
the Court

Paras 348 Just as a plaint is checked on its receipt by the Clerk of
And 349 Court, the Clerk of Court has to check every execution,
C.M. application and place it before the Judge in not later than
5 days from its presentation to enable the Court to take

Paras 351, steps provided in Rules 17, 22 or 24.
353 C.M.

Court can not place any limitation on modes of execution chosen by the D.H. He may seek simultaneous execution against person and property of J.D. But Rule 21 gives discretion to the Court to refuse simultaneous execution.

S.82 CPC An execution against public officers or Government can not be issued unless the decree remains unsatisfied for three months from the date of decree.

NOTICE

O.XXI When an application is found to be in order, Court has to
R.22 pass appropriate orders as to issue of notice or warrant. A
notice has to be issued if execution is sought more than
two years after (i) the decree was passed, or (ii) an order
was passed in a previous execution proceeding for the
same decree. Likewise a notice would be necessary when
execution is sought against L.R. of a J.D. Notice would
also be necessary in execution of a decree from a
reciprocating territory.

O.XXI Court can, however, dispense with a notice when, for
R.22(2) reasons to be recorded, the Court considers that issue of
notice would cause unreasonable delay or defeat the ends
of justice. Court had many occasions to consider the
consequences of failure to give a notice. The legal opinion
which crystallized, was adopted in the form of Rule 22 (3)

framed by our High Court. It lays down that an execution would become invalid, only if omission to give a notice has led to a substantial injury to the J.D.

STAY OF EXECUTION

POWERS OF EXECUTING COURTS

O.XXI
rr.26 to
29
Paras
377, 391
and 392
C.M.

To avoid any controversy about powers of different Courts to stay execution, it is clearly laid down that only the Court which passes a decree may order stay of execution. Rule 26 enables an executing Court to stay execution only for a short time, which would be reasonably sufficient for seeking orders from Court whose decree is being executed.

AIR 1973
SC 528
AIR 1982
SC 686

In Rule 29 words "or of a decree which is being executed by such Courts", were introduced in 1976 to clarify that only the Court which passes a decree could stay its execution, when a suit has been filed against the decree holder in respect of that decree.

MODES OF EXECUTION

SPECIFIC PERFORMANCE

O.XXI
R,32(5)

The Court can direct that the act required to be performed by J.D. may be performed as far as practicable by D.H. or any other person for and at the cost of J.D. This is an addition to the remedies of attachment of property and detention of the J.D. in Civil Prison.

O.XXI
R.34

A decree for specific performance of agreement of sale is executed by obtaining from the decree holder a draft of the document prepared in terms of the decree. The draft is then served on the J.D. inviting his objections. After objection, if any, are dealt with and the draft is approved, the J.D, having failed to execute the same, the Court would execute the document on stamp paper provided by the D.H. If the document requires registration, the Court would cause it to be registered by sending it to the Sub-Registry either with an officer of the Court or a Commissioner appointed for this purpose.

EXECUTION OF DECREE FOR PARTITION

A) Agricultural land assessed to payment of land revenue :

S.54 CPC The decree for partition is practically final so far as it
O.XVIII relates to the partition of agricultural land assessed to
R.18(1) payment of land revenue, because the Civil Court is not
 required to take any further steps to make it executable.

After sending such a decree to the collector for effecting partition in terms of the decree vide Section 54 of the Code of Civil Procedure, the Civil Court becomes functus officio and ceases to have any control over the proceedings before the Collector. The Collector has to execute that decree without intervention of the Civil Court.

There can not be any execution proceeding under Order 21 before the Civil Court in case of such a decree.

The Civil Court of its own has to send the decree to the Collector. The D.H. also may move the Civil Court by filing an application in the nature of a request letter for sending the decree to the Collector, which may be registered as Misc. Application not requiring Judicial Inquiry and will be disposed of immediately after sending the decree to the Collector.

Before sending the decree to the Collector either suo motu or on the application of the D.H., it is not necessary to issue notice to the J.D.

The Collector, in effecting partition and separating the shares performs a quasi judicial function and not a ministerial duty. He is bound to hear the parties and consider their objections to the proposed partition scheme before making it final.

