

CHAPTER 12

Execution of Decrees

Part A GENERAL

1. References—The Law relating to execution of decrees is to be found in Sections 36 to 74, Sections 82 and 135; and Order XXI of the Code of Civil Procedure as amended by the Punjab High Court. These Provisions should be carefully studied and strictly followed. The changes introduced by the Punjab Relief of Indebtedness Act VII of 1934, and the Punjab Debtors Protection Act, II of 1936, also requires careful consideration.

2. Special day to be reserved for execution work—Execution of decrees should receive the same attention from the Courts as original civil work and should be methodically and regularly dealt with, as expeditiously as possible. Where parties have to be heard or evidence recorded in the course of execution proceedings, notice should be given, processes issued and dates fixed as in the case of original suits. As a rule one day during the week should be reserved for execution works so as to ensure proper attention being paid to it; some times two days are necessary. District Judges are responsible for seeing that proper arrangements are made for execution work by all courts subordinate to them.

3. All orders to be recorded by the Judge in his own hand—All orders passed in the execution proceedings should be carefully and distinctly put on record in chronological order. The practice of writing orders at the back of the talbanas or applications at stray places in the file leads to confusion and wastes the time of the Courts and the lawyers. The initial office report should be put up on a separate sheet of paper which may form the first page of the Judge's autograph and all orders except those of a formal nature should be recorded by the Presiding Officer with his own hand in a separate record of proceedings as in a civil suit. Every formal order also should be signed by the Presiding Officer.

4. Distribution of execution work by District Judge—District Judges should record standing orders regulating the distribution of applications for the execution of decrees among the Courts subordinate to them, providing for the disposal of cases in which decrees were passed by officers who have ceased to be attached to the district, and for carrying on the execution proceedings already pending before such officers at the time of their ceasing to be employed therein. In framing such orders, every Court should be required as far as possible, to execute all decrees passed by itself; but, where this is not possible and it is necessary to send the decree to another Court for execution, care should be taken to see that it is a Court of competent jurisdiction [Section 39(2)]. ¹Court shall demand to be a Court of Competent jurisdiction, if at the time of

making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed [Section 39(3) added by Amending Act, 1976].

5. District Judge to see that execution work is not neglected in lower Courts—Close supervision and control should be exercised by District Judges over the execution of degree business pending in all Courts subordinate to them; and where any officer is found habitually to neglect this branch of work or to dispose of it in a perfunctory manner, he should be reported to the High Court.

6. Application for stay of execution—All applications for stay of execution should be treated as urgent.

7. Presiding Officer to see that money realised on warrants has been accounted for—To prevent defalcation, presiding officer should, while hearing execution applications, verify by personal inspection of previous warrants issued by him that any money previously realised by the execution bailiff or process server has been duly accounted for in the Nazir's accounts or otherwise disposed of through those accounts.

Part B

COURTS COMPETENT TO EXECUTE DECREES

1. Courts competent to execute—Section 37 of the Code of Civil Procedure define the Courts by which a decree may be executed. A decree may be executed by, the Court to which passed it, or by any Court to which it is transferred for execution. It should be noted that the expression 'Court which passed decree' has been defined in Section 37 so as to include certain Courts other than Court which actually passed the decree.

2. Transfer of decree fees for preparation of unnecessary documents —When a decree is transferred by the Court which passed it to another Court for execution, the documents mentioned in Order XXI, Rule 6, must be sent to the latter Court. The work in connection with the preparation of these documents should be done by Court officials holding permanent appointments, on payment, in the first instance, by the person applying for the transfer of the decree of a fee of Re. 1. The amount so recovered shall be credited to Government under the head 'XXI-A—Law and Justice—Courts of Law—General Fees, Fines, and Forfeitures—Fees levied by Courts'.

A decree-holder, however, may at his option file with application a copy of his decree duly stamped in accordance with Article 7 of Schedule I, to the Court-fees Act, VII of 1870, and when he does so, he shall be exempted from the fee of Re. 1, prescribed in this paragraph, the remaining documents being prepared by the officials of the Court without further payment by the decree-holder.

3. Execution pending receipt of order of transfer of decree—A provision has been made in Order XXI, Rule 10, Civil Procedure Code as amended by the Punjab High Court, to enable the decree-holder to apply for immediate execution through the Court within whose jurisdiction the

judgment-debtor is, by producing merely the decree and an affidavit of non-satisfaction pending the receipt of a formal order of transfer under Section 39, Civil Procedure Code.

4. Channel of transmission of decree transferred—Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, the Court passing the decree, shall send the same directly to the former Court. But, where the former Court is situate in a different district the Court, which passed the decree, shall send it to the District Court of the district in which the decree is to be executed. (Order XXI, Rule 5 of the Code).

5. Execution of transferred decrees—Under Order XXI, Rule 8 of the Code of Civil Procedure, 1908, a decree sent under the provisions of Section 39 for execution to another district may be executed either by the District Court to which it is sent, or by any Subordinate Court of competent jurisdiction to which the District Court may refer it, and, under Section 42, the Court executing the decree has the same powers of execution as if the decree had been passed by itself. The execution files of such cases should remain with the record of the Court by which the decree is executed, and should not be returned to the Court by which the decree was passed.

6. Amount realised on transfer of decrees to be certified and noted—A certificate showing the extent to which the decree has been executed is required, by Section 41 of the Code of Civil Procedure, 1908 to be sent to the Court which passed the decree, as to execution so certified, and the particulars should be entered in that Court's register of Civil suits under the head 'Return of Execution' in order to prevent a 'double execution' being taken out in any other district.

7. Register of decrees transferred and decrees received by transfer—To ensure compliance with order XXI, Rule 6 of the Code the High Court has prescribed a register in Form XXXVIII of part A-IV of High Court Rules and Order, Volume VI-A, Decrees transferred to other courts and those received by transfer are shown on the two sides of the same page in the register.

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. 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 and such an attachment has remained in force (for three months), the property, on application by the decree-holder may be sold, provided the judgment debtor has not obeyed the decree, otherwise the attachment should be ceased.

The period of six months 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, 1.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.

Comments

The Liquidation Judge, Lahore, made an order for payment of Rs. 1,165-5-0 against the minor respondent. That order was enforceable as a decree, but the lower Courts refused execution on the ground that the minor had not been represented before the Liquidation Court and therefore no decree existed.

Held, that an executing Court has no jurisdiction to criticise or go behind the decree, all that concerns it is the execution of it. If the decree should be annulled, that is not the function of the executing Court. *The Lahore Bank, Limited, In Liquidation v. Ghulam Jilani*, (1924) I.L.R. V Lah. 54. (*Kalipada Sarkar v. Hari Mohan Dalal*, (1916) I.L.R. 44, Cal. 627, and *Rashid-un-Nissa v. Mohammad Ismail Khan*, (1909) I.L.R. 31 All. 572 (P. C.), followed.) (*Jungli Lal v. Laddu Ram*, (1919) 50 I. C. 529 (F. B.), dissented from.)

4. Power of executing Court to decide question arising in execution—Section 47 of the Code of Civil Procedure confer wide powers on the executing Court to decide all question 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 amendment made in the explanation to this Section by Act No. 66 of 1956.

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 tendency 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 XXI, 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—Where the decree is against the Union of India, or the State of public officer in his official capacity, execution shall not be issued on such decree for a period of three months and limitation for execution of such decree commences only after the expiry of three months from the date of decree.

Part D
PAYMENT INTO COURT AND CERTIFICATION OF
PAYMENTS OUT OF COURT

1. Payment or adjustment are to be certified—Order or Rule 2(1) of the Code provides that where any money is paid out of Court or decree of any kind is otherwise adjusted, *e.g.*, (by delivery of goods or through compromise etc.) to the satisfaction of the decree-holder, the judgment debtor or his surety if any shall certify the Court accordingly. However, no payment or adjustment shall be recorded at the instance of the judgment debtor unless:

(a) the payment is made in the manner provided above; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of the decree-holder in his reply to the notice given under sub-rule (2) of Rule 1, Order 21, or before the Court.

2. Application to deposit decretal amount requires no stamp and no talbana required for notice to decree-holder—No stamp duty shall be levied on an application by a judgment-debtor to deposit money under a decree of Court, and no talbanas for the issue of the notice to be given to the decree-holder under Order XXI, Rule 1(2), of the Code of Civil Procedure, should be recovered. The decree-holder should be informed of any payment made by service post-card. The deposit money should be disposed of in accordance with Article 247 of the Civil Account Code, Volume I, and paragraph 161 of the Punjab Treasury Manual.

3. Payment by money order on special form—Under the “Explanation” to the sub-rule (i) of Rule 1, Order XXI, of the First Schedule to the Civil Procedure Code, a judgments-debtor may, if he so desires, pay the decretal amount or any part thereof, into the Court by money order on a form which has been specially approved by the High Court. The form to be used is Indian Money Order Form No. L/M.O. 6 prescribed by the Postal authorities and can be obtained from all Post Offices.

