

## **EXECUTION**

**36. Application to orders.-** The provision of this Code relating to the execution of decree (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

### **EXPLANATION AND JUDICIAL DELINEATIONS**

1. Execution in the popular sense of the term means enforcement of the decree or order of a court.
2. Execution means enforcement or giving effect to decrees or orders through the process of court.
3. It is the medium through which decree-holder compels the judgment-debtor to carry out the mandate of the decree or order as the case may be.
4. It enables the decree-holder to recover the fruits of the judgment.
5. Main rules of procedure are to be found in Part II of the Code (Sections 36-74) and minor rules are to be found in Order 21 of the Code.

**Case 1.** - The Supreme Court of India in *Ghanshyam Das Gupta Anant Kumar Singh, AIR 1991 SC 2251* opined that "So far as the question of executability of a decree is concerned, the **Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order 21 of the Code taken care of different situations providing effective remedies not only to judgment-debtors and decree-holder but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the Civil Court.**"

To take a simple example, where a court passes a decree in favour of 'A' for the payment of Rs. 10,000/- and against 'B', there 'A' is decree-holder and 'B', the judgment-debtor and the sum of Rs. 10,000/- is judgment debt or decretal debt. In view of this decree for Rs. 10,000/- in favour of 'A', 'B' should pay this sum to him. But despite this decree if 'B' refuses to pay the amount to W. 'A' will initiate steps to get the payment of Rs. 10,000/- through the medium of court or through the process of court. In other words 'A' will compel 'B' through the process of court to make payment of Rs. 10,000/-. So the entire procedure (through the process of court) with the help of which 'A' will realise the amount of Rs. 10,000/- from 'B' is known as execution.

### **Modes of Execution**

Proceedings of execution are generally carried out in following ways **Section 51:**

**i.** Execution against the person of the judgment debtor

Execution against the person of the judgment-debtor implies arrest and detention of the judgment-debtor in civil prison. By detaining the judgment-debtor in civil prison pressure will be brought about on him to comply with the mandate of the decree or order. **Section 51(c)**

**ii.** Execution against the property of the judgment debtor

\*Execution against the property of the judgment-debtor consists in attaching and selling his property and paying out of the sole proceeds to decree-holder his decretal debt. Thus, there are three stages in execution against property:

(i) *Attachment of property*, (ii) *Sale of the attached property*, and (iii) *Payment of decretal debt to decree-holder out of sale proceeds that is distribution of assets. Section 51(e)*

\*When the decree is for any specific movable property, it may be executed by seizure and delivery of the property; *Section 51a.-*

iii. Appointment of Receiver.

iv. In any other manner depending on the nature of relief. [*Section 51(e)*]

### **Which Decree may be executed?**

1. It is the decree of the court of first instance (if no appeal has been preferred against it) that will be executed. However, if the appeal has been preferred against the decree of the court of first instance, then the decree of the court of the last instance will be executed, because the decree of the court of first instance is merged into the decree of the Superior Court.

2. In *V.N. Shreedharan v. Bhaskaran, AIR 1986 Ker 49*, a compromise decree like any other decree may be executed and it is not necessary that the compromise decree should state that in the event of non satisfaction of the decree or non-fulfilment of any condition therein, execution proceedings may be initiated.

### **Who may execute a Decree?**

- i. The decree-holder is the proper person who may apply for execution of a decree.
- ii. However, if the decree is transferred, the transferee may apply for execution. *Order 21, Rule 16.*
- iii. Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, may apply for execution. *Order 21, Rule 15.*
- iv. Lastly, where the decree holder is dead, his legal representative may apply for execution. *Section 146*

### **Against whom Decree may be executed?**

- i. In case the judgment-debtor is alive execution would lie against him.
- ii. If he is dead execution would lie against his legal representative. However, if the decree is sought to be executed against legal representative it may not be executed against his person. It can be executed only against his property and that to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. *Section 50 of the Code*

An eviction order was passed against tenant and his one of five sons under Section 7 of Orissa House Rent Control Act. Execution proceedings were initiated against the tenant and his one son who has been a co-judgment-debtor also. Tenant died during execution proceedings. Maintenance of execution proceedings challenged on the ground that other legal representatives were not brought on record. In *Radheysham Modi v. Jadunath Mohapatra, AIR 1991 Orissa 88*. that since one of five sons of the deceased tenant was already on record, other sons need not be brought on record for he represented all the brothers who would be similarly situated.