Since the rights of the parties are crystalised by the decree, the Collector in effecting partition can give to or take away from the legal representatives of the deceased party the land to the extent their predecessor could have

got or lost. As such death of any of the parties after passing of the decree will not come in the way of the Collector in executing it. Therefore, he need not send the decree to the Civil Court for substitution of legal representatives of the deceased party.

The Collector is empowered to decide all questions relating to the partition of the land assessed to land revenue. If it is not possible to effect partition without creating a fragment, the Collector is empowered to determine compensation or take other necessary steps to give effect to the decree vide Section 8AA of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

D.H. has to deposit expenses for effecting partition directly to the Collector as per the Maharashtra Land Revenue (Partition of Holdings) Rules 1967.

Cases referred :-

AIR 1939 Bom. 455	AIR 1945 Bom. 338
AIR 1946 Nag. 353	AIR 1956 Bom. 345
AIR 1964 Mys. 169	AIR 1985 Kant. 82
AIR 1974 MP 12	1996 (2) Mh.L.J. 40
1997 (3) Mh.L.J. 419	2000 (4) Mh.L.J. 485
2001 (3) Mh.L.J. 53	

B) Other immovable property or movable property which is impartible without further inquiry:

O.XVIII R.18(2) The Court shall pass a preliminary decree declaring the right of several parties interested in the property and giving such further directions as may be required. After passing of the preliminary decree under O.XVIII R.(2) the suit continues before the Civil Court until passing of the final decree.

Shankar Lokhnade Vs Chandra-Kant Lokhande Until a final decree determining rights of the parties by metes and bounds is drawn up and it is engrossed on stamped papers supplied by the parties, there would be no executable decree. For example, the preliminary decree declaring shares of the parties in a house property can not be executed unless the rights of the parties are

(1995) 3 SCC 413 determined by metes and bounds by appointing a Commission and passing of the final decree after hearing the parties as to the divisions proposed by the Commission. The practice of filing execution petition under O.21 R.11 immediately after passing of the preliminary decree under O.20 R.18(2) and in that proceeding issuing Commission for determining rights of the parties by metes and bounds is not at all in consonance with the provisions of law. Unless final decree is passed, no execution petition under O.21 R.11 CPC can be entertained in respect of such a decree.

DELIVERY OF POSSESSION

Also paras 388 to 390 C.M. Rules 35 and 36 govern delivery of immovable property in possession of a person bound by the decree and tenant of such person respectively. When property is in possession of tenant or a person not bound by the

O.XXI r.36 decree, the D.H. receives only constructive possession. Similarly, when a person has to be put in joint possession, he is not placed in physical possession, but a copy of warrant is affixed at a conspicuous place of the building and the substance of the decree is proclaimed by beat of drums.

O.XXI R.35(2)

AIR 1974 Madras 325 Delivery of physical possession occasionally leads to a controversy. Such delivery may at times be (i) perfunctory though not acceptable to D.H. or (ii) perfunctory and yet acceptable to D.H. or (iii) proper and complete, but ineffective because of inability of D.H. to maintain possession. A fresh application for execution could be entertained only if the delivery of possession in The first execution proceeding was perfunctory and not Acceptable to the D.H. Once the D.H. though entitled to recovery of physical possession accepts delivery of possession without removal of person in possession, the D.H. is bound to the position that the decree has been fully executed and can not seek its execution again.

AIR 1974 M.P. 26 When in the course of delivery of possession some obstruction is encountered, and consequently possession can not be delivered, the D.H. has to apply, under Rule

97 for removal of obstruction.

AIR 1933 Bom. 457 However, when the D.H. fails to apply for removal of obstruction under Rule 97 within 30 days, he is not debarred from making fresh application under Rule 35 to obtain a fresh warrant of possession.

The procedure to be followed on encountering an obstruction or on dispossession of a person who considers himself not bound by the decree is the same, irrespective of whether possession is sought to be recovered by D.H., or a purchaser of property in execution proceedings.

O.XX R. 10 CPC When the decree directs delivery of specific movable property, the Court would have indicated the amount to be recovered as an alternative if delivery of specific movable property can not be effected. If delivery of such property can not be effected by seizure or by detention of J.D. in civil prison or attachment of his other property, the Court may award to the D.H. the amount indicated in the decree. If no such amount is indicated in the decree, the executing court would fix such compensation as it thinks fit and award it to D.H.