Part E
PROCEDURE ON APPLICATION FOR EXECUTION

1. Form and contents—An Application for execution must be in writing except when an oral application is made under Order XXI, Rule 11(1). Upon an application for execution being filed, the Court shall scrutinize it to see that all the requirements of Order XXI, Rules 11(2), 12, 13, and 14 of the Code of Civil Procedure, 1908, have been duly complied with. The application should state distinctly the mode in which the assistance of the Court is sought and the proceedings should be confined to that mode, unless any amendment has been allowed. When an application is for the attachment of immovable property, special care shall be taken that the specification and verification required by Order XXI, Rule 13, of the Code have been furnished. The Court may also require the applicant to produce the authenticated extract mentioned in Order XXI, Rule, 14 when the property is land registered in the Collector's office.

2. Limitation—The law of limitation as regards applications for execution will be found in Article 136^a of the Indian Limitation Act, 1963. An application for execution must be filed within three years of the date of the final decree, and in the case of subsequent applications, within three years of the date of the final order passed on a previous application made in accordance with law to the proper Court for execution.

By Section 11 of the Punjab Debtors Protection Act the period of limitation has been reduced to six years in certain cases specified therein and the attention of the Courts is directed to that Section.

3. Restrictions placed by Punjab Relief of Indebtedness Act—The restrictions imposed by Section 21(b) of the Punjab Relief of Indebtedness Act, 1934, on the power of a Civil Court to execute its decree in certain circumstances should be carefully noted.

4. Admission and further proceeding—When the application for execution is in order, or has been amended under Order XXI, Rule 17 of the Code of Civil Procedure, 1908, and is within time, the Court shall proceed as directed in Order XXI, Rule 17(4) and shall cause the application to be entered in the proper register. A copy of the decree need not be filed when execution is taken out in the Court by which the decree was passed. If in any case it is not possible to verify the correctness of the application from the Court register, the original decree should be sent for and examined by the Court.

¹**5. Amendment**—According to Rule 17(1), Order 21, if all the requirements of Rules 11 to 14 are not complied with, the Court shall not reject the application straight-way but the Court shall allow the defect to be remedied then and there or within a time to be fixed by it.

If the defect is not so remedied, the Court shall reject the application but it shall not reject the application simply if in the opinion of the Court there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of Rule 11 and shall decide the application provisionally.

6. Duty of Court to ascertain the amount due—Whenever, on an application for the execution of a decree, or whenever in the course of execution proceedings, it is necessary to ascertain the amount of money which is or which remains due under the decree, the judicial officer should from his own conclusion on the matter therefrom. He should not relay on mere *kaifyats* or office notes made by ministerial officers.

7. Several decree-holders—When an application is made to judicial officer, under Order XXI, Rule 15, of the Code of Civil Procedure, for the execution of the whole decree by one or more persons not being all the persons whose favour the decree appears to be, he should cause notice thereof to be given to the remaining decree-holders or their representatives and he ought not to grant the application unless, after all these parties have had an opportunity of being heard, he is satisfied that there is good reason for the application.

8. Several decree-holders—Where the decree is severally in favour of more persons than one specifying what each is entitled to there may be applications for partial execution. But where the decree is jointly in favour of more persons than one, the application must be for the execution of the entire decree, so far as it remains unexecuted or unsatisfied; and if the application is for execution of a fraction or a proportionate part of the decree only, it should be refused.

9. Transferee—When an application for the execution of a decree is made, under the provisions of Order XXI, Rule 16, of the Code of Civil Procedure, by a person claiming to be entitled to the benefit of the decree in consequence of a transfer of the same to him from the original decree-holder by an assignment in writing, the Court must cause notice of the application to be given to the transferor, and it cannot grant the application unless it is satisfied after the transferor has had an opportunity of being heard that the transfer has in fact been effected.

In cases in which the Court grants the application, it should record its reasons for so doing and make an order that thence forward the name of the applicant shall stand on the record as decree-holder instead of that of the original decree-holder. ⁴(The provisions of this rule do not affect the representatives) and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree).

10. Notice to judgment debtor—When an application is made more than two years after the date of decree or against the legal representatives of a party to the decree, the Court must first issue a notice to the person against whom execution is applied for requiring him to show cause why the decree should not be executed against him unless the case falls within the proviso to sub-rule 1 of Rule 22 of Order XXI, or the Court dispenses with the notice under sub-rule (2) of the same Rule in which later case the failure to record any reasons is now deemed to be only an irregularity not amounting to a defect in jurisdiction (vide the Rule as amended by the Punjab High Court).

11. Attention to service of process—Attention is invited to the provisions of Order XXI, Rules 24 and 25, regarding processes for execution. Rule 24 requires that in every case a day specified on or before which the process is to be executed. Rule 25 makes it incumbent on the Court to examine the officer executed, with the execution, when the process is not duly executed, to satisfy itself as records the reasons for its non-execution and to record the result of its inquiry. If

the Courts make careful inquiry in such cases and do not blindly accept the reports on the processes, the percentage of infructuous applications will appreciably diminish.

12. Address for service—It should be noted that according to order XXI, Rule 104, Civil Procedure Code, as framed by the Lahore High Court, service on any party shall be deemed to be sufficient in execution proceedings if it is effected at the address for service referred to in Order VIII, Rule 11, Civil Procedure Code, subject to the provisions of Order VII, Rule 24, Civil Procedure Code. This rule, however, does not apply to notices prescribed by Order XXI, Rule 22, Civil Procedure Code, to show cause against execution in certain cases.

13. Period of pendency—Execution Proceedings, will for statistical purposes, be considered as only pending for the period during which something is being done towards execution. If the decree-holder has realized his instalment, or obtained the satisfaction asked for in the application for execution, the case should be struck off, even though a portion of the decree still remains unexecuted. Similarly, the case should be dismissed if the applicant for execution does not take necessary steps to prosecute his application. The Court should record its reasons for the action taken in such cases.

14. Attachment of monies due to Judgment debtors—A case in which the Judgment-debtor prays for a prohibitory order for the attachment of monies due to the judgment-debtor (whether as his salary or otherwise) should be dismissed as soon as the prohibitory order has been duly served and the file should be sent to the Civil Nazir.

The subsequent realisation of the moneys concerned forms part of the ministerial duties of the Civil Nazir. If for any reason, such realisation is not promptly and satisfactorily effected, the judgment-creditor can ask the Court to take necessary action.

Part F EXECUTION BY ARREST AND IMPRISONMENT

1. References—The law regarding arrest and imprisonment is contained in Section 51, 55 to 59, 135, 135-A and 136, Order XXI, Rules 21, 37 to 40, Order 38, Rules 1 to 4 of the Civil Procedure Code and the Punjab Relief of Indebtedness Act, Section 34.

2. Persons exempted from arrest—A woman is exempt from arrest or detention in execution of a decree for money. (Section 56 of the Code).

For other persons exempt from arrest under Civil Procedure Code *see* Sections 135 and 135-A of the Code.

For exemption on the grounds of illness see Section 59.

3. Present Law of arrest—In view of the amendments made in Order XXI, Rule 37 of the Code by Act XXI of 1936 the Court shall issue a notice to the judgment debtor before issuing a warrant of his arrest in execution of the decree unless the Court is satisfied, by affidavit or otherwise, that the judgment-debtor is likely to abscond or leave the limits of the jurisdiction of

the Court with the object or effect of delaying the execution of the decree. Under Section 34, of the Punjab Relief of Indebtedness Act as substituted by Punjab Act XII of 1940, no debtor as defined in that Act shall be arrested or imprisoned in execution of a decree from money.

4. Judgment-debtor should be asked whether he wants to be declared insolvent—A judgment-debtor against whom no act of bad faith is proved can obtain his discharge as an insolvent under Act V of 1920; whenever a judgment-debtor is to be committed to jail, he should be informed that he may apply to be declared insolvent [Section 55(3) of the Code].

5. Expenses of arrest and imprisonment—A judgment-debtor cannot be arrested in execution of a decree unless and until the decree-holder has paid into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court. When the judgment-debtor is committed to the Civil prison, the Court must fix such monthly allowance for the subsistence of the judgment-debtor as it thinks fit. The first payment shall be made by the decree-holder to the proper officer of the Court for such portion of the current month as remains unexpired at the time. All subsequent payments must be made to the officer-in-charge of Civil prison in advance before the first day of each month (Order XXI, Rule 39, Civil Procedure Code).

Sums disbursed by the decree-holder for the subsistence of the judgment shall be deemed to be costs in the suit (*Vide* Order XXI, Rule 39(5), Civil Procedure Code as amended by the Punjab High Court).

6. Arrest during vacation—Warrants of arrest should be held in suspense during the September Vacation.

Part G
EXECUTION OF DECREES FOR THE DELIVERY OF
IMMOVABLE PROPERTY

The steps to be taken, under Order XXI, Rules 35 and 36 of the Code of Civil Procedure, 1908, in the case of the delivery of immovable property are as follows:

(a) *When the property is in possession of a person who is bound by the decree or who hold possession on behalf of one who is so bound*—First, where a decree is for delivery of immovable property if such property is in the possession of any person bound by the decree, such person may be called upon to vacate the property in order that possession may be delivered to the person to whom it has been adjudged or his agent; and if he refuses to do so he may be removed from the property in order to effect such delivery possession. Here the endorsement on the warrant should state that the property was found in the possession of A (naming the person) and that he was one of the persons bound by the decree held on behalf of one of the persons (naming the persons); that he was required to vacate the property, and that, on his doing so, the person entitled under the decree was put in possession, or that, on his refuse to do so, he was removed from the property, and the person entitled under the decree was put in possession.