## NOTICE BEFORE EXECUTION

Normally no notice is required to be issued to the party against whom execution is applied for. But notice is required in the following cases:

**i.** where an application for execution is made more than two years after the date of the decree or more than two years after the date of the last order made on any previous application for execution; **Order 21, Rule 22 (1) (a).**

In cases where an application for execution is made more than two years after the date of the decree no process in execution can issue unless a notice to show cause is served on the judgment-debtor or the service of such notice is dispensed with in accordance with law.

**ii.** Where an application is made against a legal representative of a party to the decree; **Order 21, Rule 22 (1) (b).**

**iii.** Where an application is made for execution of a decree filed under the provisions of Section 44-A; that is a decree passed by a Superior Court of any reciprocating territory; **Order 21, Rule 22 (1) (b).**

**iv.** Where an application is made against the assignee or receiver in insolvency in case the party to the decree (judgment-debtor) has been adjudged to be an insolvent; **Order 21, Rule 22 (1) (c).**

**v.** where the decree is for the payment of money and the decree is sought to be executed against the person of the judgment-debtor. But issuing of notice here is discretionary; **Order 21, Rule 37 or**

**vi.** While an application is by the transferee of the decree-holder. **Order 21, Rule 16.**

## Application for execution

See provisions of Order 21, Rules 10, 11 (1), 11 (2), 11-A, 12, 13, 14, 15 & 16 for an application for execution.

**37. Definition of Court which passed a decree.**—The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

**(a)** Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

**(b)** Where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

**Explanation.**—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court ; but in every such case, such Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

## COMMENTS

**Section 38 of the Code** points out the court by which a decree may be executed-

1. It provides that a decree may be executed either by the court which passed it or
2. by the court to which it is sent for execution.
3. It can also be executed, by Court to whom it is transferred under Section 24 of the Code.

4. Section 37 defines the expression the "court which passed a decree".

5. Section 39 lays down the conditions under which a decree may be transferred, for purposes of execution, by a court which passed the decree to another court. And therefore, the provisions of Section 37, 38 & 39 is needed to be read together.

### **The Court which passed the Decree**

From a conjoint reading of Section 37 & 38 of the Code following rules are deducible or following courts come within the purview of the expression "court which passed a decree". *Sundar Dass v. Ram Prakash, AIR 1977 SC 1204.*

i. Where the decree sought to be executed is a decree of court of first instance, the court of the first instance is the proper court to execute the decree.

ii. Where the decree sought to be executed is a decree passed in first appeal, that is passed by first Appellate Court then also the proper court for execution of such a decree is, the court of first instance.

iii. Where it is a decree passed by the High Court in second appeal there also it is the court of first instance, which is the proper court to execute the decree (of High Court).

iv. Where the court of first instance has ceased to exist then the only court competent to execute the decree would be the court which would have jurisdiction to try the suit at the time of making the application for execution. *Lalita Devi v. Kamla Devi, AIR 1995 All 21.*

v. Where the court of first instance has ceased to have jurisdiction to execute the decree, then the court of execution is the court which at the time of the application would have jurisdiction to entertain the suit in which the decree was passed. A court does not cease to have jurisdiction to execute its decree merely because the decree is transferred to another court for execution. *Surendra Nath v. Harihar, AIR 1971 Ori 77.*

An application for restitution has been held by the Supreme Court of India to be an application for execution.

### **COURT BY WHICH DECREE MAY BE EXECUTED**

**38. Court by which decree may be executed.**—A decree may be executed either by the court which passed it, or by the Court to which it is sent for execution.

**39. Transfer of Decree-** (1) the Court which passed decree **may**, on the application of a decree-holder, send it for execution to another Court of competent jurisdiction-

(a) if the person against whom the decree is passed actually and voluntarily resides and carried on business, or personally works for gain, within the local limits of the jurisdiction of the other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the Decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) for the purpose of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorize the Court which passed a Decree to execute such decree against any person or property outside the limits of its jurisdiction.

40. **Transfer of decree to Court in another State**- where a decree sent for execution in another State, it shall be sent to such court and executed in such manner as may be prescribed by rules in force in that State.

