

Execution of a decree in a nutshell

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Introduction

The term *execution* of a decree refers to the process for enforcing or giving effect to the judgment, decree or order of the court. The *execution* is the mechanism through which the decree holder realises the fruits of the decree ordered by the court. It comes to a close when the decree holder gets the relief awarded to him by the court.

The *decree holder* is the person in whose favour a decree has been passed, and the *judgment debtor* is the person against whom a decree has been passed.

Legal provisions on execution

The *Sections 36 to 74* of the Civil Procedure Code, 1908 (CPC), lay down the basic legal framework for execution of decrees and orders.

The *Order 21 Rules 1 to 106* provides for the procedural details in regard to execution under CPC.

Article 135 & 136 of the Limitation Act, 1963 put the limitation period of enforcement of a decree. The former is concerning a decree involving mandatory injunction (three years) and the latter any other decree (twelve years).

The court executing the decree

A decree can be executed by either the court which passed it or the court to which it is sent for execution.

The term 'court which passed the decree' means the 'court of first instance' in case of a decree of that court or the appellate decree of an appeal court. If a court of first instance ceases to exist or ceases to have jurisdiction to execute the decree, the court which would have jurisdiction at the time of execution of the decree can execute it.

The 'court which passed the decree' can send the decree for execution to another court either of its own motion or on the application of the decree holder if the judgment debtor resides or doing business or his property situates at the jurisdiction of another court. A decree can also be executed simultaneously at different places when the property of the judgment debtor situates in different locations.

Powers of the executing court

The executing (transferee) court has all the powers needed to execute the decree once the decree is transferred to that court for execution. But it does not have the power either to alter the substantive rights of the parties or to function as a court passing the decree, in regard to the content of the decree. The question of validity of the decree cannot be agitated in the executing court as it is not a

matter relating to execution. The executing court cannot go behind the decree and correct the mistake in the decree.

However, a decree passed by a court without jurisdiction is a nullity. Invalid nature of such a decree can be set up during execution. If a decree is ambiguous the executing court can ascertain its clear meaning by going through the pleading and the judgment. But in the guise of interpretation the executing court cannot make a new decree.

Similarly, if a decree is obtained against a dead person the executing court can refuse to execute the decree as it is a nullity. But a decree passed in favour of a dead person is not at all a nullity.

The court executing the decree will decide every objection relating to execution, discharge and satisfaction of the decree, arising between the parties to the suit.

Application for execution

The execution proceedings start with by filing an application for execution by the decree holder. The application for execution should be made to the court which passed the decree or the court where the decree has been transferred to for execution of it.

Decree holder, his representative or his legal representative, any person who has any claim under the decree or any assignee (transferee) of the decree can make an application. No other person can apply for execution of a decree.

The execution is taken out against the judgment debtor, his representative or his legal representative, any person claiming under the judgment debtor or his surety.

The application for execution shall be in writing, signed and verified by the applicant or by someone acquainted with the facts, except for money suit. For the payment of money oral application is sufficient.

The application should contain necessary particulars of the suit, inventory of the moveable property to be attached, description of the immoveable property owned by judgment debtor but possessed by the decree holder, the details of the person and the grounds for arrest in case arrest is needed, certified extract of the register of the land to be attached, as the case may be.

In case the application is defective when presented, the court must allow the defect to be cured within a specified time. If the defect is not cured within the specified time, the application would be rejected.

The period of limitation for execution of a decree for mandatory injunction is three years and for other decrees twelve years.

Notice before ordering execution

No notice is generally issued to the party against whom execution is applied for. But in the following cases the court executing the decree shall issue a notice to the opposite parties, under Order 21 Rule 22 of the CPC.

1. Where the application is made after more than two years of the date of the decree
2. Where the interest of the decree holder has been transferred by assignment
3. Where the execution applied for is against the legal representatives of the judgment debtor.

The object of notice under the Rule 22 is to give the judgment debtor an opportunity to show why the execution should not be proceeded with. No notice is needed when the transfer of the right to execution is by operation of statutory laws.

Stay of execution

The executing (transferee) court can stay execution for a reasonable time. Such a stay is granted to enable the judgment debtor to apply to the (transferor) court which passed the decree or an appellate court for obtaining an order to stay execution or for any other order relating to the decree or execution. The transferee court can allow a temporary stay but the transferor court can grant an absolute stay.

The stay application can be filed when there exist claim petitions in which the judgment debtor and the decree holder have to mutually adjust claims between them, in some other pending suit.

Mode of execution

The decree holder can choose a particular mode for executing a decree. But the court has discretion to disallow execution against the person and his property simultaneously.

