

# DIVISIONAL JUDICIAL SEMINAR

**BILASPUR DIVISION : 14.02.2026**

**(DISTRICTS:- BILASPUR, JANJGIR-CHAMPA, KORBA, MUNGELI & RAIGARH )**

*PAPER ON:*

***EXECUTION OF DECREES BY ARREST AND DETENTION IN THE CIVIL PRISON AND ATTACHMENT OF PROPERTY. STRATEGIES FOR TIMELY AND EFFICIENT ENFORCEMENT***



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## **ACKNOWLEDGEMENTS**

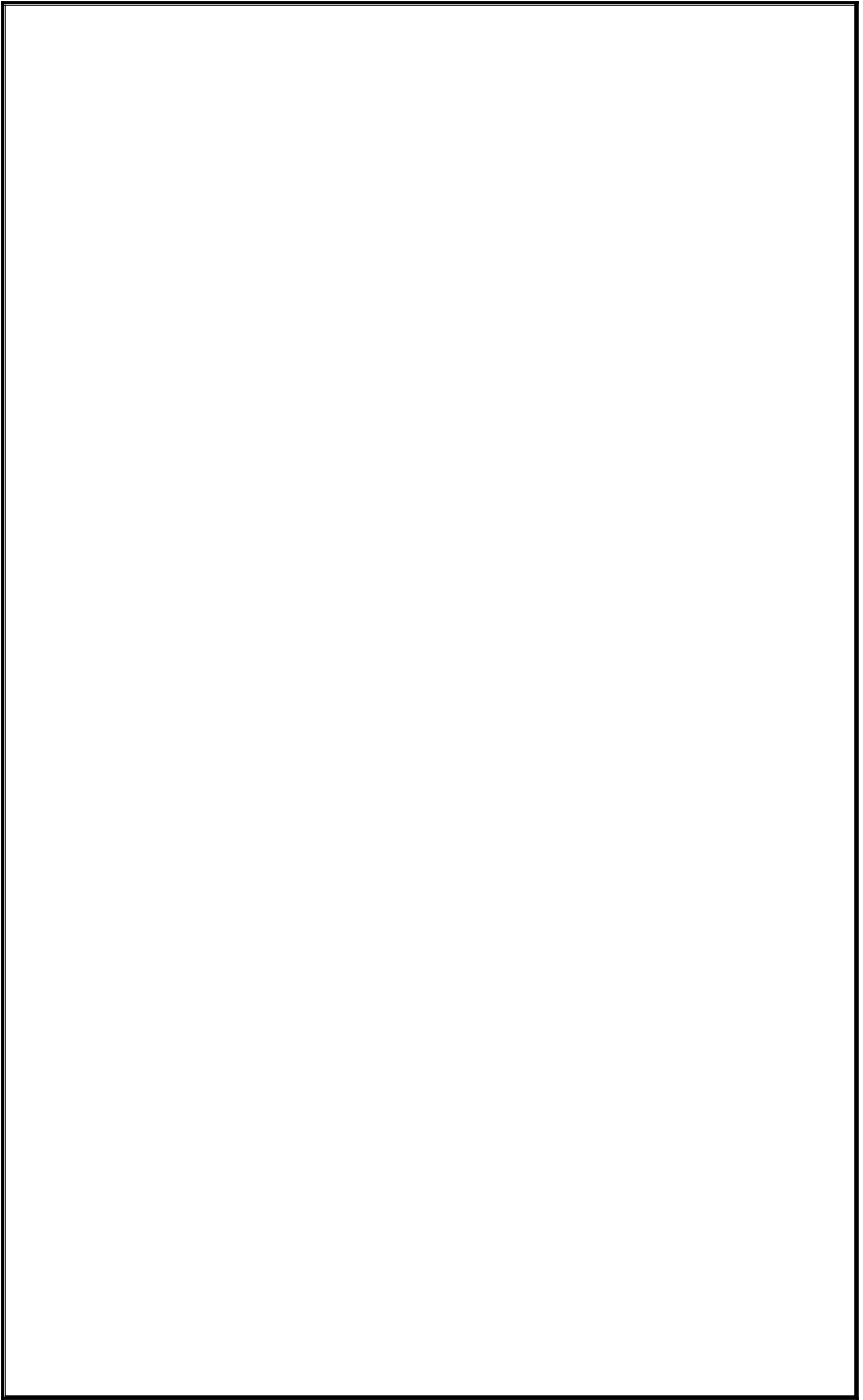
We feel highly elated to work on the topic "*EXECUTION OF DECREE BY ARREST AND DETENTION IN THE CIVIL PRISON AND ATTACHMENT OF PROPERTY. STRATEGIES FOR TIMELY AND EFFICIENT ENFORCEMENT*" The practical realization of this presentation has obligated the assistance of many persons. First of all, we would like to thank the Hon'ble High court of Chhattisgarh & Chhattisgarh State judicial Academy for organizing this divisional conference and providing us a platform to discuss on such crucial legal points.