(b) *Decree for joint possession*—Secondly, where a decree is for joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum at some convenient place the substance of the decree. Here the endorsement on the warrant should state on what part of the property the copy of the process was affixed and at what place the substance of decree was proclaimed.

(c) *Obtaining access to deliver possession*—Thirdly, where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the officers of the Court may (after giving reasonable warning and facility to any woman not appearing in public according to custom, to withdraw) remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Here the endorsement should describe briefly the action taken, as in paragraph (a) above.

(d) *When property is in possession of a person who is not bound by decree*—Fourthly, if the property is in the occupancy of a tenant or other person entitled to occupy it and not bound by the decree to relinquish such occupancy, a copy of the warrant must be affixed in some conspicuous place on the property, and proclamation made as provided in Order XXI, Rule 36, of the Code. Here the endorsement should state that a copy of the warrant had been put up (starting where it was affixed), and that the substance of the decree had been proclaimed.

Before issuing a warrant for the delivery of immovable property, the Court should ascertain from the decree-holder, or his agent, the name of the person whom he believes to be in possession of such property, to guide it in selecting the particular mode of delivery suitable to the case.

When a decree is passed giving possession of agricultural land, the date on which possession is to be delivered should always be specified in the decree, and orders passed as to any standing crops that may be on the land. If this has not been done in the decree, it should be done in the order which is sent to the Collector by the Court executing the decree. If however, no date is specified in either the decree or the order, and the land of which possession is to be delivered is in the cultivating possession of the judgment-debtor, the Collector should at once refer to the Civil Court for instructions as to whether or not he is to delay execution of the decree, until any crop which may have been sown by the judgment-debtor and is standing on the land, has been removed.

Comments

For executing orders about possession of agricultural land, decree is sent to Collector. Civil Court must make mention about standing crops and specify period when possession is to be given. If it is silent, then Collector should return decree to Civil Court for doing the needful. *Arya Dutt v. State*, (1974) 75 PLR 245 (Delhi).

Part H
ATTACHMENT

1. Attachment of standing crops, trees and salary—The law as to attachment is contained in Sections 60-64 and Order XXI, Rules 41-57, Civil Procedure Code and Section 141, Punjab Land Revenue Act, 1887.

The changes made in Rules 43, 43A, 43B, 43C, 43D, 45, 53 and 54 of Order XXI by the Punjab High Court (*vide* Chapter 21) should be noted as also the fact that in the Punjab standing crops, excepting cotton and sugar-cane, are not now liable to attachment or sale in execution of a decree [*vide* Section 10(1) of Punjab Debtor's Protection Act]. Standing trees apart from land on which they stand, are also exempt from sale [*vide* Section 10(2) of the Punjab Debtor's Protection Act].

Attention is drawn to the amendment of Section 60 of the Code of Civil Procedure by Act No. 66 of 1956 and 104 of 1976. Now in execution of decrees for maintenance only one-third of the salary would be exempt from attachment irrespective of the amount of the salary. In execution of decrees other than decrees for maintenance salary to the extent of first hundred rupees and one-half of the remainder shall be exempt from attachment. Servants of the Government or railway Company or local authority are given further protection as regards the periods for which their salary can be attached in execution of decrees other than decrees for maintenance.

2. Mode of attachment of immovable property—The mode of attaching immovable property is by issuing a prohibitory order to the judgment debtor and to the public generally. (It shall require the judgment debtor to attend Court on a specified date to take notice of the date so fixed for settling the terms of the proclamation of sale). (The order shall also take effect, as against of person claiming under a gratuitous transfer from the judgment-debtor, from the date of attachment, as against others from the date they had knowledge of the passing of the order of attachment or from the date of proclamation, whichever is earlier (Order XXI, Rule 541), when the property is land paying revenue to the Government, three copies of the prohibitory order shall be prepared. In the case of other immovable property, only two copies are necessary. The details given in the schedule annexed to the order shall be identical with those given in the schedule of the property given in the warrant strict compliance with the provisions of law is necessary to make the attachment valid.

3. Mode of attachment of immovable property—The warrant, together with the requisite copies of the prohibitory, order shall be delivered to the Nazir who will himself, or through his subordinates, fix up the copies and proclaim the order, in accordance with the directions given in the warrant. The Nazir will personally make upon the warrant the endorsement required by law, and return it duly endorsed within the specified time to the Court. Any person deputed by the Nazir, who performs any of the acts constituting the attachment, shall submit a separate return starting the manner in which, and the day and hour at which, he did such act. This return will be attached by the Nazir to the warrant. (Where the property is land situated in a cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates officer in whose are that cantonment is situated.

4. Attention to compliance with legal formalities—The attention of all Civil Courts is drawn to the necessity of making it a point to scrutinize the service of warrants of attachment before they take further action with regard to the sale or temporary alienation of the property attached. The attachment of land and houses requires particular care and the Court should thoroughly satisfy itself that all the formalities necessary for a legal attachment, have been complied with. Failure to comply with these legal formalities may constitute material irregularity, within the meaning of Order XXI, Rule 90 Code of Civil Procedure, and may cause very serious trouble and loss to the parties later on. It should be noted that a copy of the attachment order is first to be affixed on the property and then upon the Court house. All Courts will, therefore, require the Reader to record a note on the warrant of attachment or on file, that the specific formalities required by Law in the case, have been actually complied with. The Presiding Officer will carefully scrutinize such note and initial it in token of its correctness.

5. Warrant of attachment of land. Drum beating charges—Where the order is for the attachment of land, the warrant should, in accordance with the provisions of Section 141 of the Punjab Land Revenue Act, XVII of 1887, be addressed to the Collector, and be sent to him for execution, along with the necessary copies of the prohibitory order. The Collector and his office will then be responsible for executing it in accordance with the specified legal formalities, and to affix the necessary prohibitory orders, first on the property and then on the Court house of the Judge issuing the attachment and in his own office. The Collector will return the warrant to the Court concerned when it has been duly executed, with an endorsement under his signature certifying that all the legal formalities required have actually been complied with, and the Court will thereafter proceed as directed in paragraph 4 above.

Payment of drum-beating charges may be allowed to be made at the discretion of the District Judge either:

- (a) in cash at the spot, or
- (b) by postal stamps attached to the warrant, or
- (c) by Indian Postal Orders.

6. Precept—Upon the application of a decree-holder, the Court which passes a decree may issue a precept to another Court to attach the judgment-debtor's property, when this course is convenient, provided that the Court to which the precept is issued is competent to execute the decree (*see* Section 46, Code of Civil Procedure).

7. Effect of dismissal of execution position—Where the Court for any reason, passes any order dismissing the application for execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease (Order 21, Rule 57).

Determination of Attachment. The attachment automatically ceases where the Court for any reason has dismissed the application for execution of the decree (and has omitted to give and discretion to that effect).

Removal of attachment after satisfaction of the decree—In the following circumstances, the attachment may be terminated:

- (1) When all the costs and charges of the decretal amount are paid into the Court.
- (2) Satisfaction of the decree is otherwise made through the Court or certified to the Court.
- (3) The decree is set aside.
- (4) On furnishing the required security by the J.D.
- (5) By compromise between the parties.
- (6) By an express order withdrawing or putting an end to the attachment.
- (7) By sale of the attached property in execution of the decree.
- (8) By abandonment of the attachment by the decree-holder.

8. Notification—The Central Government has issued the following notification under Section 60(1)(L) of the Civil Procedure Code:

The 2nd October, 1940

No. 186/37. In pursuance of Clause (L) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure 1908 (Act V of 1908), the Central Government is pleased to declare that the following allowance payable to any public officer in the service of the said Government, or any servant of a Federal Railway or of a Cantonment authority or of the port authority of a major port, shall be exempt from attachment by order of a Court, namely:

- (1) All kinds of travelling allowances.
- (2) All kinds of conveyance allowances.
- (3) All allowances granted for meeting the cost of:
 - (a) Uniforms; and
 - (b) Rations.
- (4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.
- (5) All house rent allowances.
- (6) All allowances granted to provide relief against the increased cost of living.

(7) A foreign allowance or, in the case of heads of Diplomatic missions, *frais de representation*, assigned to officer serving in posts abroad.

9. Ditto—The Punjab Government has issued the following notification under clause (1) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure:

Home Department

Judicial

The 15th January, 1943

No. 8298-J-42/489—In exercise of the powers conferred by clause (I) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Governor of the Punjab is pleased to declare that the “dearness allowance” payable to any public officer serving the Government in connection with the affairs of the State shall be exempt from attachment in execution of a decree.

10. Officer to whom notices of attachment of salary etc. may be given under Order XXI, Rule 48—In pursuance of sub-rule (1) of Rule 48 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government hereby appoints the officers specified in column 1 of the table below as officers to whom notices of orders attaching the salaries and allowances of the officers specified in the corresponding entries in column 2 of the said table shall be sent.

