

CHAPTER XXIV
Proceedings in Execution

1. Interpretation—In this Chapter the word ‘decree’ includes order.

Application for Transmission

2. Transmission of decree for execution—(a) An application for transmission of a decree to another Court for execution shall be in the form prescribed and shall specify the Court to which the transmission of the decree is sought and whether the decree has already been satisfied in part and if so, to what extent. The same shall be supported by an affidavit. It shall also be accompanied by a certified copy of the decree or an application for the same.

(b) The Registrar shall transmit by registered post at the cost of the applicant the certified copy of the decree together with the other documents mentioned in Order XXI, Rule 6 of the Code to the Court to which the transmission is sought in accordance with the provisions of Rules 4 and 5 of Order XXI of the Code.

Application for Execution

3. Application under Order XXI Rule 15 to be supported by affidavit—An application under Rule 15 of Order XXI of the Code shall be in the prescribed form and supported by an affidavit.

4. Checking and admission of execution petition—Applications for execution shall ordinarily be checked in the order in which they have been filed by reference to the Registrar of Civil Suits and all objections thereto, if any, shall be noted therein and then be submitted to the Registrar, for orders. All application for execution, when admitted, shall be entered in the Register of execution applications.

5. Procedure in execution application under Order XXI Rule 15—When an application is made by one or more of several joint decree-holders, unless a written authority signed by the other decree-holders for the applicant to execute the decree and to receive the money or property recovered is filed in Court, the Court or the Registrar, may give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not jointed in the application and may also give notice of any application for payment or delivery to the applicant of any money or property recovered in execution.

6. Procedure when cause not shown—When execution is for arrest of a judgment debtor and the judgment-debtor does not appear on the day of hearing fixed under the notice issued or on

such other day to which the hearing thereof is postponed, the notice and the affidavit of service thereof shall be filed and the Registrar, shall thereafter, place the matter before a Judge in Chambers for orders.

7. Registrar not to issue execution simultaneously against person and property—Execution shall not issue against the property of a judgment-debtor at once with the issue of execution against his person. But a judgment-creditor desiring to proceed against both simultaneously, shall apply to the Court and in case of such application being refused, shall not be allowed to include the costs thereof in his costs as against the debtor without the special order of the Court. But a warrant for the arrest has not been executed, a warrant for attachment may, at the request of the judgment-creditor, be issued.

8. Application for appointment of receiver in execution of decree—An application for the execution of a decree by the appointment of a receiver under Section 51 and Order XI, Rule 1 of the Code to realise or otherwise deal with property under attachment shall be made to the Court, and such receiver shall, unless otherwise ordered, be subject to the rules of this Court, applicable to persons appointed as receivers of property in a suit.

MODE OF EXECUTION

Execution of Documents

9. Copies of draft to be filed—The decree-holder shall file two copies of the draft referred to in Order XXI, Rule 34(1) of the Code and two copies of the notice in the prescribed form together with the prescribed process fee for service thereof. One of the copies of the draft shall be served on the person directed to execute the document in the manner prescribed for service of summons on the defendant to a suit.

10. Execution of document under Order XXI, Rule 34(5)—Unless otherwise ordered by the Court, a document shall be executed or a negotiable instrument endorsed under Order XXI, rule 35(5) of the Code by the Registrar.

ARREST

11. Deposit with warrant of arrest—With every application for warrant of arrest before or after judgment there shall be deposited with the Registrar a sum of Rs. 5 for the intermediate subsistence of the judgment-debtor, pursuant to Order XXI, Rule 39(i) to (4) of the Code.

Attachment and Sale

12. Application of incumbrancer to be made a party to the suit or to join in the sale—An incumbrancer, not a party to the suit, may at any time before the sale, apply to the Court to be made a party, or for leave to join in the sale; such order shall be made thereon in protection of his right and as to costs as the Court shall deem fit.

13. Receipt of attached property to be given—A bailiff attaching movable property shall, furnish to the judgment-debtor or other person, from whose possession the movable property is attached, a receipt in the form of a list of the said property signed by the said bailiff and take an acknowledgment to that fact on the warrant of attachment.

14. Deposit of cost for removal or maintenance of property—Before making any order for the attachment of live-stock or other movable property, or at any time after any such order has been passed, the Court or the Registrar, may require the person at whose instance the order of attachment is sought or has been made to deposit in Court such sum of money as the Court or the Registrar may consider necessary:

(a) for the removal of the property to the Court premises or other appointed place and its maintenance, guarding and custody till arrival thereat;

(b) for the maintenance, guarding and custody of the property at the Court premises or other appointed place till it is sold or otherwise disposed of; and

(c) for the maintenance, guarding and custody of the property at the place at which it was attached or elsewhere.

In case of failure to deposit such sum within the time prescribed by the Court or Registrar, the Court or Registrar may either refuse to issue or may cancel the order of attachment, as the case may be.

15. Account to be rendered on demand—An account of the expenses actually incurred shall, on demand being made on or before the date of the sale, be furnished to the attaching creditor and to the person whose property was attached. After hearing objections to the account, if any, made within three days of its receipt by a party, the amount that the Registrar finds, to be properly due shall be deducted at first charge from the proceeds of the sale of the property and paid to the attaching creditor along with any balance of the deposit made by him.

16. Restoration of attached property on payment of costs incurred—(a) If in consequence of the cancellation of the order of attachment or for any other reason, the person whose property has been attached, becomes entitled to receive back the live-stock or other movable property

attached, he shall be given a notice by the Registrar that he should take delivery of it within the time specified by the Registrar on payment by him of the charges, if any, found by the Court or the Registrar to have been property incurred and which have not been defrayed or for the defrayal of which, no money has been deposited by the attaching-creditor.

