

Section 60 - Property liable to attachment and sale in execution of decree:-

- All saleable property belonging to over which the Judgment-debtor has a disposing power should become liable to attachment and sale.
- Subsistence allowance payable to person under suspension till it is in the hand of employer was held exempted. (Velraz vs. Muthaiah, AIR 20 08 Madras 239).
- An order of attachment of share s cannot have t he effect of depriving the holder of the shares of his title to the shares. (Balkrishna Gupta and others vs. Swades hi Polytex Ltd (1985) 2 SCC 16 7)
- Privy purse to ex-ruler of former Indian states is in the nature of political pension. It is not liable in attachment on execution.

Section 60 (1)(g) – Properties or amounts not liable for attachments –

Gratuity, Provident Fund and Leave salary payable to deceased employee and kept in trust by employer are not liable for attachments [2004 2 CTC 129 PSDJ]

SOURCE: TAMIL NADU STATE JUDICIAL ACADEMY, Two days refresher course for Civil Judges (Junior Division), Saturday, 10th July 2010

Execution of Decrees [O. 21]

Execution, meaning of.—Suppose that in the hypothetical suit for specific performance¹ a decree is passed² for the plaintiff for Rs. 5,000. Suppose, further, that the defendant does not pay the amount of the decree to the plaintiff. What steps should the plaintiff take to enforce the decree against the defendant, in other words, how should he proceed to execute the decree? The subject of execution of decrees is dealt with in Order 21 of the Code. That Order contains 106 rules, and is the longest of all Orders in the Code. We propose to give in the present Lecture an analytical abstract of that Order. The reference to the rules given in this Lecture are to the Rules of Order 21.

A obtains a decree against *B* for Rs. 5,000. Here *A* is the decree-holder, *B* is the judgment-debtor, and Rs. 5,000 is the judgment-debt. If *B* fails to satisfy the decree, *A* may apply for execution of the decree against *B*'s person, or against his property, or both (r. 30). But the Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor (r. 21). Execution against the person of the judgment-debtor consists in arresting him and detaining him in jail. Execution against the property of a judgment-debtor consists in attaching and selling his property, and paying the decree-holder the amount of the judgment-debt out of the sale-proceeds.

Application for execution.—All proceedings in execution are to be commenced by an application for execution (r. 10). The application for execution must be in writing [r. 11(2)] and should contain the particulars set forth in rr. 11(2) to 14. The only exception is where the decree is for the payment of money and the judgment-debtor is in the precincts of the Court when the decree is passed, in which case the Court may order immediate execution on the oral application of the decree-holder at the time of passing the decree [r. 11(1)]. If the application complies with the requirements of rr. 11(2) to 14 the Court will direct execution to issue (r. 24). If it does not, the Court may reject it, or may require it to be amended (r. 17). If the application is rejected, the decree-holder may present another application properly framed.

Who may apply for execution.—The application for execution is to be made by the decree-holder. If the decree is transferred by the decree-holder, the transferee may apply for execution (r. 16). If the decree has been passed jointly in favour of more persons than one, any one of such persons may apply for execution (r. 15). If the decree-holder is dead, his legal representative may apply for execution (s. 146).

Against whom execution may be applied for.—If the judgment-debtor is living, execution is to be applied for against him. If he is dead, execution may be applied for against his legal representative. In the latter case, the decree may not be executed against the person of the legal representative, but only against the property of the judgment-debtor which has come to the hands of the legal representative and has not been duly disposed of by him (s. 50).

Notice before ordering execution.—The law does not require any notice to be issued to the party against whom execution is applied for, except in the following two cases:

1. Where the application for execution is made more than ~~one~~^{two} years after the date of the decree or more than ~~one~~ year after the date of the last order made on any previous application for execution.
2. Where execution is applied for against the legal representative of the judgment-debtor.

In the two cases mentioned above the Code provides that "the Court executing the decree shall issue a notice" (r. 22). There is one case in which it is discretionary with the Court to issue a notice before making an order for execution, and that is where the decree is for money and execution is sought against the person of the judgment-debtor (r. 37).