Table

<i>Officers to whom Notice should be sent</i>		<i>Officers whose salaries and Allowances are attached</i>
Accountant-General, Central Revenues, New Delhi	(1)	Ministry of Finance (Defence), Gazetted Officers
Assistant Financial Adviser, (Establishment), Ministry of Finance (Defence), New Delhi		Non-Gazetted Officers
Controller General of Defence Accounts, New Delhi	(2)	Office of the Controller General of Defence Accounts, New Delhi Gazetted and Non-Gazetted Officers
Controller of Defence Accounts, Eastern Command, Meerut	(3)	Organization of the Controller of Defence Accounts, Eastern Command, Meerut Gazetted and Non-Gazetted Officers

<i>Officers to whom Notice should be sent</i>		<i>Officers whose salaries and Allowances are attached</i>
Controller of Defence Accounts, Western Command, Meerut	(4)	Organization of the Controller of Defence Accounts, Western Command, Meerut Gazetted and Non-Gazetted Officers
Controller of Defence Accounts, Southern Command, Poona	(5)	Organization of Controller of Defence Accounts, Southern Command, Poona Gazetted and Non-Gazetted Officers
Joint Controller of Defence Accounts, Patna	(6)	Organization of the Joint Controller of Defence Accounts, Patna Gazetted or Non-Gazetted Officers
Controller of Defence Accounts, (other ranks), Secunderabad	(7)	Organization of the Controller of Defence Accounts (other ranks), Secunderabad Gazetted or Non-Gazetted Officers
Controller of Defence Accounts (Officers), Poona	(8)	Organization of the Controller of Defence Accounts (Officers), Poona Gazetted or Non-Gazetted Officers
Controller of Defence Accounts (Pensions), Allahabad	(9)	Organization of the Controller of Defence Accounts (Pensions), Allahabad Gazetted or Non-Gazetted Officers
Controller of Defence Accounts (Factories), Calcutta	(10)	Organization of the Controller of Defence Accounts (Factories), Calcutta) Gazetted and Non-Gazetted Officers
Controller of Defence Accounts (Air Force), Dehra Dun	(11)	Organization of the Controller of Defence Accounts (Air Force), Dehra Dun Gazetted and Non-Gazetted Officers

<i>Officers to whom Notice should be sent</i>		<i>Officers whose salaries and Allowances are attached</i>
Controller of Defence Accounts (Navy), Bombay	(12)	Organization of the Controller of Defence Accounts (Navy), Bombay Gazetted and Non-Gazetted Officers

(Government of India, Ministry of Finance (Defence), Notification No. S.R.O. 1417, dated the 15th June, 1956.)

Part J
OBJECTIONS TO ATTACHMENT

1. Full Inquiry—Objection to attachment of property under Order XXI, Rule 58, are frequently responsible for great delay in the disposal of the execution cases. Such objections are at times collusive and should be scrutinised with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Rules 58 and 59 of Order XXI. Adjudication of any claim or objection is appealable like a decree. When the Court dismisses any claim or objection under Order 21 Rule 58(1), the party may file an application under Section 151 CPC for restoration and for re-investigation or he may also file a suit under Order 21 Rule 58(5) within one year from the date of dismissal for default.

2. Power to dismiss objection out trial—It should be noted if an objection appears to have been ‘designedly or unnecessarily delayed’ (or where, before the claim is preferred or objection is made, the property attached has already been sold), the Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 28 CPC for the purpose.

The amendment of Rule 58 of Order 21, CPC by Punjab and Haryana, Delhi and Himachal Pradesh High Court further provides that unless an objection is made within a reasonable time of first attachment a further right to the attachment and sale of the same property can be allowed only if a title acquired subsequent to the date of the first attachment is established).

Part K
CUSTODY AND DISPOSAL OF MOVABLE PROPERTY
PENDING SALE

1. References—Rules relating to the custody and disposal of movable property (other than agricultural produce) attached pending sale, are contained in Rule 43 to 43(D) of Order XXI of the First Schedule to the Code of Civil Procedure (Act V of 1908) as modified or added by the High Court. These have been reproduced in Chapter 21, of this volume.

2. Jewels and portable property to be brought to Court—Light and readily portable articles of all kinds, and especially valuable property of small bulk, such as jewels, etc., shall after seizures, be taken to the headquarters of the Court executing the decree and be made over there to the custody of such officer as the Court may direct.

Note—Property of the nature described in this rule when placed in the custody of the Nazir may be placed by him in his cash chest and lodged in the outer room of Treasury, if it is open, as provided in Order 4(2) of the Punjab Treasury Manual, if it is closed, the Presiding Officer of the Court must make other suitable arrangements for its safe custody.

3. Bulky property and livestock—Livestock and other property which is bulky not readily portable should be dealt within accordance with the second proviso to Rule 43.

4. Form of schedule of property—The schedule of property to be annexed to the bond which a custodian must furnish under the above-mentioned Rule must be in the following form:

Schedule of property attached

Schedule of property attached and made over

to, son of

of, as custodian on the

..... of 19.....

Detail of property Estimated value

Total

Sd/-..... Sd/-.....

Witness Custodian

Sd/-..... Sd/-.....

Witness Attaching Officer

Sd/-.....

Judgment debtor

Directions in regard to attached property
(To be printed on the reverse of the Form)

I. No person can be compelled by the Court or attaching Officer thereof to take charge of attached property as a custodian.

II. A custodian may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust, and delivering to the proper officer of the Court the property made over to him.

III. When any property is taken back from a custodian he should be granted a receipt for the same.

IV. When property is made over to a custodian a schedule of property should be drawn up by the attaching officer in triplicate, dated and signed by—

- (a) the custodian and his sureties;
- (b) the officer of the Court who made the attachment;
- (c) the person whose property is attached and made over; and
- (d) two respectable witnesses.

One copy will be transmitted to the Court by the attaching officer and placed on the record; one copy will be made over to the person whose property is attached and one copy will be made to the custodian.

V. In regard to livestock the following directions apply:

- (a) The custodian is bound to take all reasonable and proper care of any livestock entrusted to him.
- (b) The custodian is responsible for the value of any livestock which he fails to deliver to the Court or its authorized officer, when required so to do. If any livestock is lost or stolen or dies while in the hands of a custodian, such custodian is bound to satisfy the Court that its loss or death was not due to his fault or neglect.
- (c) If the judgment-debtor or any person claiming to be interested in any attached animal has been permitted to make arrangements for feeding the same (not being inconsistent with its safe custody, while it is under attachment), he may, in the case of poultry, milch cows, etc., take the eggs, milk, etc.

5. Arrangement for feeding to be noted on Schedule—Whenever attached property kept in the village or place where it is attached is livestock, a note shall be added on the schedule to show what arrangements have been made for its keep, *i.e.*, whether it is to be fed by the custodian, and, if so, at what charge or by the judgment-debtor or any person interested. If it is to be fed by the judgment-debtor or a person claiming to be interested as permitted by Rule 43-B(1) of Order XXI, the arrangements made should be described on the Schedule to show that they are not inconsistent with its safe custody.

6. Arrangements when value of property is liable to deteriorate—If the property is of such a nature that its value will deteriorate unless special arrangements are made for its storage or for carrying out some preparatory process during the period of attachment the necessary arrangement shall be made and noted at the foot of the schedule; provided that, if in such cases the judgment-debtor and decree-holder agree in writing to the immediate sale of the property the

officer shall proceed to sell it by auction forthwith, after giving such notice to intending purchasers as the circumstances of the case allow.

7. Arrangements subjects to approval of Court—All arrangements made under these rules shall be made subject to the approval and confirmation of the Court executing the decree.

8. Modification of arrangements—If the arrangement made by the attaching officer are modified by the Court, a note of the modifications ordered shall be made on the schedule and such note shall be signed by the parties who originally signed the schedule or a fresh schedule shall be prepared in the manner provided above according as the Court may direct.

9. Release of property—If the Court directs the release of the property in whole or in part, the articles released shall be made over to the person to whom the Court orders there to be delivered, by an officer of the Court, in the presence of the custodian, judgment-debtor and the witnesses mentioned; or, if their presence cannot be conveniently obtained, two other respectable witnesses.

10. Reclamations—If any reclamations are then made, a note of such reclamation shall be made at the time by the officer of the Court, and such note shall be signed by the person making them. The statements of the custodian and witnesses shall, likewise, be recorded on the subject by the officer of the Court, and shall be signed by such custodian and witnesses.

11. Custodian liable for criminal breach of trust—Any person who has undertaken to keep attached property under Rule 43(1)(c) of Order XXI shall not be liable to be proceeded against as a surety under Section 145 (vide Rule 43D), but if the facts disclose that he has been guilty of ‘criminal breach of trust’, he will also be liable to be prosecuted for that offence.

12. Instructions reattachment of property which is not left in local custody—Instructions laid down in Rules 43 to 43D of Order XXI refer, in the main, to cases in which attached property is not removed from the town or village in which it is found by the attaching officer. In cases in which the property is not left in local custody the attaching officer should still, in order to avoid, as far as possible, resistance or obstruction and to facilitate the disposal of claims be careful to attach the property in the presence of two respectable house holders of the village or town where the attachment is made and to draw up a schedule of property attached and to procure their signatures to it.