41. **Result of execution proceedings to be certified**.- the Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former court fails to execute the same the circumstances attending such failure. (further)

42. **Powers of Court in executing transferred decree**.[(1)] The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

<sup>2</sup>[(2) Without prejudice to the generality of the provisions of sub-section (1) the powers of the Court under that sub-section shall include the following powers of the Court passed the decree, namely:-

(a) power to send the decree for execution to another Court under section 39;

(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Courts to which a decree is sent for execution any of the following powers, namely-

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.]

43. **Execution of decrees passed by Civil Courts in places to which this Code does not extend**.-Any decree passed by any Civil Court established in any part of India to which the provisions of this Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends.

44. **Execution of decrees passed by Revenue Court in places to which this Code does not extend**.-The State Government may, by notification in the Official Gazette, declare that the decrees of any Revenue Court in any part of India to which the provisions of this Code do not extend or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State.

44A. **Execution of decrees passed by Courts in reciprocating territory**.- (1) Where a certified copy of decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

<sup>4</sup>[Explanation 1- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.- "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

**45. Execution of decrees outside India.**-So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established by the authority of the Central Government outside India to which the State Government has by notification in the Official Gazette declared this section to apply.

**“45-A. Execution of decrees etc. passed or made before the Commencement of the Code in Pondicherry-** Any Judgment, decree or order passed or made before the Commencement of this Code by any Civil Court in the Union Territory of Pondicherry shall for the purpose of execution be deemed to have been passed or made under this Code.

Provided that nothing contained in this section shall be construed as extending the period of limitation to which any proceeding in respect of such judgment decree or order may be subject.”

**46. Precepts.**-(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property. Questions to be determined by Court executing decree

**47. Questions to be determined by the Court executing decree.**-(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

### **COMMENTS**

- 1. New case: held by SC the validity of decree can be challenged before executing court only on the ground of inherent lack of jurisdiction which renders decree nullity. (2018) 11 SCC 113-B**
- 2. Objection raised before executing court under section 47 as to validity of decree sought to be executed on ground of lack of territorial jurisdiction of court which passed decree. Executing court has no jurisdiction to entertain such objection. Opined in the case (2019) 3 SCC 594-A.**

(i) Executing court has to first decide whether preliminary decree in question is severable from final decree and can be executed independently. If not, then only after passing of the final decree it can be executed; **Md. Serajuddin v. Md. Abdul Khaliq, AIR 2005 Gauhati 40.**

(ii) Once decree reached finality, it is not open to judgment-debtor to plead new facts in execution proceedings; **Pothuri Thulasidas v. Potru Nageswara, AIR 2005 AP 171.**

(iii) Suit was not 'in reality' one in the nature of execution of the earlier order of eviction in favour of plaintiff and is not barred. Suit based upon fresh cause of action. The High Court was wrong in treating present suit as one 'virtually' for execution of the order of eviction passed in the earlier rent control case. Hence the ban under section 47 cannot apply; **Ajit Chopra v. Sadhu Ram, AIR 2000 SC 212.**

(iv) An executing court granted decree for interest which was not part of the decree for execution on ground of delay and unreasonable stand taken in execution. Since the executing court cannot travel beyond decree under execution, the said decree was held to be without jurisdiction; **Kameshwar Das Gupta v. State of Uttar Pradesh, AIR 1997 SC 410.**

(v) New plea cannot be allowed to be raised for the first time in execution proceedings; **Jalada Daland Uchha Bidyapith v. State of Orissa, AIR 1993 Ori 257: 1993 (1) Ori LR 77.**

(vi) Execution of the decree ought not to be refused, unless the decree itself is a nullity; **Jalada Daland Uchha Bidyapith v. State of Orissa, AIR 1993 Ori 257: 1993 (1) Ori LR 77.**

(vii) Injunction decree can be enforced by the legal heir of the decree holder against the J.O. after the death of the decree holder; **D'souza, J. v. A. Joseph, AIR 1993 Kant 68: ILR (Kant) (1992) 2972.**

(viii) Death of the decree holder during pendency of the execution proceedings. His legal representative can continue the proceedings after obtaining the succession certificate; **Kariyamma v. Assistant Commissioner and Land Acquisition Officer, AIR 1993 Karn 321: 1993 (1) Civ LJ 297: 1992 (3) Cur CC 664.**