* * Execution against person of judgment-debtor.—

(i) Decrees for the payment of money.—A obtains a decree against B for Rs. 5,000 and costs. [This is a money-decree.] B fails to pay the amount of the judgment-debt. A applies for execution of the decree against B's person [r. 11(2), cl. (j)]. The decree being a money-decree, the Court shall, instead of issuing a warrant for B's arrest,³ issue a notice calling upon him to appear and show cause why he should not be committed to the civil prison in execution of the decree (r. 37). If B appears, and satisfies the Court that he is unable to pay the amount of the decree from poverty or other sufficient cause and if there are no circumstances which disentitle B to the indulgence of the Court, the Court may make an order disallowing A's application for B's arrest and detention [r. 40(1)]. If B does not appear, the Court should issue a warrant for his arrest if the decree-holder

³ In cases where the judgment-debtor is likely to abscond, a warrant can be issued immediately. O. 21, rule 37(i), proviso.

1.

so requires (r. 37). If B appears but fails to show cause to the satisfaction of the Court, the Court should cause him to be arrested [r. 40(5)].

Where a warrant of arrest is issued, it should be executed by an officer of the Court appointed in that behalf (rr. 24-25). If, when the officer goes to execute the warrant, B pays the amount of the judgment-debt which must always be specified in the warrant the officer should receive the payment and the warrant should not then be executed (r. 38). But if no payment is made, B should be arrested and brought before the Court "as soon as practicable" (s. 55). Where a notice was issued prior to his arrest under r. 37, the Court should forthwith make an order committing him to the civil prison [r. 40(5)]. If no such notice was issued, it is open to B to show that he is unable to pay the amount of the decree from poverty or any other sufficient cause [r. 40(1)]. If the Court is satisfied that B is unable to pay the amount of the decree from poverty or any other sufficient cause, and if there are no other circumstances which would disentitle B to the indulgence of the Court, the Court will make an order directing B's release [r. 40(1)]. Otherwise, the Court will make an order committing him to prison [r. 40(5)]. The prison is to be a civil prison (s. 55), and the term of detention in the prison is not to exceed six ³ months in any case (s. 58). Where the amount of the decree does not ^{is between} exceed Rs. 50, the term of detention should not exceed six weeks (s. 58). If while in prison B pays the amount mentioned in the warrant for his detention to the officer in charge of the prison, or the decree is otherwise fully satisfied, as by attachment and sale of his property, he will be released from detention (s. 58). Otherwise, he will be detained in prison until the expiration of the term of his detention unless the decree-holder requests the Court for his release, or fails to pay the allowance for the subsistence of the judgment-debtor. A judgment-debtor released from detention in any of the above cases cannot be re-arrested in execution of the same decree though the judgment-debt may remain unpaid. This does not mean that his liability to pay the debt ceases, for the decree still subsists, and A may yet execute the decree against B's property though not against his person (s. 58).

No woman can be arrested in execution of a money-decree (s. 56).

(ii) Decrees other than those for the payment of money.—A judgment-debtor may be arrested and imprisoned not only in execution of a decree for the payment of money, but also in execution of certain other decrees (rr. 31, 32). The procedure to be followed in these cases is as follows: if the application is in proper form, the Court will issue a warrant for the arrest of the judgment-debtor (s. 24). If the judgment-debtor is arrested in execution of the warrant, he must be brought before the Court "as soon as practicable" (s. 55). The Court will then make an order committing him to the civil prison. The term of imprisonment should not exceed six weeks in any case (s. 58). If, while in jail, the decree is fully satisfied,

② decree for specific movable property (R. 31); specific performance of a contract, or for an injunction (R. 32) — ... may be executed by detention of the judgment-

he will be released from detention [s. 58(1)]. Otherwise he will be detained in prison unless the decree-holder requests the Court to release him from detention, or omits to pay the subsistence-allowance.

A judgment-debtor, released from detention in any of the cases mentioned above, is not thereby discharged from the performance of the decree, but he cannot be re-arrested in execution of the same decree. If the decree remains unsatisfied, the decree-holder may apply to the Court to attach and sell the property of the judgment-debtor in the manner prescribed by rr. 31 and 32.

Execution against property of judgment-debtor.—This subject may be considered under two heads, namely, (1) attachment, and (2) sale. We shall first state the rules relating to attachment, and then the rules governing sale, for attachment precedes sale. Attachment is levied and the sale of the property attached is effected by an officer of the Court under a warrant issued from the Court.

Before considering the rules relating to attachment and sale, it is to be observed that there are certain kinds of property which are not liable to attachment or sale in execution of a decree. These are described in s. 60. Subject thereto, all saleable property which belongs to the judgment-debtor, or over which he has a disposing power which he may exercise for his own benefit, is liable to attachment and sale in execution of a decree against him (s. 60).