We would like to express our deepest regard and gratitude for Respected Principal District and Sessions Judge, Raigarh Chhattisgarh. His consistent supervision, constant inspiration and invaluable guidance have been of immense help in understanding and carrying out the nuances of the preparation of paper. Some printing errors might have crept in, which are deeply regretted. we would be grateful to receive comments and suggestions to further improve this presentation.

**District and Sessions Court  
Raigarh, Chhattisgarh**

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## INTRODUCTION

"न्यायस्य सौन्दर्यं त्वरितं निष्पादनम् "

**It is said that "A Decree unexecuted suspends justice between promise and reality ."**

The Sanskrit maxim "न्यायस्य सौन्दर्यं त्वरितं निष्पादनम्", meaning "the beauty of justice lies in its swift execution" eloquently captures the essence of an effective justice delivery system. Justice, though solemnly declared by courts, attains its true legitimacy only when it is enforced without undue delay. The real success of adjudication lies not merely in the pronouncement of rights, but in their timely realization.

A decree that remains unexecuted reduces judicial determination to a symbolic exercise, aptly reflected in the legal observation that "**A Decree unexecuted suspends justice between promise and reality .**" Prolonged execution proceedings frustrate litigants and weaken public confidence, reinforcing the enduring principle that justice delayed is justice denied.

In the words of **Hon'ble President of India Smt. Draupadi Murmu,** "Execution is the most important aspect of Civil justice. Success or failure of the system of Civil justice depends on the rate of success in executing the decrees of Civil Courts."

In 1872 the Privy Council had observed<sup>1</sup> "the difficulties of a litigant in India begin when he has obtained a decree."

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<sup>1</sup>General Manager of the Raj Durbhunga v Coomar Rarnaput, Sing.

The Hon'ble Supreme Court of India, recognizing the systemic impact of delayed execution, in **Periyammal (Dead) through LRs & Ors. v. V. Rajamani & Anr.**<sup>2</sup>, emphasized the need for expeditious disposal of execution petitions and cautioned courts against mechanical adjournments that defeat the very purpose of decrees.

In **Satyawati v. Rajinder Singh**<sup>3</sup>, The Supreme Court observed that “if there is an unreasonable delay in execution of a decree, the decree-holder would be unable to enjoy the fruits of his success and the entire effort of successful litigant would be in vain”

The interest of bonafide civil litigants lies in the fact that the courts not only decree a remedy but also follow it up to ensure that it reaches its logical and fair conclusion. In justice delivery system it is a paramount responsibility of the judicial officers to enforce the execution of the decree, because "A decree without execution is like a promise without fulfillment". Out of various stages of civil suit. Execution is the final stage of litigation.

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<sup>2</sup> 2025 SCC OnLine SC 507

<sup>3</sup>(2013) 9 SCC 491

## **EXECUTION OF DECREE MEANING**

The Code of Civil Procedure contains no definition for the word “execution of decree or order.”

The Merriam Webster Dictionary defines execution as ‘**the process of enforcing a judgment**’.

The Oxford Law Dictionary defines execution as ‘**the process of carrying out sentence of court**’.

In simple terms, “execution” refers to the act of putting the court’s decree or judgment into effect by requiring the judgment debtor to follow the directives in the decree or order and allowing the decree holder to retrieve the item that was awarded to him by the decree. The act of carrying out, upholding, or giving effect to a court of justice’s order or verdict is referred to as “execution.”

The success and failure of the civil justice dispensation system depends on the successful execution of the decree which in real sense provides relief to the litigant.

**Section 36 to 74 and section 144 & 146 and order 21 of civil procedure code, 1908** deals with Execution of Decrees and Orders. The various modes of execution of decree under CPC are as follows:

1. By Delivery of any Property specifically decreed
2. By attachment and sale or by sale without attachment of any property
3. By arrest and detention in prison
4. By appointing a receiver
5. In such other manner as the nature of the relief granted may require.

Our topic is limited to two of such modes of execution namely 1. Arrest and Detention, and 2. Attachment of Property.

## PART – I

*" DILATIO EST NEGATIO JUSTITIAE "*

*It means that " DELAY IS DENIAL OF JUSTICE."*

### EXECUTION OF DECREE BY ARREST AND DETENTION

One of the modes of executing a decree is arrest and detention of the judgment debtor in civil prison.