(ix) In absence of any challenge to decree no objection can be raised in execution; **State of Punjab v. Mohinder Singh Randhawa, AIR 1992 SC 473.**

(x) Auction sale held in execution of final decree can be set aside under section 47 on displacement by Appellate Court of preliminary decree on which final decree was based; **Kumar Sudhendu Narain Deb v. Renuka Biswas, AIR 1992 SC 385.**

**1. Sub-section (2) omitted by Act No. 104 of 1976, sec. 20 (w.e.f. 1-2-1977).**

**2. Subs, by Act No. 104 of 1976, sec. 20 for Explanation (w.e.f. 1-2-1977). Earlier Explanation was ins. by Act 66 of 1956, sec. 5 (w.e.f. 1-1-1957).**

**48. Execution barred in certain cases.**

Rep. by the limitation Act, 1963(36 of 1963), s. 28 (with effect from the 1st January, 1964)

**49. Transferee.**-Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

**50. Legal representative.-(1)** Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

**PROCEDURE IN EXECUTION**

**51. Powers of Court to enforce execution.**—Subject to such conditions and limitations as may be prescribed; the Court may, on the application of the decree-holder, order execution of the decree-

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by the sale without attachment of any property ;
- (c) by arrest and detention in prison for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section
- (d) by appointing a receiver ; or
- (e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied

- (a) that the judgment-debtor, with the object *or* effect of obstructing or delaying the execution of the decree,—
  - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
  - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

**Explanation.**—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

**52. Enforcement of decree against legal representative.—**(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.

**53. Liability of ancestral property.—**For the purposes of Section 50 and Section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

**54. Partition of estate or separation of share.—**Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazette subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

**55. Arrest and detention.—**(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to

the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he <sup>1</sup>[may be discharged], if he has not committed any act of bad faith regarding the subject of the application and if he complies with provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court <sup>2</sup>[may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

1. Subs. by Act 3 of 1921, sec. 2, for “will be discharged”.  
2. Subs. by Act 3 of 1921, sec. 2, for “shall release”.

**56. Prohibition of arrest or detention of women in execution of decree for money.-** Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

**57. Subsistence allowance.-**The State Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

**58. Detention and release.-**(1) Every person detained in the civil prison in execution of a decree shall be so detained,-

(a) where the decree is for the payment of a sum of money exceeding <sup>12</sup> [five thousand rupees], for a period not exceeding three months, and]

<sup>3</sup>[(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks :]

Provided that he shall be released from such detention before the expiration of the <sup>4</sup>[said period of detention]-

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

<sup>5</sup>[(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed <sup>6</sup>[two thousand rupees.]]

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

1. Subs, by Act No. 104 of 1976, sec. 22, for “fifty rupees, for a period of six months, and”  
(w.e.f. 1-2-1977).

2. Subs, by Act No. 46 of 1999, section 5 for “one thousand rupees”, (w.e.f. 1-7-2002).

3. Clause (b) subs. by Act 104 of 1976, sec. 22 (w.e.f. 1-2-1977) and again subs. by Act 46 of 1999, sec. 5 (w.e.f. 1-7-2002)

4. Subs. by Act 104 of 1976, sec. 22 for certain words (w.e.f. 1-2-1977)  
5. Ins. by Act No. 104 of 1976, s. 22, (w.e.f. 1-2-1977).  
6. Subs. by Act No. 46 of 1999 section 5 for “five hundred rupees” (w.e.f. 1-7-2002).

**59. Release on ground of illness.**-(1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom,-

(a) by the State Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

**60. Property liable to attachment and sale in execution of decree.**-(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to <sup>2</sup>[an agriculturist or a labourer or a domestic servant] and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government <sup>3</sup>[or of a local authority or of any other employer], or payable out of any service family pension fund <sup>4</sup>notified in the Official Gazette by <sup>5</sup>[the Central Government or the State Government] in this behalf, and political pension;

<sup>6</sup>[(h) the wages of labourers and domestic servants, whether payable in money or in kind <sup>7</sup>[\*\*\*];]

<sup>8</sup>[(i) salary to the extent of <sup>9</sup>[the first <sup>10</sup>[<sup>11</sup>[one thousand rupees]]] and two thirds of the remainder] <sup>12</sup>[in execution of any decree other than a decree for maintenance]:

