

## Execution of Decrees in India

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The expression 'execution' means enforcement or implementation of the order or judgment passed by the Court. A Decree means an operation or conclusiveness of a judgment and the execution of a Decree is complete when the decree-holder gets satisfied as to its enforcement against the judgment-debtor i.e. receiving of the awarded amount or property, as the case may be. It is the medium by which a decree-holder compels the judgment-debtor to carry out the mandate of the Decree. To take the benefit of a decree, execution proceedings - an Application under Order XXI of the Code of Civil Procedure, 1908 (CPC) have to be filed before the appropriate court/authority within 12 years from the date of Decree.

Different types of Decrees include Preliminary Decree, Final Decree, Partly Preliminary and Partly final, Consent Decree, Ex-parte Decree, Decree passed in appeal, Decree on a compromise petition, and Conditional Decree - Decree with inbuilt conditions forming part of the Decree. The general rule as laid down under Section 38 of CPC is that 'the Decree may be executed either by the court which passed it or by the court to which it is sent for execution. The words 'Court which passed the Decree' includes courts which passed the Decree (court of the first instance) and courts of the first instance in appellate Decree. The executing court cannot question the validity of a Decree or entertain an objection as to the legality or otherwise of the Decree. It must take the Decree as it stands and executes it according to its terms. The executing court must abide by the directions contained in the Decree.

It is true that an executing court cannot question the Decree and has to execute the Decree as it stands, however, this principle has no operation when the objection is based on the effect of the provision of the Act, which deprived the party of his proprietary rights. In these circumstances, the executing Court can refuse to execute the Decree holding that, it has become inexecutable on the account of change in the law. There are, however, some cases where the executing court can go behind the Decree such as Nullity of Decree, Ambiguous Decree and Decree made without jurisdiction. Once the Decree is obtained, depending on the nature of the case, the Decree-holder can choose its mode of execution of the Decree under Section 51 - 54 of the CPC.

### **The procedure of Execution (Approximate timelines)**

- A written application is to be filed in the court that originally passed the decree or the court to which it has been transferred for execution. It shall contain all the essential information such as suit number, name of parties, date of the decree, any appeal preferred or pending, amount due, name of the person against whom execution is sought, and most importantly the mode in which the assistance of the court is required. On filing the Application a lodging number is given for raising of defects – Time limit three weeks from the filing of Application, defects are raised by the registry.
- On raising of defects, the Decree holder must remove all defects and get the same certified by the registry – Time limit one week from raising of the defect by the registry.
- After the executing court has satisfied itself that all defects if any have been cured in the application and has provisionally evaluated, without prejudice to the right of the parties, the correct amount for the execution of the decree concerning the value of the immovable property, it finally gives a number to the Application for further movement. On obtaining of a final number to the Application, process or a show-cause notice is issued by the registry to the judgment debtor, only if, the execution petition is filed after 2 years of the passing of the decree, or is against a legal representative or assignee or receiver where DH is declared to be insolvent – Time limit two weeks from date of the final number.
- Where the person to whom notice is issued under rule 22 does not appear or does not show cause to the satisfaction of the court why the Decree should not be executed, the court shall order the Decree to be executed, by the issuance of Warrant of Sale and/or Warrant of

Attachment. Where such person offers an objection to the execution of the decree, the court shall consider such objection and make such order as it thinks fit – Time limit is about four weeks to eight weeks for the hearing to take place and decision of the registry.

- Once after the court has decided upon the claims or objections (if any), raised by the judgment debtor, against the execution of a decree, the DH shall move an application requesting attachment of immovable property preceding the sale. Though sale can take place without attachment, this shall further help in protecting the interests of the Decree Holder – Time limit is about two weeks from the decision on claims/objection if any and/or final numbering of the Application, whichever is applicable.
- Once the Warrant of Attachment is issued, the same be drawn in writing and posted at a conspicuous place adjacent to the immovable property in question, and also at collector's office if the said property is a land paying revenue to the government. Besides affixing Warrant of Attachment, it shall be publicly proclaimed with the beating of drums and other means. – The time limit is two weeks from the issuance of the Warrant of Attachment.
- Based on the report submitted by the bailiff of Sheriff office, the registry shall issue a Warrant of Sale order in the name of the bailiff to publicly auction as per the details mentioned in the warrant on the date and place specified and report back to court with an endorsement certifying how sale has been executed or the reason why it has not been executed. – The time limit is two weeks from the submission of the report.

#### **Execution of Foreign Decrees in India:**

A foreign Decree or judgment needs to be conclusive in nature. Section 13 of the CPC lays down the test for conclusiveness of a foreign judgment or decree, which says that a foreign judgment would be conclusive in all cases except the following:

- When a court of competent jurisdiction has not pronounced it
- When it has not been pronounced on the merits of the case
- When it has been based on a wrong view of international law or a refusal to recognize the law of India in cases in which such law is applicable
- When the proceedings carried out while obtaining the judgment are opposed to natural justice
- When such a judgment has been obtained by fraud
- When it sustains a claim that had been based on a breach of any law in force in India

Thus, a foreign judgment or Decree shall have to pass the seven tests mentioned above. Otherwise, such foreign judgment or Decree cannot be enforced in India as it will not be regarded as conclusive if it fails any of these tests.

There can be various challenges that can come in the ways for executing a Decree smoothly. The challenges that can be faced by the Decree holder are as follows:

- **Obstructionist proceedings:** The provisions contained in Sections 51 to 74 of the CPC deal with the substantive law relating to the execution of a Decree. The numerous rules of Order XXI of the CPC take care of different situations, providing effective remedies not only to the Decree holder, auction purchaser, and Judgment-debtors but also to obstructionists claiming independent rights, title, and interest in the property. If a third-party is effected by the execution of a Decree, such a third party can make an application to the executing Court to resolve its grievances.
- **Defect in the process of the execution:** There can be procedural defects as the application is not properly filed or some details are missed. These are curable defects and the same can be rectified failing which the decree cannot be executed.

- Defect in serving the Notice under Order XXI Rule 22: The Notice should be sent to the person against whom the decree is to be executed only if the application for execution is filed after 2 years from the decree. It is mandatory to send a notice as it is a show-cause notice whereby a date is fixed as the person against whom the decree is to be executed should explain as to why the decree should not be executed against him. The notice has to be properly served on the party against whom the decree has to be executed failing which the execution cannot proceed.

It can be summarized that Order XXI of the CPC is an independent code in itself and it not only provides a procedure to be followed by the decree-holder to get the fruits of the Decree but also gives an opportunity to the judgment debtor or the third party/ objection petitioner, to raise the grievances or objection in the execution proceeding itself.