(b) If he commits default in taking delivery of the property by failure to pay the requisite charges or otherwise the Court may order that the property be sold by public auction and that after defraying the charges referred to in sub-rule (a), if any, and the expenses of the sale, the balance of the sale-proceeds be credited to his account.

Sale of Attached Property

17. Notice regarding sale of guns and other arms, etc., attached—Whenever guns or other arms in respect of which licences have to be taken by purchasers under any law in force for the time being or any other articles in respect of which licences have to be taken under any law in force, are sold by public auction in execution of decrees, the Registrar shall give due notice to the District Magistrate concerned, or other appropriate officer, of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchaser of such arms or other articles. No such arm or other article shall be delivered to the purchaser unless he holds a licence for the same.

18. Immediate sale of movable property—In the case of property to be sold under the proviso to Rule 43 of Order XXI of the Code, if such property is in the Court premises in the custody of the Registrar, he may authorise an officer of the Court to sell the same by public auction and may give such directions as to the date and time and place of sale and the manner of publishing the same as the circumstances of the particular case admit.

19. Contents of sale proclamation—In addition to the particulars specified in sub-rule (2) or Rule 66 of Order XXI of the Code, the sale proclamation shall contain a notice that only the right, title and interest of the judgment-debtor is to be sold. The title, deeds or an abstract of the judgment-debtors title, if available, will be open for inspection at the office of the Registrar.

The proclamation shall, whenever such information is available, also state in whose possession and occupation the property is and the tenancy or terms on which any person is in occupation or possession.

20. Appearance judgment debtor—(a) If the judgment-debtor appear before the Registrar pursuant to the notice issued, under Order XXI, Rule 66(2) of the Code, the Registrar shall examine him on any matter affecting his title to the attached property. The judgment-creditor may also examine him on any matter relating thereto. If the judgment-debtor fails to attend, the Registrar shall proceed *ex parte*.

(b) The Registrar may also exercise powers under Order XXI, Rule 66(4). If any documents are produced relating to the attached property by any person, the same shall be left with the Registrar, and shall be subject to his directions both as to their custody pending the sale and their ultimate disposal, such directions being subject to appeal to the Court.

21. Publication of proclamation—Whenever the sale of land or of a house or houses exceeding Rs. 10,000 in value or movable property exceeding Rs. 10,000 in value is ordered, the Registrar shall, with the permission of the Court, advertise such sale in a local newspaper or newspapers.

22. Copy of sale proclamation to be sent to Collector in case of sale of land—When any land or share of land is ordered to be sold in execution of a decree, the Court shall send a copy of the proclamation of sale issued under Order XXI, Rule 67 of the Code of the Collector concerned.

23. Arrest on sale on holidays—No arrest shall be effected and no sale shall be hold in execution on Sundays or during holidays or vacation of the Court, except by leave of the Court or the Registrar.

24. Leave to bid and reserved price—(a) An application for leave to bid by the decree-holder at the sale shall be supported by an affidavit giving reasons why the applicant should be permitted to bid.

(b) In cases in which the Registrar considers that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Registrar to give leave to bid at the sale only on condition that the applicant's bid shall not be less than the amount so fixed, which amount shall as far as practicable, be determined with reference to the market value of the property or of the lot or lots into which the property is divided for sale.

25. Sale—On the day and at the time and place appointed for the sale, the proclamation of sale shall be read out before the property is put up for sale.

26. Postponement of sale or want of sufficient bidding—If there be no bid or the highest bid be below the reserved price (if any), or be deemed insufficient by the Registrar or other officer conducting the sale, he shall postpone the sale and record the reason for such postponement in the bidding paper.

27. Postponement of sale otherwise than under Rule 26—The Registrar or other officer conducting the sale may for sufficient cause postpone the sale. The costs of a postponement rendered necessary by the absence of the Registrar or other officer conducting the sale shall be

costs in the cause. The costs of a postponement made at the request of the party or by reason of his conduct shall be borne by him.

28. Bidding paper—The name of each bidder at the sale of property shall be noted on a paper to be called “the bidding paper”, each bid shall be signed by the bidder and the amount of the bid shall be entered opposite his name. If there be no bid, the words “no bid” shall be written in the bidding paper opposite the property or, as the case may be, the number of the lot. If the highest bid be deemed insufficient, the word “not sold” shall be written opposite the property or the number of the lot. If the property be sold, the highest bid shall be inserted opposite the property or the number of the lot, wherein the full name and address of the bidder be taken and his signature obtained and purchaser shall write his full name opposite such entry and shall add his address and occupation. All notices thereafter served at the address so given shall be deemed to have been duly served on the purchaser.

29. Agent to produce Authority—A person purchasing for another as his duly authorised agent shall produce his authority in writing at the time of bidding, and sign the bidding paper as such, giving the full name, address occupation both of himself and his principal. All notices thereafter served at either of the addresses given shall be deemed to have been duly served.

30. Declaration of purchase—If the highest bid be equal to or higher than the reserved price (if any), the Registrar or other officer conducting the sale shall make an entry in the bidding paper to the following effect.—

“I declare to have been the highest bidder for the purchase of the property above set forth (or of lot No.) for the sum of Rs.”

31. Report of sale—Upon the completion of the sale the Registrar or other officer conducting the sale shall file in Court his report of the sale.

32. Time for confirming sale—A sale of immovable property shall not be confirmed until after the expiration of 30 days from the date thereof.