Part L

SALE OF PROPERTY AND DELIVERY TO THE PURCHASER

1. References—The provisions of the Civil Procedure Code, 1903, on the subject of sales are contained in Order XXI, Rules 64 to 102 as amended by the Punjab High Court (*vide* Chapter 21). Rule 64 to 73 deal with “sale generally”; Rules 74 to 81, with “sale of moveable property”; and Rules 82 to 104 with “sale of immovable”.

2. Settlement of proclamation of sale—Whenever a Court makes an order for the sale of any attached property under Order XXI, Rule 64, it shall, if the property be land assessed to land

revenue, revenue-paying or revenue-free land, or any interest in such land, act as directed in the rules hereinafter prescribed. If the property be of any other description the Court shall fix a convenient day, not being distant more than fifteen days, for ascertaining the particulars specified in Order XXI, Rule 66(2), and setting the proclamation of sale. Notice of the day so fixed shall be given to the parties or their pleaders.

3. Enquiry as to encumbrances from Sub-Registrar's office—(1) If the property be immovable (other than revenue-paying or revenue-free land) the Court may call upon the Sub-Registrar within whose sub-district such property is situated to search his registers and report, before the date fixed for settling the proclamation, to what incumbrances, if any, the property is liable. It is very desirable that such searches should be ordered in all cases, with a view to the prevention of fraud, but it should be noted that they cannot be ordered if the decree-holder is not willing to pay the necessary fees. The fees payable are at the rates prescribed in the second proviso to Article II of the table of registration fees published with Punjab Government notification No. 22850; dated the 25th September, 1923, as amended by Punjab Government notification No. 23759, dated the 15th June, 1932, which are as follows:

Rs. P.

(a) For the first year in the books of which search is to be

made for each entry or document 1.00 1.00

(b) For every other year in the books of which search is

continued for each entry or document 0.25

The fee in each case is subject to a maximum of 5.00

(2) the amount recovered in this behalf by the Court will first be placed in deposit and will then be paid to the Registration Department, by means of repayment vouchers endorsed in their favour.

(3) The report of the Sub-Registrar shall be open to the inspection of the parties, or their pleaders, free of charge, between the time of its receipt by the Court and the settlement of the proclamation of sale.

4. Settlement of proclamation of sale, Estimate of value—On the day so fixed, the Court shall, after perusing the documents, if any, filed under Order XXI, Rules 13 and 14 of the Code, and the report referred to in the preceding paragraph; after examining the decree-holder, and judgment-debtor, if present, and after making such further inquiry as it may consider necessary, settle the proclamation of sale specifying as clearly and accurately as possible the matters required by Order XXI, Rule 66(2), of the Code, in the following form:

Description of property including name of village and boundaries, if	Name of judgement debtor	Extent of interest of judgement-debtor in the property so far as it has been ascertained by the	Details of incumbrances, if any, to which the property is liable so far as they can be ascertained by	Any other known particulars bearing on the nature and value of the property
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necessary		Court	the Court	
1	2	3	4	5

This proclamation for sale is an important part of the proceedings and the details should be ascertained and noted with care. This will remove the basis for many a belated objection to the sale at a later stage.

It is not necessary for the Court itself to give in this proclamation its own estimate of the value of the property. It is sufficient to include in it the estimate, if any, given by either or both of the parties [Proviso added to Order XXI, Rule 66(2)(e) by the Punjab High Court].

The proclamation, when settled, shall be signed by the Judge, and shall be made in the manner prescribed by Order XXI, Rule 67, of the Code.

It should be noted that the period of thirty days and fifteen days mentioned in Order XXI, Rule 68, Civil Procedure Code, has been reduced by the Punjab High Court to fifteen days and one week, respectively.

5. Information obtained after proclamation—If, after the proclamation has been published, any matter is brought to the notice of the Court which it considers material for intending purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale.

6. Costs of proclamation—The costs of the proceedings hereinbefore prescribed shall be paid, in the first instance, by the decree-holder; but they shall be charged as part of the costs of execution, unless the Court, for reasons to be specified in writing, considers that they should, either wholly or in part, be omitted therefrom.

7. Grant of time to debtor to arrange private alienation—Attention is called to the provisions of Order XXI, Rule 83 of the Code, which confers on the Court the power of postponing, at the instance of the judgment-debtor, a sale of immovable property in execution of decree, if it is satisfied that the amount of the decree may be raised by mortgage or lease or private sale of such property or of any other property of the judgment-debtor. Care must be taken that this power is not so exercised as to inflict an injury on the decree-holder.

In clause (3) of Rule 83 quoted above it is expressly laid down that the Rule does not apply to a sale of property directed to be sold in execution of decree for sale in enforcement of a mortgage of, or charge on, such property.

8. Adjournment of sale—The sale shall be held at the time and place specified in the proclamation, unless the Court adjourns it to a specified day and hour, or the officer conducting the sale (with the leave of the Court, if the sale is made in or within the precincts of the Court-house) adjourns it for reasons which must be duly recorded. Whenever a sale is adjourned for a longer period than thirty days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

9. Purchase of auction by decree-holder or officer connected with auction—Attention is drawn to Order XXI, Rule 73, of the Code of Civil Procedure, 1908, which directs that an officer having any duty to perform in connection with any sale in execution of a decree, shall not directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold; and to Order XXI, Rule 72, of the Code, which prohibits the holder of a decree in execution of which property is sold from bidding for or purchasing the property without the express permission of the Court executing the decree. (Similarly mortgagee is also forbidden to bid at sale without the leave of the Court).

10. Decree-holder need not pay sale money—Clause (2) of Rule 84 of Order XXI enables the Court to dispense with the deposit of earnest money when the decree-holder is the purchaser and is entitled to set off the purchase money under Rule 72. Rule 86 makes the forfeiture of earnest money optional.

11. Submission of statements of forfeiture of earnest money.

12. Purchase money : its payment to decree-holder or its refund. Refund of commission—Purchase money deposited in Court upon the sale of immovable property shall be retained by the Court until the expiry of a period of fifteen days from the date of the order confirming the sale. If no notice of an appeal having been presented by the party seeking to set the sale aside, be given to the Court within that period, the purchase money less the sum which has to be credited to Government or paid to the Court Auctioneer as commission on the sale (*see* paragraph 22) may be paid on the demand of the decree-holder. If such notice be given within the prescribed period, the purchase money shall be retained in deposit until the appeal is decided, unless the party at the time entitled to receive it gives security, to the satisfaction of the Court to repay it at any time when he may be required by the Court, so to do.

13. The changes introduced by the Punjab High Court in Order XXI, Rule 89, Civil Procedure Code, require careful attention (*vide* Chapter 21).

14. Application to set aside—Applications for setting aside sales are frequently made under Order XXI, Rule 90, Civil Procedure Code. An application under this Rule can be made not only by the decree-holder or person entitled to rateable distribution in the assets but also by any person “whose interests are affected by the decree”. But the grounds on which such an application can be made are restricted and should be carefully borne in mind. An application

under this Rule can only be made on the ground of material irregularity or fraud in publishing or conducting the sale, and secondly, it must be proved that the application has suffered substantial injury as a result of the material irregularity or fraud complained of. Both these conditions must be satisfied before any sale is set aside under this Rule. It has been provided further in the Punjab that no sale can be set aside on any ground which the application under this Rule must be made within 30 days of the sale (Article 127, Schedule I, of the Indian Limitation Act, 1963).

15. Application by purchaser to set aside sale—Order XXI, Rule 91, of the Code of Civil Procedure, 1908, enables the purchaser at a sale of immovable property in execution of decree to apply to the Court to set aside the sale on the ground that the debtor had no saleable interest therein. Such an application must also be made within thirty days from the date of the sale (*see*, Article 127, Schedule I to the Indian Limitation Act, IX of 1963). It should be noted that the Rule applies only when the judgment-debtor has no interest at all in the property sold but not when he has some interest at any rate in it, however, small that interest may be.

16. Confirmation of sale : Appeal—If no application to set aside the sale is made under Rules 89, 90 or 91 within thirty days, or the application is disallowed, the Court must confirm the sale:

“(Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property the Court shall not confirm such sale until the final disposal of such claim or objection). An appeal lies from an order confirming or setting aside a sale but no separate suit is maintainable to challenge the order.

“(Where a third party challenges the J.D.’s title by filing a suit against the auction purchaser the decree-holder and the judgment debtor shall be necessary parties to the suit and if the suit is decreed, the Court shall direct the decree holder to refund the money to the auction purchaser and where such an order is passed the execution proceedings in which the sale had been held, shall be revived at the stage at which the sale was ordered).

17. Refund to purchaser—When such a sale is set aside under Order XXI, Rule 92, Rule 93 provides for the recovery and repayment to the purchaser of the purchase money. The Court should not refer him to a separate suit for the money paid by him, which should be recovered (if necessary) and refunded to him, subject to the provisions of paragraph 23.

