

Chapter 12
PART C—POWERS OF EXECUTING COURTS.

- 1. Mode of execution Receivers:-** The various modes in which execution of a decree may be ordered are given in section 51 of the Code as follows: -
- (a) By delivery of any property specifically decreed.
 - (b) By attachment and sale, or by sale, without attachment of any property.
 - (c) By arrest and detention of the judgment- debtor.
 - (d) By appointment of a Receiver; or
 - (e) In such other manner as the nature of the relief may require.

In most cases, the methods specified in (a), (b) and (c) alone are resorted to and are found adequate. The appointment of a Receiver may be tried where the value of the property is sufficient to bear the cost and where such appointment is expected to be conducive to harmonious relations between the judgment-debtor and the decree-holder and to provide for the discharge of the decree in a satisfactory manner.

- 2. Execution of a decree for delivery of property:-** When it is sought to enforce a decree in Class (a) by attachment of the judgment- debtor's property, it should be noted that the period of six months prescribed by Rule 31, sub-rule (2) of Order XXI, Civil Procedure Code, for the sale of the property has been reduced to three months by the Punjab High Court.

The Court is empowered, however, to extend this period up to six months in any special case.

The period of one year mentioned in Order XXI, Rule 32 (3) Civil Procedure Code, has also been reduced to three months.

- 3. Power of executing Court to question the validity of the decree:-** An executing Court cannot go behind the decree or question the jurisdiction of the Court which passed it (22 P.R.1919, I.L.R., 5. Lah. 54). Its function is to execute the decree as it stands. It may, however, refer to the judgment to ascertain its meaning when the terms of the decree are ambiguous.

- 4. Power of executing court to decide question arising in execution: -**

Section 47 of the Code of Civil Procedure confers wide powers on the executing Court to decide 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. Such questions must be decided by the executing Court and no separate suit is maintainable for the purpose. A purchaser at a sale in execution of the decree would also be a party to the suit in view of the amendments made in the explanation to this section by Act No.66 of 1956. A decision under section 47 is deemed to be a decree, [vide section 2 (2)], and is, therefore, appealable as such. {If a third party claim(s) right(s) in the property subject matter of decree under execution by filing an application under Section 47 or Order XXI of the Code of Civil Procedure, 1908 and the Court is of the opinion that the application is frivolous, it shall record reasons while declining to issue notice thereof. The Court should also refrain from entertaining such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

The Court should in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.}

{Rule 4 Amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

- 5. Execution of decree pending appeal:-.**The filing of an appeal from a decree is,

by itself, no bar to its execution, and execution may proceed unless it is stayed by an order of the Appellate Court or the Court which passed the decree (vide Order XLI, Rules 5 and 6). It should be noted, however, that when an order is made for the sale of immovable property during the pendency of the appeal, and the judgment-debtor applies for stay of the sale, the Court ordering the sale is bound to stay it, though it can impose such terms as to security or otherwise as it thinks fit [Order XLI, Rule 6 (2)].

6. **Security when execution is stayed:** - When a stay of execution is granted under Order XXI, Rule 26, Civil Procedure Code, the rules, as amended by the Punjab High Court, makes it compulsory for the Court to require security or impose such conditions as it thinks fit unless sufficient cause is shown to the contrary.
7. **Decree against Government etc. – Stay of execution and report of non-satisfaction:** - Where the decree is against the Union of India or the State or a public officer in his official capacity and the decree remains unsatisfied within the time specified by the Court under section 82 or where no time is so specified within three months of the date of the decree the Court shall report the case for the orders of the State Government. Execution shall not be issued on such decree unless it remains unsatisfied for a period of three months from the date of such report an order or award of any Court or authority which is capable of being executed as a decree is also subject to the above provisions.

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