According to [Oxford Learner's Dictionaries](#), **arrest means** to take someone into custody by legal authority or to stop the progress/movement of something or a sudden cessation of motion.

According to [Oxford Learner's Dictionaries](#), **detention means** the state of being kept in a place and prevented from leaving, often for legal reasons.

Arrest and Detention are a part of Criminal Justice system but it finds a place in the civil procedural law also. This mode seeks to enforce a decree by putting a restriction on the personal liberty of the person against whom a decree is passed. Since this mode of enforcement of the decree affects the personal liberty of a person, there has to be a high threshold of satisfaction for the court to order for arrest or detention.

Detaining a person in civil custody, notwithstanding the law's permissiveness, is a court order that violates the individual's human rights. As a result, the law has imposed a number of restrictions on the executing Courts'

**Powers when ordering arrest and detention in this mode of execution.**

**The Code of Civil Procedure 1908 Section 55 provides. 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.

**The Code of Civil Procedure 1908 Further provides the procedure for arrest and detention in execution of a decree:**

1. For the purpose of making an arrest under this section, no dwelling-house shall be entered 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 officer authorized 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;
3. 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 authorized 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;

4. 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.

*In N. Ramachandra Iyer vs Thomas Mathai<sup>4</sup> Hon`ble Kerela High Court laid down the situations where the execution court could order arrest and detention.*

**i.** If the court is satisfied that the debtor is likely to abscond or leave the jurisdiction to delay execution, arrest can be ordered without prior notice.

**ii.** If the debtor fails to appear in response to a notice under Rule 37(1), the court may issue a warrant for arrest.

**iii.** If after an enquiry under Rule 40(1) and subject to Section 51, the court may order detention in civil prison and arrest if the debtor is not already in custody.

**iv.** If judgment-debtor released under Rule 40 may be re-arrested.

### **DECRETAL AMOUNT WHICH MAY BE EXECUTED BY ARREST :**

**The Code of Civil Procedure 1908 Section 58 provides.** If the decretal amount exceeds five thousand rupees, an individual cannot be detained for more than three months, and that detention for amounts between two and five thousand rupees cannot exceed six weeks. No order for detention of the judgment debtor may be made if the total is less than two thousand rupees.

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<sup>4</sup> AIR 1966 KER 65

In *G. Sudhakara Reddy v. M/S. Jahnavi Chit Fund Pvt. Ltd. And Others*<sup>5</sup> Hon`ble Andhra Pradesh High Court laid down that it is for the decree holder to establish to the satisfaction of the Court that the judgment debtor has means to pay the decree amount and is refusing or neglecting to pay the same.

**THE FOLLOWING DECREES MAY BE EXECUTED BY ARREST AND DETENTION:**

- I. A decree for the payment of money.
- II. A decree for a specific moveable property.
- III. A decree for specific performance of the contract or an injunction

**PERSONS EXEMPTED FROM ARREST:**

There are certain classes of persons that are exempted from arrested or detained in execution of a decree which is provided in The Code of Civil Procedure,1908:

- A woman.
- Legal representative of deceased Judgment-debtor.
- Judicial Officers, while going to, presiding in, or returning from their courts.
- The parties, their pleaders, mukhtars, revenue agents and recognised agents and their witnesses acting in obedience to a summons, while going to, or attending or returning from the court.
- Members of Legislative bodies.
- Any person or class of persons, whose arrest, according to the State Government, might be attended with danger or inconvenience to the public.

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<sup>5</sup> 2006 SCC OnLine AP 627

In *Jolly George Varghese and another vs. The Bank of Cochin*<sup>6</sup> Hon`ble Supreme Court held that the simple default to discharge is not enough. There must exist an element of bad faith that transcends mere indifference or inability to pay. Such bad faith may manifest either through a deliberate or recalcitrant conduct in the past, or through the existence of present means to satisfy the decree, wholly or in substantial part, coupled with a refusal to do so. Section 51 of the Code of Civil Procedure underscores the necessity of establishing not a mere omission to pay, but a conscious and obstinate refusal upon demand bordering on a dishonest repudiation of the obligation imposed by the decree. In assessing such conduct, due weight must be accorded to the debtor's pressing necessities and financially constrained circumstances.

The object of arrest and detention is to afford an effective remedy to the decree-holder by committing the judgment-debtor to civil prison where it is demonstrated that he wilfully neglects to discharge the decretal amount despite possessing the means to do so. Simultaneously, the provision acts as a safeguard for bona fide debtors whose failure to pay arises from legitimate and justifiable incapacity rather than intentional default.