18. Certificate of sale—When a sale of immovable property has become absolute, the Court shall grant a certificate stating the property sold and the name of the person, who, at the time of the sale, is declared to be the purchaser. This certificate should be in the prescribed form, and must bear the date of the confirmation of the sale, and be stamped, at the expense of the purchaser, in conformity with the provisions of Chapter II, Part B, and Article 18 of Schedule I-A of the Indian Stamp Act II of 1899, as amended by Punjab Act, VIII of 1922, when the terms of the certificate have been finally, settled, the draft shall be signed by the Judge and placed with the record of the execution proceedings, and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. Instances have occurred where the purchaser has not taken his certificate, but has asked merely for a draft certificate, to be appended to the file of execution, his idea being to use the draft certificate in proof of his title to the property purchased. Subordinate Courts are warned

to guard against such subterfuges. No draft certificate should in any case be drawn up until the stamp duty required by law has been paid.

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation.

19. Copy of certificate of sale of immovable property to be sent to Registration office—A copy of the certificate, whether the property sold be land or other immoveable property, and without regard to the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated to be filed in his supplementary Book No. I.

This copy should be drawn up in vernacular with permanent black ink or with “registration ink” obtainable from the Central Stationary Officer, Calcutta, and on the prescribed form which is obtainable on indent from the Controller of Printing and Stationery, Punjab.

20. (i) Court official for conducting sales—Sales in execution of decrees shall ordinarily be conducted by the Court Auctioneer. The District Judge may direct by special order that the sale in a particular case or cases shall be conducted by the Nazarat staff.

(ii) In every district, save as otherwise prescribed, the Official Receiver should ordinarily be appointed Court Auctioneer.

(iii) *Security by Court Auctioneers*—Every Court Auctioneer shall give security in the sum of Rs. 2,000, over and above any security he may have given as Official Receiver, for the satisfactory discharge of his duties. This security shall be furnished to the satisfaction of the District Judge. The rules in Chapter 4-D, High Court Rules and Orders, Volume II, which govern the taking of security from Official Receivers shall, *mutatis mutandis*, apply also to Court Auctioneers.

21. Procedure for return of sale warrant—(i) A warrant of sale shall not be delivered to the Court Auctioneer direct by the Court ordering sale but shall be forwarded to him through the process-serving agency. After the sale the warrant and connected papers shall be returned by the Auctioneer to the process-serving Agency which shall forward it to the Court concerned.

(ii) *Sale under supervision of Court Auctioneers*—All sales of property whose estimated values exceeds Rs. 500/- or less may be conducted by agents of the Court Auctioneer. In all cases the Court Auctioneer is responsible for proper compliance with all legal requirements and for all the acts of his agents.

The Court Auctioneer shall each morning, supply to each Court a date-sheet showing the sales already fixed by all courts in order that sales which he has to attend may not be fixed at different places on the same day.

(iii) *Deposit of sale proceeds into Government treasury*—The Court Auctioneer shall himself deposit into the treasury all sums realised at auction sales conducted by him or his staff. All sums realised at sales conducted at places where there is a treasury shall be deposited into the treasury

or the State Bank of India, as the case may be, on the first working day after the sale. The District Judge shall prescribe periods, within which the proceeds of sales conducted at other places shall be deposited. The periods so prescribed shall be reported to the High Court and shall be as short as possible.

22. Government commission—(i) Commission at the following rates shall be deducted from the proceeds of sales under this Chapter:

(a) If the sale-proceeds do not exceed rupees five thousand—at five per centum.

(b) If the sale-proceeds exceed rupees five thousand—at five per centum on rupees five thousand and two-and-a-half per centum on the remainder.

(ii) If the sale is conducted by the Court Auctioneer, 80 per cent of the commission will be paid to him and 20 per cent will be paid into the Treasury to the credit of Government. All incidental expenditure shall be met by the Auctioneer.

(iii) If the sale is conducted by the Nazarat staff, the whole of the commission shall be credited to Government and nothing shall be paid to the officer conducting the sale. In such cases, the expenses incurred in conducting the sale, including the cost of advertisement, must not exceed the amount of commission.

(iv) *Expenses of custody etc.*—The expenses incurred in the care, custody and keep of attached property (as taxed by the Court) shall be a first charge on the sale-proceed thereof, after the deduction on the commission mentioned above.

Comments

Where evacuee property which could not be attached and sold under Section 8 of the East Punjab Evacuee (Administration of Property) Act, 1947, was put to auction by reason of a mistake on the part of the Court and the custodian applies to have the sale set aside, it is clear case for departure from the rule contained in Para 22 dealing with the matter of commission payable on auction sales, and the custodian is not liable to pay the commission of the Court auctioneer. *Custodian Evacuee Property Delhi v. Ram Kishan and others*, AIR 1952 Punjab 141.

Where the auctioneer accepted cheque as deposit under Order XXI Rule 84 CPC and the cheque was not encashed. The purchaser was held liable to pay commission of the auctioneer. *Kabul Singh v. S. Balwant Singh and others*, AIR 1955 NUC (Punjab) 4344.

23. Charges of Court Auctioneers—(i) No commission shall be paid on the proceeds of sales set aside for a material irregularity in publishing or conducting the sale. The commission on the proceeds of a sale set aside for any other cause shall be paid by the person at whose instance and for whose benefit the sale is set aside and the Court Auctioneer shall be entitled to his share of such commission.

(ii) If a sale is set aside the purchase money shall be refunded in full to the Auction Purchaser unless it is set aside at his instance and for his benefit in which event the commission due under paragraph 22 shall be deducted from the sum to be refunded.

Where a sale is set aside after the commission has been paid to the Court Auctioneer, the Court shall recover it from him and shall refund it to the Auction Purchaser if he is entitled to the

refund of the whole the purchase money. In such cases the Government share of the commission shall also be refunded.

(iv) In cases in which auction sales are ordered, but not completed or do not take place at all, the Court auctioneer shall be paid only his actual expenses, provided that if there has been, in the opinion of the Court, clear negligence on the part of the auctioneer (*e.g.*, failure to advertise leading to absence of bidders) he will not be entitled to any compensation. The amount of actual expenses if held due under this rule will be determined by the Court and shall be paid by the decree-holder or the judgment-debtor as the Court may direct.

24. Conduct of sale by Nazarat staff—(i) Where the District Judge directs that a sale be conducted by the Nazarat staff, the proper officer to conduct the sale is.

(a) Where the sale is ordered by a Court of Small Causes—the Department Officer or such other officer as the Court may appoint.

(b) Where the sale is ordered by a Court other than a Court of Small Causes:

(1) The Civil Nazir, for all sales ordered by Courts located at District Headquarters and for all other sales in which the value of the property to be sold is estimated to exceed Rs. 5,000.

(2) The Naib Nazir of the Court ordering the sale for other sales.

(ii) In every case in which the Civil Nazir is not required, under these directions or the directions of the District Judge, to conduct the sale in person, such sale may be conducted under the orders and upon the responsibility of the Civil Nazir, by the Naib Nazir deputed by him for the purpose.

(iii) When it is desirable to have the sale conducted at the place where the attached property is situate and the property is of small value, and a Nazir or Naib Nazir is not available for the duty, an execution bailiff may be deputed to conduct the sale.

(iv) A process-server shall not be employed to conduct sale without the authority in writing of the Officer-in-charge of the Process-serving Agency concerned. Such order shall not be made unless no other officer is available and the value of the property to be sold is estimated at Rs. 100 or less.

(v) The District Judge may issue instructions, consistent with these directions, for the further regulation of the conduct of sales by the civil Nazir and his establishment.

25. Sale of guns or arms—Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act XI of 1878, and Rules thereunder, are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, that proper steps may be taken by the Police to enforce the requirements of the Indian Arms Act.

26. Sale of land—For attachment and sale of land or interest in land.

Part M
EXECUTION OF DECREES BY THE ATTACHMENT AND
SALE OR TEMPORARY ALIENATION OF REVENUE-PAYING
OR REVENUE-FREE LANDS

1. Law applicable—In dealing with applications for the execution of decrees by the sale or temporary alienations of land, the provisions of Section 141 of the Punjab Land Revenue Act and the Debtors' Protection Act should not be overlooked. It should be observed that land which has been built upon ceases to be land within the meaning of Section 141 of the Punjab Land Revenue Act, notwithstanding the fact that it is assessed to land revenue. (*See* I.L.R. 1946 Lahore, 52 AIR 1944, Lahore 455).

Comments

A Single Judge of the High Court set aside the attachment and sale of certain shops and a workshop belonging to the judgment debtor on the ground that the sale was illegal and void because it had not been conducted in accordance with the mandatory provisions of section 141 of the Punjab Land Revenue Act.

Held (reversing the judgment of the Single Bench) that 'land' in section 141, of the Punjab Land Revenue Act has its dictionary meaning and is used in the plain sense of that term, that is land that was in its original state and on which buildings with structures of a permanent character had not been constructed.

The special procedure prescribed by section 141, of the Punjab Land Revenue Act is not meant to be followed in cases where the property to be attached and sold is not bare land but houses and shop etc., and it is wholly outside the contemplation of the framers of the section that the Collector had to sell shop and house property under the provisions of section 141, of the Act. *Vir Bhan and Another v. Sham Singh and Athers*, (1946) I.L.R. XXVII Lah. 52. (*Nawab Ahmad Yar Khan v. S. K. Bose*, AIR 1923 Lah. 582, dissented from.)