O.XXI R.32 CPC
O.XXI r.31(2) CPC

ATTACHMENT

A decree may have to be executed by attachment and sale of J.D.'s property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.D. to comply with the decree, or to expose him to a penalty in case of disobedience. Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds.

Para 407 C.M. Before ordering attachment, the Court must satisfy itself that the J.D. has attachable interest in the property, and that the property is not exempt from attachment. While ordering attachment of salary regard may be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment. In execution of a decree for maintenance one third of the salary of J.D. is exempt from attachment. In other money decrees salary

Para 403 C.M. S.60

- (1)(1)(a) to the extent of first one thousand rupees and two third of
CPC the remainder are not liable to attachment. Thus, if the J.D. gets a salary of Rs.2500/- the first Rs.1000/- plus two third of the remainder, i.e., Rs.1000/-, total Rs.2000/- would be unattachable, leaving only Rs.500/- available for attachment. Pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment. As to the procedure of attachment
- S.60(1)(j) please refer to Rules 48 and 48-A. The Court must then
And (l) determine the mode of attachment Attachment can be
CPC, made by seizure or by an order prohibiting the J.D. or
Para 402 other person from dealing with the property or by charging
S.60, 61 the debtor's interest in the property. When movable
CPC Para property other than agricultural produce is to be attached,
406, 408, it should be actually seized and kept in custody of the
C.M. attaching officer, except when, the property is subject to
O.XXI speedy and natural decay, in which case it may be sold at
R.43 once. Property which can not be conveniently removed
may be left at the place of attachment in the custody of a
respectable person.
- Paras Before ordering attachment of livestock, the D.H. should
415, 416 be asked to deposit sufficient sum for removal of property
C.M. to Court premises or other place as the Court may direct
and also for its maintenance and guarding. Property
attached may be placed in the custody of D.H. for removal
and conveyance to the place appointed by the Court.
- O.XXI Growing crop shall not be attached at any time less than
R.45(5) 20 days before it is likely to be fit to be cut or gathered.
- O.XXI When crop is attached warrant of attachment should be
R.44, 45 affixed on the land where the crop is growing, or if the crop
has been cut or gathered, on the threshing floor, on the
house in which the J.D. resides, and shall also be sent to
the Collector. Order for attachment of crop should specify
the time at which the crop is likely to be fit to be cut or
gathered. The J.D. may be allowed to cut and
O.XXI gather the crop and if he fails the D.H. may be allowed to
R.45(2) do the needful.
- Ss.60 to Reference to relevant provisions may be made before
63 and ordering attachment of different types of movable

O.XXI R. 48, 48A, 46 to 46 I, 49, 47 and paras 403 to 420 of C.M.

49, 47

and paras

403 to

420 of

C.M.

O.XXI R.54

Immovable property is attached by making an order prohibiting the J.D. from transferring the property, affixing copy of order on a conspicuous part of the property and proclaiming it by beat of drums and informing the Collector.

O.XXI R.58

All objections to attachment, including questions of right, title an interest in the property attached, have to be decided by executing Court and not by a separate suit.

O.XXI R.55

O.XXI R.57

Para 359 C.M.

When decree is satisfied, the attachment is removed. When the executing application is dismissed for any reason, the court has to indicate the period up-to which the attachment shall continue. If the Court fails to pass such orders, attachment shall cease at the expiry of period of appeal.

While passing these orders, the Court must bear in mind the distinction between satisfaction of decree and satisfaction of the execution proceeding. A decree holder may have his darkhast dismissed as partly satisfied for a variety of reasons to accommodate the J.D., to wait for an opportune, moment etc. such dismissal will not prevent the decree holder from initiating execution proceeding afresh. But when the decree is fully satisfied, there would remain nothing to be executed.

SALES

O.XXI R.64

AIR 1990 SC

110

Para 421, 422

Before ordering sale, the Court has to decide whether it is necessary to bring the entire attached property to sale, or such portion thereof as may seem necessary to satisfy the decree. If the

C.M. property is large and decree to be satisfied is small, the Court must bring to sale only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provisions of law, only such portion of the property should be sold. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction. After an order of sale is made, notice is issued to the D.H. and J.D. to settle the proclamation of sale.