The following are the important modes of execution:-

- By delivery of moveable and immoveable property
- By attachment and sale or by sale without attachment, of the property
- Arrest and detention of the judgment debtor in civil prison

- Appointment of a receiver for realization, management, protection, preservation and improvement of the property, and the collection of the rents/profits thereon. This is done at the discretion of the court
- Partition for separation of shares in case of a decree for partition
- Set off against cross decrees/mutual claims
- Payment of money in court or out of court
- Specific performance of contract, when judgment debtor willfully disobeys
- Execution of document by court
- Endorsement of negotiable instruments
- Attachment of rent, mesne profits etc

Arrest and detention of judgment debtor

One mode of execution of a decree for payment of money, exceeding Rupees two thousand, is arrest and detention of the judgment debtor in a civil prison.

When decree holder files an application along with an affidavit stating the grounds for arrest and detention, the court will issue a notice to the judgment debtor to appear before the court on a day and show cause why he should not be committed to civil prison. No notice as above is required if the judgment debtor is likely to abscond or leave the local jurisdiction of the court.

If judgment debtor appears, pleads and prove he does not have any means to pay the amount, he will not be arrested. When he appears what the decree holder is required to prove is that the judgment debtor has or had, since the date of the decree, the means to pay the decree amount or some substantial portion of it and he refused or neglected to pay.

On the other hand, if he does not appear when required, the court will issue warrant. If the judgment debtor is a government officer, a notice is to be issued to his superior before arresting the officer.

However, a woman, judicial officers, the parties or the pleaders going to attend or returning a court, members of legislative bodies, etc cannot be arrested or detained (See Sections 56, 58, 135 & 135 A of the CPC).

When a judgment debtor arrested for payment of money in a decree and brought before the court expresses his intention to apply to be declared an insolvent and furnishes security instead, the court may release him from arrest. But if he fails to do so within one month the security will be realised and he will be committed to prison. The court should not order arrest and detention if the judgment debtor has not means to pay.

A judgment debtor may be arrested at any time and any day, but no dwelling house may be entered after sunset or before sunrise for the arrest. No outer door of a dwelling house may be broken open unless it is in the occupancy of the judgment debtor.

Judgments debtor will be put to prison for three months only. Re-arrest is not normally possible. The decree holder will have to pay the subsistence allowance for the detention. When the judgment debtor pays the decretal amount with cost he should be released at once. The judgment debtor arrested or committed to prison or under warrant of arrest will be set free on the ground of his serious illness. The state government can release a person detained in civil prison on the ground of any infectious or contagious disease.

Attachment of property

Attachment and sale of property can be done under execution of a decree. An attachment is an order prohibiting and restraining the defendant from transferring the attached property or from creating any charge over such property by sale / gift or otherwise.

Any private transfer of attached property is void to the extent it creates new rights or liabilities. But a transfer as per an agreement executed prior to the attachment is legally valid.

Attachment is being done to give notice to the judgment debtor not to alienate the property and the public not to buy it. Any property, which is not liable to be attached under the law, can be attached. Some properties cannot be attached, as per Section 60 of the CPC.

Moveable property should be attached by actual seizure. If the property thus seized is subject to speedy and natural decay the attaching officer may sell the property.

Agricultural produce is to be attached by affixing a copy of warrant of attachment on the land on which such crops are grown or on the floor where the grain is stocked

Approaching the debtors debtor

The decree holder can reach the debtor who owes any debt to the judgment debtor (a Garnishee is a debtor's debtor) by filing an application along with an affidavit to the court.

The court can issue an order asking him to pay the amount to the court if he is staying within the court's jurisdiction. Otherwise the case has to be transferred to the district court of that area for enforcing the payment.

If Granishee disputes his liability in the decree the dispute needs to be tried as if it were an issue in the suit.

Attachment of salary

Salary or allowance of an official of the government, Company, Government owned Corporation, Railway or Local Authority can be attached by a court order as provided for by law. The disbursing officer of salary, on receiving a court order, shall withhold and remit the installment of salary to the court. If the attachable portion of the salary of the official is remitted to a court in pursuance of a previous court order, the officer shall return the subsequent order received from another court with a full statement of particulars to the latter court.

The portion of salary that can be attached in any decree other than the maintenance decree is arrived at by excluding the first one thousand rupees and the two third of the remainder from the total salary. Here the salary means the total monthly emoluments, excluding any allowance declared exempted from attachment.

Attachment of salary of the private employees is possible by an order of the court.

Attachment of partnership property/ firm

Attachment of property belonging to a partnership firm can be made only when the decree is against the firm or against the partners in the firm as such. However the court can charge the interest of one partner in the firm if the decree is against him.

If decree is against a firm, the execution is possible against any property of the partnership or anyone admitted on the pleadings as a partner or anyone who failed to appear before the court on serving summons. No partner can be made liable unless he is served with a summons to appear and answer.