In furtherance of fairness and procedural justice, the court is mandated to grant the judgment-debtor a meaningful opportunity of being heard. This safeguard functions as a corrective mechanism, ensuring that once a decree is passed in favour of the decree-holder, a real and enforceable remedy is available against a judgment-debtor who deliberately fails to comply.

Arrest and detention of judgment-debtors, as a mode of execution of a decree, must therefore be employed sparingly and only in circumstances where wilful neglect or fraudulent evasion of payment is clearly

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<sup>6</sup> (1980) 2 SCC 360

established, and not where non-payment stems from genuine financial inability.

## **JUDICIAL PRECEDENTS**

### **I. *Xavier vs Canara Bank*<sup>7</sup>**

Hon'ble Supreme Court held that while harmoniously construing execution of arrest and Article 11 of ICCPR Hon'ble High Court of Kerala held that if the debtor has the means but refuses to pay, it is not violative of Article 11 of the ICCPR.

### **II. *Kalidindi Rama Raju Vs. Vijaya Bank (Nationalised), Bhimavaram, W.G.Dist.*<sup>8</sup>**

Hon'ble Andhra Pradesh High Court held that "The courts may also examine whether other modes of recovery are available to the decree holder and it is necessary order arrest for recovery of amount and whether the Judgment Debtor are wilfully and intentionally neglecting to discharge the decree debts and courts may examine the relevant circumstances also in this regard".

### **III. *In Korada Narayana Rao Vs. Kudara Mutyalu*<sup>9</sup>**

Hon'ble Supreme Court held that "As held by Courts on many earlier occasions, unless there is a deliberate intention not to pay despite possessing sufficient means, an order of arrest should not be granted."

### **IV. *P.G. Ranganathan Padayachi V. Mayavaram Financial Corpn. Ltd*<sup>10</sup>**

Hon'ble Madras High Court held that The Court is required to record reasons for its satisfaction for detention of the judgment-debtor. Recording of reasons is mandatory.

<sup>7</sup> 1969 SCC OnLine Ker 147

<sup>8</sup> 2001 SCC OnLine AP 562

<sup>9</sup> 2018 (0) Supreme (AP) 899

<sup>10</sup> 1973 SCC OnLine Mad 9

## **Part - II**

### **ATTACHMENT OF PROPERTY IN EXECUTION**

Attachment of property constitutes a fundamental and efficacious mode of execution under the Civil Procedure Code, governed principally by Order 21 Rules 41 to 57 and Sections 60 to 64. Through attachment, the law secures the assets of the judgment-debtor and restrains their alienation or dissipation, thereby preserving the property's availability for the satisfaction of the decree and ensuring that judicial mandates do not remain illusory.

The scheme of the Code contemplates attachment at two distinct stages. The first arises prior to the pronouncement of judgment, as provided under Order 38 Rules 5 to 13, and is preventive in nature. The second and more consequential stage operates after the passing of a decree and includes attachment of movables, immovable property, salary, decrees, and negotiable instruments. The present discussion is confined exclusively to this post-decretal form of attachment, which functions as a substantive instrument of execution.

Before directing attachment, the court must reach a clear satisfaction that the judgment-debtor possesses an attachable interest in the property and that such property is not exempt from attachment under the Code. Upon such determination, the court is further required to prescribe the appropriate mode of attachment. Attachment may be effected by actual seizure, by an order prohibiting the judgment-debtor or any other person from transferring or dealing with the property, or by creating a charge upon the debtor's interest therein each method tailored to the nature of the property sought to be attached.

Section 64 of the Code reinforces the sanctity of attachment by declaring that, once attachment has been effected, any private transfer, delivery, or alienation of the attached property or of any interest therein is rendered legally ineffective as against claims enforceable under the attachment. In cases involving shares or negotiable instruments, any payment made to the judgment-debtor in contravention of the attachment, including dividends or other monetary benefits, is void against the attaching creditor. However, bona fide contracts entered into and duly registered prior to the attachment remain protected and do not stand invalidated merely by the subsequent attachment.

The law further tempers the power of attachment with accountability. Where a court subsequently finds that an attachment was obtained on insufficient or unjustified grounds, it may, upon the application of the defendant, direct the payment of reasonable compensation for the injury suffered, subject to the statutory ceiling prescribed by the Code. This safeguard ensures that attachment, while a potent weapon of execution, does not degenerate into an instrument of oppression.

### **WHAT PROPERTY CAN BE ATTACHED**

In Execution Proceedings provided for attachment of the property of the Judgment debtor is provided under different Rules of Order 21 of Civil Procedure Code. It also provides for the manner of the attachment of movables and agricultural property and custody of the movables and agricultural property.