Paras 423, 424, 425 C.M. The decree holder has to furnish a sale statement, containing particulars set out in Rule 66(2) and verified as if it is a pleading. These particulars are then included in the sale proclamation, after a thorough enquiry. If sale proclamations are not carefully drafted they can lead to injury to the J.D. or purchaser. Before issuing sale proclamation, the Court has to fix a sale date. Sale can not take place until the expiration of fifteen days, in the case in the case of immovable property and seven days is in the case of movable property, from the date sale proclamation is affixed. Sale proclamation may mention venues of taking preliminary and final bids.

Para 432 C.M.
O.XXI R.68
Para 429 C.M.

AIR 1987 Bom. 90=1987
Mh.L.J. 301 Rule 65 provides that every sale in execution of a decree shall be made by public auction. Sale by calling offers by issuing advertisement in newspapers, and accepting the highest offer was held to be not a sale by public auction.

O.XXI R.69
Para 426, 428 Sale can be adjourned to a specified day and fresh proclamation is necessary when sale is adjourned

O.XXI R.69(3) for a period longer than 30 days. Sale has to be stopped if the decretal debt and costs are tendered to the Officer conducting the sale, before it is knocked down.

O.XXI R.74 Sale of agricultural produce is held on or near the

Place where the crop stands or is collected.

O.XXI R.77
Paras 433 to
435

At sales of movables, the auction purchaser has to deposit the entire price immediately, failing which the property is forthwith resold. Sale of movable property becomes absolute on officer holding the sale passing receipt on payment of purchase money. If the property has been actually seized, it is delivered to the purchaser. Sale of immovable property can be postponed to enable the Judgment Debtor to raise the amount of decree.

O.XXI R.79,
83, 84

At auction of immovable property, a purchaser has to deposit 25% of purchase money immediately, failing which the property is forthwith resold. When the D.H. is himself the purchaser (having participated in the auction after obtaining permission of the Court under Rule 72) he is entitled to set-off the purchase money against the decretal debt. The balance of 75% has to be deposited "before the Court closes on the fifteenth day from the sale of the property". When D.H. happens to be the purchaser, he again has the benefit of set off.

AIR 1954 SC
349

The provision about time limit for making payment are mandatory and upon non-compliance there is no sale at all. Inherent power of the Court can not be invoked to circumvent mandatory provisions of the Code. However, as per Rule 85 as applicable to the State of Maharashtra, if as a result of some bonafide mistake or miscalculation the amount deposited falls short of the full amount of the purchase money, the Court may in its discretion, allow the short fall to be made up after fifteen days of the scale, and if the full amount of the purchase money is deposited within such time as the court may allow, the Court may condone the delay, if it considers it just and proper to do so.

O.XXI R.86,
87, 71

If the purchaser fails to deposit the balance amount, the amount deposited can be ordered can be ordered to be forfeited. The property has to be put to sale again. The defaulting, purchaser is liable to

AIR 1975 SC 1290 make good "any deficiency of price which may happen on a resale by reason of purchaser's default". These words have been held to mean; "any deficiency of price which on a resale may happen by reason of the purchaser's default" (emphasis supplied)

SETTING ASIDE SALE

O.XXI R.89 Though the purchaser has deposited full purchase
O.XXI R.92(2) money, the sale can be set aside at the instance
Art.127 Lim. of any person claiming interest in the property
Act (which obviously includes the J.D.), on his
Depositing for payment to purchaser a sum equal
To 5% of purchase money and for payment to D.H.
AIR 1987 SC the amount in sale proclamation. Such deposit has
53, AIR 1990 to be made within 60 (earlier 30) days of sale. An
SC 933 application to set aside sale may, however, be made
within 30 (now 60) days. This raised a question as
to whether a J.D. was obliged to make a deposit
within 30 (now 60) days only as required under
O.XXI R.92(2) or taking advantage of Art. 127 of
Limitation Act, could he make deposit within 60 days?
This question was considered by the Supreme Court
twice. Its earlier view that advantage of limitation of
60 days as provided under Art.127 could be taken
was overruled by it. The court held that deposit will
have to be made within 30 days only (now within 60
days)

1996 Mh.L.J. Rule 89 does not prescribe any particular form of
490 the application and filing of a pursis containing an
implicit prayer for setting aside the sale, instead of a
formal application, does not amount to non-
compliance with that provision.