<sup>13</sup>[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period

of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;]

<sup>14</sup>(ia) one-third of the salary in execution of any decree for maintenance;]

<sup>15</sup>[(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;]

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925)], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

<sup>17</sup>[(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]

<sup>18</sup>[(l) any allowance forming part of the emoluments of any <sup>19</sup>[servant of the Government] or of any servant of a railway company or local authority which the <sup>20</sup>[appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to <sup>21</sup>[any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by <sup>22</sup>[any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

**<sup>23</sup>[Explanation I.]**—The moneys payable in relation to the matters mentioned in clauses (g), (h), (i) (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

**<sup>24</sup>[Explanation II.]**—In clauses (i) and (ia)] “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.

**<sup>25</sup>[Explanation <sup>26</sup>[III].]**—In clause (l) “appropriate Government” means—

(i) as respect any <sup>27</sup>[person] in the service of the Central Government, or any servant of <sup>28</sup>[a Railway Administration] or of a cantonment authority or of the port authority of a major port, the Central Government;

<sup>29</sup>[\*\*\*]

(iii) as respects any other servant of the Government or a servant of any other <sup>30</sup>[\*\*\*] local authority, the State Government.]

**<sup>31</sup>[Explanation IV.]**—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled, unskilled or semi skilled labourer.

**Explanation V.**—For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner, or agricultural labourer.

**Explanation VI.**—For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or laborers on wages payable in cash or in kind (not being as a share of the produce), or both.]

<sup>32</sup>**[1A)** notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

(2) Nothing in this section shall be deemed <sup>33</sup>[\*\*\*] to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land,

**61. Partial exemption of agricultural produce.** The State Government <sup>1</sup>[\*\*\*] may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

**1. The words “with the previous sanction of the G.G. in C.” omitted by Act 38 of 1920, sec. 2 and Sch. I**

**62. Seizure of property in dwelling-house. (1)** No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

**(2)** No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

**(3)** Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

**63. Property attached in execution of decrees of several Courts. (1)** Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

**(2)** Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

<sup>1</sup>**[Explanation.-**For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.]

**1. Ins. by Act No. 104 of 1976, sec. 24 (w.e.f. 1-2-1977).**

**64. Private alienation of property after attachment to be void.** <sup>1</sup>[(1)] Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

<sup>2</sup>[(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.]

Explanation-For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

**2. Ins. by Act 22 of 2002, sec. 3 (w.e.f. 1-7-2002).**

**65. Purchaser's title.-** Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

**66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff**

[Rep. by Benami Transactions (Prohibition) Act, 1988 (45 of 1988), sec. 7 (w.e.f. 19-5-1988).]

**67. Power for State Government to make rules as to sales of land in execution of decrees for payment of money.**<sup>1</sup>[(1)] The State Government <sup>2</sup>[\*\*\*] may, by notification in the Official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undermined as, in the opinion of the State Government to make it impossible to fix their value.

<sup>3</sup>[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the State Government may, by notification in the Official Gazette, declare such rules to be in force, or may <sup>4</sup>[\*\*\*] by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.]

<sup>4</sup>[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

**1. Section 67 renumbered as sub-section (1) of that section by Act 1 of 1914, sec. 3.**

**2. The words "with the previous sanction of the G.G. in C.," omitted by Act 38 of 1920, sec. 2 and Sch. I.**

**3. Added by Act 1 of 1914, sec. 3.**

**4. Ins. by Act No. 20 of 1983, sec. 2 and Sch. (w.e.f. 15-3-1984).**

68-72. Repealed

68.-72. Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 7. (w.e.f. 1-1-1957).

**73. Proceeds of execution-sale to be rateably distributed among decree-holders.**-(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:-

(a) where any property is sold subject to a mortgage or charge, the mortgage or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charges the Court may, with the consent of the mortgagee or encumbrances, order that the property be sold free from the mortgage or charge, giving to the mortgagee or encumbrances the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied-

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal moneys due on subsequent encumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

### **COMMENTS**

The debts due to the State are entitled to priority over all other debts; **Union of India v. Somasundaram Mills (P) Ltd., AIR 1985 SC 407.**

**74. Resistance to execution.**-Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

**Order 21 Rule 46B . Order against garnishee**— Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