**Sections 60 of Civil Procedure Code provides what property can and can not be attached**

**The following property can be attached**

1. Movable property
2. Agricultural produce
3. Debt, Shares and movable property not in the possession of the Judgment debtor
4. Attachment of share in the movables
5. Attachment of Salary of Govt. Employees, Railway Company or Local Authority
6. Attachment of salary or allowances of private employees
7. Attachment of partnership property
8. Attachment of Negotiable Instruments
9. Attachment of property in the custody of Court or Public Officer
10. Attachment of Decree
11. Attachment of Immovable property

**The following property can not be attached**

1. 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;
2. 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;

- 3.** Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;
- 4.** Books of account;
- 5.** A mere right to sue for damages;
- 6.** Any right of personal service;
- 7.** Stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;
- 8.** The wages of labourers and domestic servants, whether payable in money or in kind;
- 9.** Salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance: 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; one-third of the salary in execution of any decree for maintenance;
- 10.** Any allowance forming part of the emoluments of any servant of the Government;

- 11.** Servant of a railway company or local authority which the appropriate Government may, by notification in the Official Gazette, declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;
- 12.** Any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and
- 13.** 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.
- 14.** A right to future maintenance;
- 15.** Any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and
- 16.** 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.

All claims or objections challenging the attachment of property on the ground that it is not liable for attachment must be filed before the executing court. However, the court will not entertain such applications if the property has already been sold or if the claim is deliberately delayed.

<b><u>TYPE OF PROPERTY</u></b>	<b><u>MODE OF ATTACHMENT</u></b>
Movable property in possession of judgement debtor	by actual Seizure and sale if the property is subject to speedy and natural decay.
Movable property not in possession of judgement debtor	by order prohibiting person in possession from giving it to judgement debtor.
Negotiable instrument	by actual seizure and bringing it to court.
Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.
Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.
Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.
Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.
Partnership property	by making an order of <ol style="list-style-type: none"> <li>1. Attaching the interest share of the partner and partnership.</li> <li>2. Appointing a receiver of the share.</li> <li>3. Directing production of accounts.</li> <li>4. Ordering sale of such interest.</li> </ol>
Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court
Decree for payment of money or Sale in enforcement of a mortgage or a charge.	By an order of such court.
Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.
Immovable property	By an order prohibiting judgement debtor from charging or transferring it.

## *Important Provisions in Attachment*

### **PRECEPT**

A precept is a formal directive issued by the court which has passed the decree, directing another court of competent jurisdiction to execute the decree by effecting attachment of property belonging to the judgment-debtor. Under Section 46 of the Code of Civil Procedure, the executing court may, upon the application of the decree-holder, issue a precept to the court within whose territorial jurisdiction the property of the judgment-debtor is situated, authorising it to attach the property specified therein.

The principal object of attachment by precept is to enable the decree-holder to obtain an interim and protective attachment of the judgment-debtor's property located beyond the jurisdiction of the court which passed the decree, particularly in circumstances where there exists a real apprehension that the fruits of the decree may otherwise be defeated. A precept thus operates as a preventive safeguard against the alienation or dissipation of the judgment-debtor's property situated outside the jurisdiction of the decree passing court, thereby securing the legitimate interests of the decree-holder. As a general rule, the attachment effected in pursuance of a precept remains operative for a period of two months, unless extended in accordance with the proviso to the section.

### **GARNISHEE**

Garnishee proceedings provide an efficacious mechanism whereby a decree-holder may reach money or property of the judgment-debtor that is in the hands of a third party namely, a person who is himself indebted to the judgment-debtor.

Through this process, the executing court is empowered to direct such third party to satisfy the debt owed to the judgment-debtor by making payment directly to the decree-holder.

Any payment made by the garnishee in obedience to the order of the court operates as a valid and complete discharge of the garnishee's liability to the judgment-debtor. The primary object of a garnishee order is to render the debt due from the debtor of the judgment-debtor immediately available to the decree-holder in execution, without compelling him to institute a separate suit.

Thus, attachment of property under the CPC embodies a calibrated balance firm enough to enforce decrees with efficacy, yet restrained enough to prevent abuse affirming the principle that execution is not an act of vengeance, but a disciplined extension of justice itself.

Execution is the true test of the judicial system. Arrest and detention in civil prison and attachment of property are vital enforcement mechanisms under the CPC, but their efficacy depends on proactive judicial management and systemic reforms. By adhering to statutory provisions, strictly following the Supreme Court's binding guidelines in Periyammal (Dead) through Lrs & Ors. vs. V. Rajamani & Anr. (Supra) and leveraging technology and structural reforms, courts can ensure that decrees are not reduced to mere paper pronouncement. Effective execution is indispensable to uphold the rule of law and public confidence in the judiciary.