AIR 1967 SC However, in order to save the property, a J.D. must
608 take steps outlined in Rule 89. Failing which, even if
succeeds in getting the decree set aside, in
execution of which property is sold, he would lose
property, because the policy of legislature seems to
be that unless a stranger auction purchaser is
protected against the vicissitude of the fortunes of

the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified.

AIR 1982 SC
989

This would not hold good if the decree holder himself is the auction purchaser. In that case, if the decree is set aside, sale too would not stand.

O.XXI R.90
AIR 1965 SC
834

Sale can be set aside only if a person establishes that he has suffered substantial injury on account of a material irregularity or fraud in publishing or conducting the sale. Mere irregularity which does not result in substantial injury is not enough.

Likewise, in conducting a sale, the Court has to see that property fetches a reasonable price. But mere deficiency in price is not enough for setting aside sale.

AIR 1974 SC
1331

“Indeed under the CPC, it is the Court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply its mind to this aspect of the conduct of sale may amount to material irregularity. But it is not as if the Court should go on adjourning the sale till a good price is got, it being a notorious fact that court sales and market prices are distant neighbours. Otherwise, decree holders can never get the property of the debtor sold. What is expected of the Judge is not to be a prophet, but a pragmatist and merely to make a realistic appraisal of the factors, and if satisfied that in the given circumstances the bid is acceptable, conclude the sale”.

O.XXI R.91

Under Rule 91, even a purchaser can apply to have the sale set aside on the ground that the J.D. has no saleable interest in the property sold.

CONFIRMATION OF SALE

O.XXI R.92
Para 437 C.M.
Para 439 C.M.

If application under rules 89 and 90 for setting aside the sale are rejected, under Rule 92, the Court confirms the sale. As Art.127 of the Limitation Act prescribes limitation of 60 days for making an application for setting aside a sale in execution, it is obvious that sale should not be confirmed till this period of 60 days from the date of sale is over. If sale is confirmed a sale certificate is issued. In addition to particulars of property sold and the name of purchaser, the sale certificate must also show the amount of purchase money, the dated of application for the certificate, confirmation of sale and granting the certificate. Such certificate is not compulsorily registrable.

DELIVERY OF POSSESSION

Art.134 Lim.
Act.
AIR 1987 SC
1443

An application by auction purchaser to obtain Possession of property purchased must be made within one year of the sale becoming absolute. An application for delivery of possession can not by any stretch of imagination be construed as an application for execution of a decree for possession of property so as to invoke the provisions of Art. 136 of Limitation Act. Merely because the auction purchaser will be deemed to be a party in the suit in which the decree has been passed, as provided in Cl.(a) of Explanation II to S.47 of the Code and by virtue of Cl.(b) of Explanation II all questions relating to delivery of possession of the property shall be deemed to be the questions relating to execution, discharge, or satisfaction of the decree within the meaning of S.47. An application for delivery of possession under Order XXI R.95 CPC can not be equated with an application of the execution of a decree for possession so as to apply 12 years period of limitation as prescribed by Art.136 of the Limitation Act.

O.XXI R.97

In the course of delivery of possession if obstruction

- Art.129 Lim.
Act. Is encountered, the purchaser (or D.H., where possession is to be delivered to him), may apply, Complaining of such obstruction within 30 days from the date of obstruction. However, failure the apply for removal of obstruction within the prescribed period does not debar the D.H. from making a fresh application to obtain a fresh warrant of possession. Likewise when a person other than J.D. is dispossessed in execution of decree, he may apply to the Court complaining of such dispossession within 30 days of dispossession.
- O.XXI R.99
Art.128 Lim.
Act.
- 1983 Mh.L.J.
203 When an application for removal of obstruction is made, notice to the obstructionist is necessary. Likewise, in order to adjudicate upon an pplication under Rule 99, notice to D.H. or auction purchaser and the J.D. would be necessary. Consequences of appearance/non-appearance of parties, akin to those provided in Order IX, are prescribed in Rules 105 and 106.
- Para 443 C.M. Rule 101 requires that all questions, including those of title, are to be decided in these proceedings themselves and not be a separate suit. Orders deciding these applications are, under Rule 103, treated as decrees, but, as provided by Rule 104, subject to result of suits, if any, pending at the commencement of these proceedings in respect of the property involved in execution.