2. Objections to be decided by Civil Court—It should be borne in mind that the powers of the Civil Courts to deal with objections under Section 47, Civil Procedure Code or Order XXI, Rule 58, as amended by the Punjab High Court, are the same irrespective of whether the objections are received by the Court direct or through the Collector.

3. Objections under Section 9 of the Debtors' Protection Act are to be decided by the Civil Court and not the collector. (AIR 1941, Lahore 225).

4. Seeking Collector's advice—In cases of temporary alienations which are not governed by the Punjab Debtors' Protection Act, the Civil Court may seek the Collector's advice.

5. Returns to be submitted by Court—Civil Courts should be submitted quarterly returns in Form C printed in Part A-V, High Court Rules and Orders, Volume VI-A, under the heading "4. Returns relating to execution of decree in which the Collector is consulted", under the Rule 4 above or an order is sent to the Collector under Section 141 of the Punjab Land Revenue Act but execution of the decree remains in the hands of the Civil Court.

6. Returns to be submitted by Collector—Forms A and B in the aforesaid part of Volume VI-A were drawn up by the Judges with the concurrence of the Financial Commissioners for

quarterly statements which the Collectors are required to submit to the District Judge in respect of execution proceedings transferred under Section 141 of the Punjab Land Revenue Act and Section 4 of the Debtors' Protection Act respectively.

7. Money specifically charged on land. Warrants of sale how sent—In cases where the decree is one for the recovery of money specifically charged on the land ordered to be sold the warrant of sale has to be issued by the Civil Court. In this connection attention is invited to the Section 141 of the Punjab Land Revenue Act, 1887, according to which orders for sale of land have to be addressed to the Collector or such revenue officer as the Collector may appoint. The warrants for sale in such cases may, therefore, after arrangement with the Collector, be sent direct to the Tahsildar or such other revenue officer, as the Collector may appoint, who will return them after execution to the Court concerned through the Collector. Duplicate copies of warrants for sale should also be sent direct to the Collector for information.

Part N
EXECUTION OF DECREES AGAINST AGRICULTURISTS

1. Property exempt from attachment and sale etc.—The following property of an agriculturist is exempt from attachment and sale.

(a) The necessary wearing apparel, cooking vessels, beds and beddings of the judgement-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with any woman. [Section 60(1)(a) of the Code.]

(b) Implements of husbandry, and such cattle and seed-grains as may, in the opinion of the Court be necessary to enable him to earn his livelihood as an agriculturist and such portion of agriculturist produce or any class of agricultural produce as may have been declared by the State Government to be free from Liability under Section 61 [*vide* also clause (b) of the proviso to Section 60 (1) of the Code].

(c) Where the judgment-debtor is liable to pay land revenue, so much of the produce of the land as the collector thinks necessary for seed-grain and the subsistence until the harvest next following of the judgment-debtor, his family and cattle exempted under head (b) [Section 70 of the Punjab Land Revenue Act, read with Section 88 of the Punjab Tenancy Act and Section 60(1)(p) of the Code of Civil Procedure. Under Section 61 of the Civil Procedure Code, the Punjab Government has declared that in the case of agriculturists, the judgment-debtor's entire fodder crops, including gram-oats, chari, maize and guara, one-third or 20 maunds, whichever is greater, of foodgrains, and one-third of all other crops shall, subject to the provisions of clauses (b) and (p) of sub-section (1) of Section 60 of the Civil Procedure Code and of the proviso to Section 70 of the Land Revenue Act, be exempted from liability to attachment or sale in the execution of a decree for the purpose of providing, until the next harvest for the cultivation of land and for the support of the judgment-debtor and his family.

(d) Houses and other buildings (with the materials and the sites thereof and the land immediate appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and not proved by the decree-holder to have been let out on rent or lent to persons other than his father,

mother, wife, son, daughter, daughter-in-law, brother, sister or other dependants or left vacant for a period of year or more. [Section 60(1)(c) of the Code and Section 35 of the Punjab Relief of Indebtedness Act as amended by Punjab Act XII of 1940].

(e) Milch animals, whether in milk or in calf, kids, animals, used for the purpose of transport or draught cart or open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or staking fodder or manure [clause deemed to be added to the proviso to Section 60(1) of the Code, by Punjab Act XII of 1940].

(f) Standing crops except cotton and sugarcane. [Section 10(1) of the Punjab Debtors' Protection Act].

(g) Standing trees apart from the land on which they stand cannot be sold [Section 10 (2) of the Punjab Debtors' Protection Act.]

2. No bar to the sale of land belonging to an agriculturist—The Punjab Land Alienation Act, 1900 was replaced by the adaptation of Laws (Third Amendment Order, 1951. (S.R.O. 508, dated the April, 1951). There is now no bar to the sale in execution of a decree of the land belonging to an agriculturist.

3. Exemption of ancestral immovable property—Attention is invited to the provisions of Section 9 of the Punjab Debtors, Protection Act which lays down that ancestral immovable property in the hands of a subsequent holder shall not be liable in the execution of a decree or order of Court relating to a debt incurred by any of his predecessors-in-interest. Thus rule, however, is to be applied only “when custom is the rule of decision in regard to succession of immovable property”. It is not applicable when the debts has been expressly charged by way of a mortgage.

4. Attachment and sale to be carried out through Collector—The attachment and sale of the land and its produce will be carried out by an order addressed by the Civil Court to the Collector or such Revenue Officer as he may appoint in this behalf under Section 141 of the Punjab Land Revenue Act and subject to the rules made thereunder and the provisions of the Code contained in Order 21, Rules 44, 45, 74, and 75.

Part O
EXECUTION OF DECREES AGAINST PERSONS IN
MILITARY SERVICE

(See Chapter 6)

Part P
RECEIPTS FOR PROPERTY REALISED OR RECOVERED IN EXECUTION OF DECREES

1. Receipts—Receipts should invariably be furnished by decree-holders for money paid or goods delivered through the Courts in satisfaction of decrees.

2. Payment by debtor—Sums tendered by a judgment-debtor in payment or part payment of a decree shall be received by the Court which framed the decree or to which the decree has been sent for execution, whether the judgment-creditor has taken out execution or not; and whether, in case he has taken out execution, he is actually in accordance at the Court-house or not.

3. Payment to decree-holder when present—If the judgment-creditor is in attendance at the time of such tender (whether for the purpose of prosecuting his execution or not), the money so received by the Court shall be made over to him upon his giving a receipt, duly stamped if the sum so paid exceeds Rupees twenty, and the receipt taken shall be filed with the proceedings.

4. Amount to be deposited when decree-holder is not present—If the judgment-creditor is not in attendance the sum paid in by the judgment-debtor shall be made over by the Court to the Nazir, who shall forthwith deposit it in the Treasury, at the Sadar or Tehsil, as the case may be, and notify to the Court the number, and date on which the sum has been entered in the deposit register. A corresponding entry will be made in the Court's record:

Provided that if the Treasury is closed for business when the money is paid into Court, it should be placed in the Nazir's Cash Chest, which should be lodged in the outer room of the Treasury, if it is open, as provided in Order 4(2) of the Punjab Treasury Manual, 2nd edition, page 2, and if it is closed the Presiding Officer of the Court must make other suitable arrangements for its safe custody.

5. Receipt to be given to debtor by Court—An unstamped acknowledgement will in every case, be given to the judgment-debtor, by the officer to whom the payment is made, for any sum paid into Court under the preceding paragraphs.

6. Payment to decree-holder of the sum deposited—When the judgment-creditor appears and claims the sum received by the Court, such Court shall give the claimant (after identification) a cheque on the Treasury, payable to his order, for the amount, and shall note thereon the date of deposit and the number in the deposit register. An unstamped receipt, particularising the amount of the cheque, its date and number, together with the deposit number and date, shall be taken from the judgment-creditor in acknowledgement of such cheque, and this receipt will remain on the record, and will be deemed sufficient to mark the finality of the proceedings.

7. Payment to decree-holder of the sum deposited—The cheque mentioned in the preceding paragraph shall be presented to the Treasury Officer for payment, and the receipt to the payee, endorsed thereon, shall be sufficient acquaintance for the Treasury Officer, who will forward such endorsed cheque to the Accountant-General as his voucher for the withdrawal of the amount from deposit.

8. Stamp on receipt—When the amount exceeds rupees twenty the receipt will be stamped at the expense of the judgment-creditor.

9. Dakhnama does not require stamp—The practice prevailing in some districts of requiring the dakhnama or acknowledgement taken from a decree-holder when he has been placed in possession of immovable property in execution of decree, to be stamped, is not authorized either

by the Court Fees Act or by the Stamp Act. The dakhnama, not being an acknowledgement of the receipt of money or other movable property, is not a receipt within the meaning of Section 2(23) of the Stamp Act, and does not require to be stamped.

Part Q
RESISTANCE TO EXECUTION

1. Resistance by judgment-debtor or by some person on his behalf or at his instigation—If the holder of a decree for the possession of immoveable property, or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person, and the decree-holder complains of such resistance or obstructions, Order XXI, Rules 97 to 99, prescribed the procedure to be followed.