***“Interest Reipublicae ut sit finis litium”***

***It says that - It is in the interest of the state that  
there must be an end to litigation***

## Part - III

# STRATEGIES FOR TIMELY AND EFFICIENT ENFORCEMENT

*"lex semper dabit remedium"*

It means that "THE LAW WILL ALWAYS GIVE REMEDY"

### CONSTRAINTS AFFECTING EXECUTION:

The Hon'ble Supreme Court in [Rahul S. Shah v. Jinendra Kumar Gandhi](#)<sup>11</sup> noted the challenges and issued directions to ensure that decree-holders are not driven into another long battle after winning their case.

Before discussing strategies for timely and efficient enforcement, it is necessary to first understand the Practical challenges of execution. In Enforcement of Order or decree following common challenges arises:

1. **Delay in Execution Proceedings** – multiple adjournments, procedural technicalities.
2. **Concealment of Assets by Judgment-Debtors** – debtors transfer or hide property.
3. **Ineffective Role of Court Officers** – bailiffs, process servers, etc., often lack efficiency or integrity.
4. **Multiplicity of Litigation** – judgment-debtor files objections, appeals, or new suits to stall execution.
5. **Inadequate Use of Technology** – lack of asset-tracing mechanisms, poor inter-departmental coordination.

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<sup>11</sup> (2021) 6 SCC 418

## **STRATEGIES:**

As per the various directions and strategies issued by Hon'ble Supreme Court to ensure that the challenges that come across during the execution proceeding are curbed for effective and timely enforcement of the decree:

### **1. Early Disclosure of Assets**

The biggest hurdle in execution is when the judgment-debtor conceals or transfers assets. If assets are disclosed early, enforcement becomes straightforward.

In motor accident claim cases and matters relating to recovery of money, substantial procedural efficiency can be achieved if, at the stage of adjudication of the original proceedings itself, the bank account details of the respondent/non-applicant (such as an insurance company) are duly obtained and placed on record.

Such a measure ensures that, at the stage of execution of the decree, in the event the non-applicant fails or neglects to deposit the adjudicated amount, the executing court is already equipped to enforce compliance. By directing restrictions on the operation of the concerned bank account, the court can exert effective pressure upon the judgment-debtor to deposit the decreed sum without unnecessary delay, thereby preventing frustration of the decree-holder's lawful entitlement.

This approach not only expedites the execution process but also discourages wilful non-compliance, ensuring that decrees particularly in compensation-related matters do not remain mere paper orders.

### • **Judicial Recognition**

- In **Rahul S. Shah v. Jinendra Kumar Gandhi**<sup>12</sup>, the Supreme Court held that trial courts should insist on **mandatory asset disclosure** at the time of filing the written statement itself.
- These directions have been reiterated by the Hon'ble Supreme Court in **Periyammal (Dead) through LRs & Ors. vs. V. Rajamani & Anr. Etc.**<sup>13</sup>

### **Illustrative Examples**

#### **(i) Motor Accident Claim Cases**

Suppose a Motor Accident Claims Tribunal awards compensation against an insurance company. If the bank account details of the insurer have already been recorded during the trial, and the insurer fails to deposit the awarded compensation within the stipulated time, the executing court may promptly direct freezing or restriction of the said account. Such action compels swift compliance, ensuring timely relief to the victims or their dependents.

#### **(ii) Money Recovery Suit**

In a decree for recovery of money against a corporate respondent, prior disclosure of bank account particulars enables the court to restrain the operation of the account upon default. Faced with such restriction, the judgment-debtor is left with little choice but to deposit the decretal amount, thereby avoiding prolonged execution proceedings.

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<sup>12</sup> (2021) 6 SCC 418

<sup>13</sup> 2025 SCC Online SC 507

## **2. Efficient Use of Arrest and Detention**

Courts should use arrest as a last but firm resort to prevent the message that decrees can be disobeyed with impunity.

### **• Judicial Recognition**

*Jolly George Varghese v. Bank of Cochin*<sup>14</sup>– The Court held that a debtor cannot be detained merely for inability to pay. There must be proof of bad faith or dishonest refusal.

## **3. Proactive Attachment of Property**

- Use **Order 21 Rule 41 CPC**, which empowers courts to summon the debtor for oral examination regarding assets.
- Immediate **attachment before judgment** under Order 38 Rule 5 CPC if there's likelihood of asset transfer.
- Use of **e-auction portals** for sale of attached assets.