Claims and objection against attachment

Parties to the suit and other third parties can raise objections against attachment of property in case any interest of such party is defeated.

The parties to the suit can file application under Section 47 of the CPC whereas the third parties can file either a suit for claims or an application under Order 21 Rule 58 of the CPC. The court shall hear the person, adjudicate upon the claim and allow/disallow it. When a claim petition is dismissed it cannot be restored under Order 9 Rule 13 of the CPC, but it can be restored under Section 106 of the CPC.

Any person, who has some right, title or interest in the attached property at the time of attachment, may lodge a claim or raise an objection against attachment. A claim petition may be filed in the executing court which attaches the property

Sale of property

The court is bound to order sale of property when a property is attached and a party files an application to order sale. The court has authority to sell a portion of the property of the judgment debtor necessary to satisfy the decree. No sale beyond the decretal amount is permissible. Sale is to be done by the officer of the court by public auction alone.

The decree holder should apply for sale of the property in form 56 along with draft sale proclamation. Proclamation should be made after issuing notice to the judgment debtor. The object of issuing a proclamation is to give notice to intending purchasers to know what is to be sold and the names of the parties whose right, title and interest in it are to be sold. After proclamation the sale takes place after 15 days in case of immoveable property and 7 days in case of moveable property, a failure of which will make the sale void.

The application should include property to be sold or portion thereof, revenue assessed on the estate, encumbrances to which property is liable, amount to which sale is ordered, valuation of both parties and other material things. Proclamation should be published in a local news paper or beat of drums.

Decree holder should not buy the property without permission of the court. The mortgagee or the officers of the court also cannot bid at the sale.

Sale can be adjourned or set aside

The court can postpone sale in order to allow time for the judgment debtor to raise decretal dues by private alienation of property such as sale, mortgage, lease etc. The court can issue certificate to mortgage, lease or sale, if applies for it.

A person having any interest (the term 'interest' has a wide import) on the property can apply for setting aside the sale, under Order 21 Rules 89 to 91 of the CPC, on the following grounds:-

- On deposit of purchase price specified in the sale proclamation
- When there is substantial injury due to material post-sale irregularity or fraud in conducting sale
- When decree holder has no saleable interest.

Such an application has to be made within the limitation period of 60 days only. The pre-sale irregularities can be remedied under Section 47 of the CPC.

Deposit price after sale

Immediately after concluding the process of sale, the person declared to be the purchaser must deposit 25 per cent of the purchase money.

The balance amount must be paid within 15 days from the date of the sale, the failure of which will vitiate the sale.

Sale becomes absolute when not set aside

When no application to set aside the sale is filed in the court, the sale becomes absolute when the court makes an order of confirmation. If sale is set aside by the court, the purchaser of the property will get the purchase money.

When sale becomes absolute the court shall grant purchase certificate specifying the property and the name of the purchaser. Issue of a certificate is a ministerial act. Purchaser's title relates back to the date of sale and not the date of confirmation of the sale.

Rateable distribution of assets

Rateable distribution is proportionate distribution of proceeds of execution sale of a property of the judgment debtor among two or more decree holders by the court, when it is held by it. It is provided for in Section 73 of the CPC.

This is more an administrative rather than a judicial action of equitable distribution of assets by ensuring equitability among the decree holders. The cost of realisation of assets should be paid in priority to other debts. The section also confers priority of government debts over other debts when the amount is left with the court. But the government cannot lay claim after its distribution.

The Section allows filing of suit for refund of any asset wrongly distributed to a person who is not entitled to receive it as well. The cause of action arises when the amount is paid. The period of limitation for such suit is three years after actual payment.

The provision seeks to place all decree holders on an equal footing. It secures equitable disposition of assets among rival decree holders without any independent proceeding. Summary process of execution is followed in such distribution.

The order under this Section is not appealable as a decree but revision is possible.

Resistance to execution

If the judgment debtor resists obtaining of possession of the property in sale under execution by the court without just cause, the decree holder or auction purchaser can make an application to the court. The court can detain the person

in civil prison for a term of not more than thirty days. The court can direct the decree holder or purchaser be put in possession of the property as well.

Role the police should play in execution

A decree can be executed only through officers of the court in the manner known to law. For such enforcement the court can order assistance by police under Section 151 of the CPC. If the police keep in action the aggrieved can approach the high court under Article 226 of the Constitution for direction to police for discharge of their duty (See *Kochupenu v Veluthakunju* 1992 KHC 270).

Conclusion

Execution of a decree is the most crucial phase of litigation in achieving the fruits of laborious and monotonous litigation by the parties in dispute.

A judgment would remain as a worthless piece of paper unless it is implemented in its true spirit. This write up brings together at one place an overview of the procedure of execution of a decree by a court as described in the Civil Procedure Code.