I. Attachment.—Attachable property belonging to a judgment-debtor may be divided into two classes, (1) movable and (2) immovable.

Attachment of movable property.—This is done in different ways according to the nature of the property. See rr. 43 to 53.

Attachment of immovable property.—If the property be immovable, the attachment is to be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and prohibiting all other persons from taking any benefit from such transfer or charge. The order is to be proclaimed at some place on or adjacent to the property, and a copy of the order is to be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house (r. 54).

Where an attachment has been made, any private transfer of the property attached, whether movable or immovable, is void as against all claims enforceable under the attachment (r. 64).

If any claim be preferred to any property attached in execution of a decree by any person other than a party to the suit, the procedure prescribed by rr. 58 to 63 is to be followed. If any questions relating to the execution of the decree arise between the parties to the suit, or their representatives, they are to be dealt with under s. 47.

If during the pendency of the attachment the judgment-debtor satisfies the decree through the Court, the attachment will be deemed to be withdrawn (r. 55). Otherwise the Court will order the property to be sold (r. 64). If the property attached is current coin or currency-notes, the Court may direct the same to be paid to the decree-holder in satisfaction of his decree (r. 56), for coin or currency-notes do not require to be sold.

II. *Sale of attached property.*—If the property attached be movable property which is subject to speedy and natural decay, the same may be sold at once (r. 43). Every sale in execution of a decree should be conducted by an officer of the Court except where the property to be sold is a negotiable instrument or a share in a corporation, which the Court may order to be sold through a broker (r. 76).

After the property is attached, the first step to be taken by the Court towards the sale thereof whether the property be movable or immovable, is to cause a proclamation of the intended sale to be made stating the time and place of sale, and specifying the property to be sold, the revenue (if any) assessed upon the property, the encumbrances (if any) to which it is liable, the amount for the recovery of which the sale is ordered, and such other particulars as the Court considers material for a purchaser to know in order to judge of the nature and value of the property (r. 66). No sale should take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which a copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale, unless the judgment-debtor consents in writing to the sale being held at an earlier date (r. 68). The Court may, in its discretion, adjourn the sale from time to time, but if the sale is adjourned for a longer period than seven days, a fresh proclamation should be made, unless the judgment-debtor consents to waive it (r. 69).

It is important to note that no holder of a decree, in execution of which property is sold, can bid for or purchase the property without the express permission of the Court (r. 72).

Irregularity in the conduct of sale of attached property.—No sale of immovable property can be set aside on the ground of irregularity in publishing or conducting the sale, unless upon the facts proved the Court is satisfied that the party seeking to set aside the sale has sustained substantial injury by reason of such irregularity (r. 90). As regards movable property, the rule is that a sale of movable property is not liable to be set aside in any case on the ground of irregularity in publishing or conducting the sale. The only remedy open to the party who has sustained any injury by reason of such irregularity is to institute a suit for compensation against the person responsible for the irregularity. But if such person be the purchaser himself, the party sustaining the injury may sue for the

recovery of the specific property, and for compensation in default of such recovery (r. 78).

Disposal of sale-proceeds.—The sale proceeds of property sold in execution of a decree are to be applied in the manner prescribed by s. 73.

Resistance to delivery of possession to purchaser.—Where immovable property is sold in execution of a decree, and the purchaser is resisted in obtaining possession of the property, he may make an application to the Court complaining of such resistance. The Court will thereupon fix a day for investigating the matter, and will summon the party against whom the application is made to appear and answer the same (rr. 97-103).

Courts by which decrees 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. A decree may be sent by the Court which passed it for execution to another Court, (1) if the judgment-debtor resides or carries on business within the local limits of the jurisdiction of such other Court, or (2) if the property sought to be attached or sold in execution of the decree is situated within those limits, or (3) if the decree directs the sale or delivery of immovable property situate within those limits (ss. 38-39).

Precepts.—It always takes some time to transfer a decree for execution to another Court. If the decree-holder has reasons to apprehend that the judgment-debtor will dispose of the property before it is attached by the other Court, he may apply to the Court which passed the decree to issue a precept to the other Court to attach the property at once. Where such precept is issued, the Court to which it is issued should proceed to attach the property (s. 46).

Questions to be determined by Court executing decree.—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, should be determined by the Court executing the decree on the application of parties, and not by a separate suit (s. 47). A decision determining any such question is appealable as a decree [s. 2 cl. (2)].

Source:

Sir D.F. Mulla's, "The key to Indian Practice",
5th edition 1968.