### **• Judicial Recognition**

- *Shyam Singh v. Collector, District Hamirpur*<sup>15</sup> – The Supreme Court held that attachment must be real and effective, not merely symbolic.
- *Satyawati v. Rajinder Singh*<sup>16</sup>– The Court lamented delays in execution, observing that a decree-holder should not be driven to endless litigation to realize the fruits of a decree. The Court emphasized **swift attachment and sale**.

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<sup>14</sup> (1980) 2 SCC 360

<sup>15</sup> (1993) supp (1) SCC 693

<sup>16</sup> (2013) 9 SCC 491

#### **4. Reducing Procedural Delays**

- Fixing **strict timelines** for each stage of execution (attachment, auction, delivery). Limiting adjournments; adopting a “**zero-tolerance**” **approach** towards frivolous objections.
- Using **summary disposal** of objections filed under Section 47 CPC.
- Section 5 of Limitations Act is not maintainable in execution proceedings. If execution application is filed before 2 years from decree, no notice under Order XXI Rule 22 of C.P.C. be sent. Notice not necessary if Court feels that unreasonable delay will be caused. In cases of salary attachment, no notice to pay disbursing officer is necessary. It is sufficient if attachment warrant is sent to him.

#### **• Judicial Recognition**

- **Rahul S. Shah (2021)**<sup>17</sup> – The Supreme Court directed all High Courts to issue practice directions to ensure time-bound execution, avoiding unnecessary adjournments.
- **Satyawati (2013)**<sup>18</sup> – Again emphasized that the decree-holder must not be left to chase justice for decades.

#### **5. Strict Scrutiny Before Granting Stay**

Many decree-holders suffer because appellate courts grant automatic stays on execution. This encourages dilatory tactics. Stay of proceeding is the obstacle for early disposal of execution proceeding. This is where the proceedings get stuck without any progress. If we strictly follow the provision and decisions of High Court and Supreme

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<sup>17</sup> (2021) 6 SCC 418

<sup>18</sup> (2013) 9 SCC 491

Court delay will be considerably cut down and justice will be done in time. Court cannot stay of execution of its own decree.

Only under Order 41 Rule 5 C.P.C, stay can be granted by Trial Court, but for fixed time only. No stay can be granted if appeal is filed with delay condonation petition. If Court is satisfied that appeal is pending, then no purpose in keeping the execution proceeding pending. Execution proceeding can be dismissed with liberty to file fresh execution petition after disposal of appeal.

- **Judicial Recognition**

- **Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI**<sup>19</sup> – The Supreme Court held that **interim orders, including stays, should not continue indefinitely**, and they should automatically lapse after six months unless specifically extended.

- In the case of **Radhey Shyam v. Chhabi Nath**<sup>20</sup>– The Court stressed that **execution should not be stalled mechanically**; reasons must be recorded.

- Courts should insist on **deposit of decretal amount or security** as a condition before granting stay, so that the decree-holder's interests are protected.

## **6. Technology Integration**

- Integrating courts with UIDAI, banks, land registries, RTO databases, company registrars.

- Adoption of e-filing and e-auctions for attachment and sale.

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<sup>19</sup> (2018) 16 SCC 299

<sup>20</sup> (2015) 5 SCC 423

- Example: The Delhi High Court has initiated “Execution Cell” with digital records to track assets quickly.

- **Judicial Recognition**

- **Rahul S. Shah Case** – Directed High Courts to frame rules for technology-driven execution, including linking courts with land and asset databases.

## **7. Capacity Building and Training**

- Regular training programs for judges on **asset tracing, handling objections, and human rights safeguards.**

- Formation of **special execution wings** in every district court.

- Accountability mechanisms for bailiffs and process servers. Clerks of the civil courts must be made aware as to what entry has to be made and what documents necessarily be attached with processes of warrants of attachment/ seizure/ delivery of possession, before sending it Nazarat for execution. The ministerial staffs must equip themselves with knowledge of latest technology.

- **Judicial Recognition**

- In **Rahul S. Shah Case**, the Supreme Court **stressed training of judicial officers and sensitization of staff.**

## **8. Accountability and Monitoring**

- **Periodic monitoring** by High Courts of pending execution cases.

- Annual statistics on **Shyam Singh v. Collector, District Hamirpur**<sup>21</sup> execution disposal to assess efficiency.

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<sup>21</sup> 1993 Supp (1) SCC 693

- Fixing accountability of court staff where deliberate delay is noticed. A duty should be cast upon the Nazir to submit a monthly report as to how many decrees or orders have been assigned to him for execution by different executing courts and what steps have been taken by him. The report must be submitted timely to the Judge-in-Charge/the PDJ/the executing court concerned.