ARREST OR/AND DETENTION IN EXECUTION

- S.56, 58 CPC
Para 393 C.M. Arrest and detention of a woman in execution of a money decree is forbidden. Likewise, no person can be ordered to be arrested or detained in execution of decree for Rs.2000/- or less. When decretal debt is less than Rs.5,000/- the maximum period of detention that can be ordered is six weeks. When the amount exceeds Rs.5000/- the maximum period of detention could be three months. Further a person once detained can not be re-arrested/ detained for execution of the same decree.

AIR 1990 Ker. 1, AIR 1980 SC 470

Mere existence of an unsatisfied money decree is not sufficient for ordering detention of a J.D. in Civil Prison. The Court must record a reasoned order indicating that it is satisfied that the conditions prescribed in the proviso to S.51 exist. The Court should ask itself :-

“Has the decree holder established dishonest intention or mala-fides on the part of the J.d. in failure to discharge his obligations?”

S.55(3) CPC
Para 393 C.M.

It is the duty of the Court to inform the J.d. arrested in execution of a money decree that he may apply to be declared insolvent.

In that case the Court may have to proceed in accordance with the provisions of Provincial Insolvency Act.

Limitation on detaining powers of Civil Courts prescribed in S.58 or proviso to S.51, or Rule 37, apply only to detentions sought in execution of money decree. A J.D. can be ordered to be detained under Rule 32 also for willfully failing to comply with a decree for specific performance or injunction. However, rules of fair play and natural justice would nevertheless require even in such a case that a notice should be given to the J.D. (unless dispensed with under proviso to Rule 37) and that he should be heard before any order are passed.

S.57, O.XXI R.
40 Para 397,
399 Schedule I
C.M.

Before ordering arrest or detention, the Court should ask the D.H. to deposit subsistence allowance and other expenses as per the Rules.

OTHER MODES

AIR 1960 SC 297

Clause (d) of S.51 enables a Court to appoint a Receiver for execution of a decree. Where a Receiver is appointed for execution of a money decree, he may either collect the income of the property belonging to the J.D. and satisfy the decree,

or if so authorized, sell the property. When a Receiver is authorized to sell the property he is not required to follow the procedure in respect of sales laid down in different rules of Order XXI.

Para 448 C.M. It may be necessary to appoint a Receiver, not only
In execution of money decree, but in many other
S.51(c) CPC situations. Further, as there could be unimaginable
contingencies arising in execution of different
decrees, the Code provides that Court can order
execution of a decree in such other manner as the
nature of relief granted may require.

CAUTION

The forgoing is not an exhaustive discussion of law of execution of decree. It is intended to give the reader a broad idea of the manner in which executions proceed. A suggestion, here, will not be out of place to be made to the readers that for the practical application of the legal positions, a continued reference to the provisions of O.21 and the decided cases thereon and the developments which are made in assigning meaning to these provisions should not be left out of sight. The main purpose of the present exposition is to help facilitating the above said task.

Reminder

A “down to Earth” view may suggest that the real worth of a Judgment and the Decree that follows, can be ascertained from the fruits which actually fall into the hands of a Decree Holder as a result of the decree. Decrees have a vital link to the realities of life. Litigative thoughts whirl around receipt or deprivation of the fruits of the Decrees. Procedure, when property understood and used, furthers the cause of justice. If misused or abused a Decree Holder or a judgment debtor may stand devastated or a decree Holder or a Judgment Debtor may dance in a sadistic ecstasy. Well, as the Execution Courts, we are to be conscious of these shades of life. Procedure is to be looked at, to make the process of the Court certain effective, satisfying and quick. A good vehicle is not to be badly driven. Procedure is a safe vehicle of justice.