- All court staffs/nazir/process server dealing with the matters of execution of decrees or orders must strictly submit their report within a time schedule to be framed. In case of violation of the time frame liability should be fixed.

- **Judicial Recognition**

- **A. Venkatasubbiah Naidu v. S. Chellappan**<sup>22</sup>– Supreme Court said courts have an obligation to ensure that **decree-holder gets the benefit of decree without delay.**

- **Surya Dev Rai v. Ram Chander Rai**<sup>23</sup>– Reinforced that supervisory powers under Article 227 must be exercised to check arbitrary delays in execution.

## 9. Assistance from police personnel

- Execution Courts may take assistance from police officials. Generally Execution Court takes much time in ensuring the deputation of police force or Executive Magistrate for peaceful execution of decree / order when the Nazir in course of executing the writ of that in course of execution of decree there was possibility of law and order problem. Execution Courts may be informed annually with regard to cost of each cadre of police officials to be deputed for execution of decree / order so

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<sup>22</sup> (2000) 7 SCC 695

<sup>23</sup> (2003) 6 SCC 675

that the earliest possible directions for deposition of cost for deputation of police officials/ Executive magistrate may be issued at the earliest.

• ***Judicial Recognition***

- In ***Rahul S. Shah Vs. Jinendra Gandhi & others***<sup>24</sup> Hon'ble Apex Court has also directed that “the Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree”.

***“Fiat Justitia ruat caelum”***

*In words of Hon'ble Justice Krishna Iyer*

***“Let justice be done though the heavens fall”***

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<sup>24</sup>(2021) 6 SCC 418

# **HIGH COURT OF CHHATTISGARH : BILASPUR**

## **DIRECTIONS FOR DEALING WITH SUITS AND EXECUTION PROCEEDINGS**

**No. 6834/Rules/2021**

**Bilaspur, dated 15/07/2021**

In compliance of the direction of Hon'ble Supreme Court issued in exercise of jurisdiction under Article 142 read with Article 141 and 144 of the Constitution of India in Civil Appeal Nos. 1659-1660 of 2021 titled "Rahul S Shah V/s Jitendra Kumar Gandhi & Ors.", the below-mentioned directions are issued in larger public interest so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law, to all Court subordinate to this High Court dealing with suits and execution proceedings for mandatorily compliance, which shall remain enforceable until relevant Rules are made by the High Court in exercise of powers under Article 227 of the Constitution of India and Section 122 of CPC-

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X In relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.
5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
8. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any 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.
9. 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.
10. The Court must 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.
11. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
12. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
13. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

**The above directions for dealing with suits and execution proceedings shall come into force with immediate effect.**

**Strict compliance of the above directions be ensured.**

By order of Hon'ble the High Court

**(Deepak Kumar Tiwari)**  
**Registrar General**

## CONCLUSION

***“LEX DILATIONES ABHORRET “***

***THE LAW ABHORS DELAY***

The execution proceeding is primarily designed to enforce court decrees and ensure justice through practical implementation of judgments. Hon’ble Justice Dalveer Bhandari has said that the credibility of the entire judicial system is at stake if a decree passed by a competent court is not effectively executed. Execution of decree is not a mechanical exercise.

Among the various modes of execution, arrest and detention of the judgment-debtor and attachment of property serve as effective remedies, but their success depends on being exercised strictly within the framework of law and with due regard to the rights of both parties. Yet, procedural delays, frivolous objections, and weak enforcement mechanisms often dilute their effectiveness and hinder timely relief to the decree-holder.

Therefore, timely and effective execution requires both legal and administrative strategies, including strict adherence to procedural timelines, curbing dilatory tactics, leveraging technology for asset tracing, judicial monitoring of execution proceedings, etc. A proactive role by courts, supported by accountability from both decree-holders and judgment-debtors, is essential to prevent decrees from becoming mere orders and to ensure that justice is meaningfully delivered.

If courts, lawyers and decree holders adopt timely strategies, asset disclosure, use of technology, strict timelines and penal consequences for evasion execution can truly serve its purpose to transform judicial pronouncements into lived justice. Ultimately, the success of the justice delivery system depends not merely on adjudication of rights but on their enforcement. Strengthening the machinery of execution through practical strategies is essential to uphold the rule of law and sustain public faith in the efficacy of the civil justice system.

*“न्याय में इतना विलंब नहीं होना चाहिये कि वह अन्याय लगने लगे ”*

***THANK YOU***



BY  
**DISTRICT AND SESSIONS COURT,  
RAIGARH (C.G.)**