According to Order XXI, Rules 98, Civil Procedure Code, as amended by the Punjab High Court, a Court can take action not only when the obstruction was occasioned by the judgment-debtor himself or by some person at his instigation but also when it was caused by any one “on his behalf.” It has also been provided that the detention ordered in this rule shall be at public expense. The provision as to the limitation is contained in Article 129 of the Limitation Act, 1963 which provides a period of thirty days from the date resistance or obstruction.

2. Resistance by others—Order XXI, Rule 99 (is substituted for the old Rule 100), and it provides for cases where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by purchaser thereof, he may make an application to the Court complaining of such dispossession, and the Court shall proceed to adjudicate upon the application.

3. Restoration of possession to a person who was in possession not on account of debtor but was disposed in execution—*See* Rule 2.

Part R
COSTS IN EXECUTION PROCEDURE

1. Cost of pleader—Unless there is any reason to the contrary, costs of pleaders in execution cases should be allowed on the scale laid down for miscellaneous proceedings in Chapter 16. “Legal Practitioner,” Part B.

2. Costs of clothing and bedding supplied to a civil prisoner—The clothing and bedding supplied in accordance with paragraph 790(2) of the Punjab Jail Manual (1932) to a civil prisoner committed to prison in execution of a decree, being returnable to the decree-holder at the time of the prisoner’s release under paragraph 796(2) *ibid* their cost should not be included in the costs of the execution.

3. Subsistence expenses of the debtor arrested in execution—Money spent by the decree-holder for the subsistence of the judgment-debtor arrested in execution shall be included in costs.

4. Compensatory costs for false or vexatious claims or defences—The Court can order that a party who knowingly puts forward any false or vexatious claim or defence in execution proceedings shall pay costs by way of compensation to the opposite party who objects to the claim or defence on these grounds. The amendments of Section 35A and insertion of Section 35B in the Code of Civil Procedure by Act No. 104 of 1976 may be studied in this connection.

Part S
RECIPROCAL EXECUTION OF DECREES BY COURTS IN INDIA
AND FOREIGN COUNTRIES

1. Section 44A CPC—The Law on the subject of execution of decrees of Courts in India by foreign Courts and vice versa is contained in Section 44A of the Code of Civil Procedure.

2. Reciprocal arrangements—Section 44A which was originally inserted in the Code of Civil Procedure, 1908 by Act No. 8 of 1937 has been amended by Act LXXI of 1952. It now provides that a decree passed by, a superior Court in any ‘reciprocating territory’ can be executed in India by filing a certified copy of the decree in a District Court, which will treat the decree as if it has been passed by itself. ‘Reciprocating territory’ means any country or territory outside India which the Central Government may by notification declare to be a reciprocating territory for the purposes of Section 44A. A ‘superior court’ with reference to any such territory would mean such courts as are specified in the said notification. The arrangement is confined only to decrees for payment of money not being sums payable as taxes, fines or penalties, etc. Further the decree should not be based on an arbitration award.

The definition of ‘India’ in clause (7B) of Section 2 of the Code does not govern Section 44A (*Please see* Section 4 and Third Schedule of Act No. 42 of 1953).

3. (a) United Kingdom—The Central Government has in exercise of the powers conferred by Explanation I to Section 44A CPC declared the United Kingdom of Great Britain and Northern Ireland to be reciprocating territory for the purposes of the said section and the House of the Lords, the Court of Appeal (inserted *vide* Ministry of Law GSR 201 dated 13.3.1950), and High Court in England, and Court of Sessions in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham to be the Superior Courts of that Territory, *vide* Central Government Notification Nos. 47 of 51, dated the 25th February, 1953, and 1st March 1953, respectively, published in the Gazette of India.

Similarly, the Government of Great Britain have extended Part I of the Foreign judgments (Reciprocal Enforcement) Act, 1933 to the territories of the Union of India and the following Courts shall be deemed to be Superior Courts of the said territories for the purposes of Part I of the said Act:

(a) All High Courts and Judicial Commissioners Courts.

(b) All District Courts.

(c) All other courts whose civil jurisdiction is subject to no pecuniary limit provided that the judgment sought to be registered under the said Act is sealed with a seal showing that the jurisdiction of the courts is subject to no pecuniary limits,—*vide* the Reciprocal Enforcement of judgments (India) Order, 1953”.

(b) *Burma*—Reciprocity has been established between India and Burma in the matter of execution,—*vide* Government of India Notification No. 286-36-Judicial, dated the 27th March, 1939, and Government of Burma Notification, No. 141, dated the 7th March, 1939.

According to these notifications the following courts have been declared to be superior Courts for the purposes of Section 44A.

(1) High Court at Rangoon.

(2) All District Courts in Burma.

4. Aden—Reciprocity has also been established between the colony of Aden and India and the Supreme Court of the said reciprocating territory has been specified by the Central Government as a ‘Superior Court’ under Explanation I of Section 44A of the Code. (Government of India, Ministry of Law, Notification No. S.R.O. 183, dated the 18th January, 1956).

5. Fiji Colony—Reciprocity has also been established between the colony of Fiji and India,—*vide* Central Government Notification No. S.R.O. 959, dated the 22nd March, 1954 published in the Gazette of India of 27th March 1954.

6. Colony of Singapore—Reciprocity has also been established between the colony of Singapore and India and the Supreme Court of the said ‘reciprocating territory’ has been specified by the Central Government as a ‘Superior Court’ under Explanation I of Section 44A of the Code. (Government of India, Ministry of Law, Notification No. S.R.O. 1867, dated the 1st September, 1955).

7. Federation of Malaya—Reciprocity has also been established between the Federation of Malaya and India and the High Court and the Courts of Appeal of the said ‘reciprocating territory’ have been specified by the Central Government as ‘superior courts’ under Explanation I of Section 44-A of the Code . (Government of India, Ministry of Law, Notification No. S.R.O. 4, dated the 3rd January, 1956). The Central Government *vide* Notification No. S.R.O. 3282 dated 15th October, 1957 has declared New Zealand, the Cook Islands (including Niue and the Trust Territory of Western Samoa to be the reciprocating countries under Section 44-A of the Code.

Part T
RECIPROCAL ARRANGEMENTS WITH JAMMU AND KASHMIR

1. References—Any decree passed by any Civil Court established in any part of India to which the provisions of the Code do not extend or by any Court established or continued by the authority of the Central Government outside India may if it cannot be executed within the

jurisdiction of the Court which passed it, be executed by any Civil Court in India (Section 43 of the Code of Civil Procedure).

2. Reciprocal arrangements—The State of Jammu and Kashmir is a part of India *vide* (Article 1 of the Constitution of India) to which the provision of the Code of Civil Procedure do not extend [Section 1(3) of the Code as amended by Act II of 1951]. Section 43 therefore, makes provision for the execution of decrees of Civil Courts of Jammu and Kashmir by Civil Courts in those parts of India, where the Code extends.

3. Reciprocal arrangements—The Jammu and Kashmir Government have substituted a new Section 44 in the Jammu and Kashmir Code of Civil Procedure, 1977 by their Amending Act 1 of Sambat 2011. It runs as follows:

*“Section 44. Execution of decree passed by courts in other State in
India J & K State]*

The Government may by notification in the Government Gazette declare that decrees of any Civil or Revenue Court situate in India beyond the limits of Jammu and Kashmir State or of any Court established or continued by the authority of the Central Government of India outside India or any class of such decree may be executed in the State as if they had been passed by Courts of the State.”

4. Notification by Jammu and Kashmir State—The Government of Jammu and Kashmir have issued the following notification under Section 44 of their Code. “Government of Jammu and Kashmir Chief Secretariat-General Department. Order No. 914-C of 1954, dated the 10th July, 1954.

Notification—In Exercise of the powers conferred by Section 44 of the Code of Civil Procedure, 1977, the Government hereby declare that decrees of any Civil Court situate in India beyond the limits of the Jammu and Kashmir State or of any Court established or continued by the authority of the Central Government outside India may if they cannot be executed within the jurisdiction of the Court by which they were passed, be executed in the State as if they had been passed by a Court of the State.”

5. For a list of Civil Courts in the two Provinces of Jammu and Kashmir and the limits of their territorial jurisdictions.

1. Addition made by Section 18 of Act No. 104 of 1976.

1. Substituted by Act No. 104 of 1976.

1. Substituted by Act No. 104 of 1976 due to amendment in Section 82 of CPC.

2. Substituted by Act No. 104 of 1976.

2. Rule of substituted by Act 104 of 1976 and Repeal of Article 182 of Limitation Act, 1908.

1. Substituted due to CPC Amendment Act (Act No. 104 of 1976).
1. Inserted by CPC Act No. 144 of 1976.
1. Rule 2 substituted in view of Act No. 104 of 1976.
1. Due to changes made by Act No. 104 of 1976.
2. Added in view of Government of India, Ministry of Home Affairs, Notification No. 57/4/49-Ests. dated the 31st May, 1949.
3. Added in view of Government of India, Ministry of Home Affairs, Notification No. 57/8/51-Ests., dated the 21st September, 1951, received with Punjab Government endorsement No. 10450-JJ-51/5482, dated the 7th October, 1951.
1. Due to amendments in Order 21 CPC by Act No. 104 of 1976.
1. Due to amendment of Order 21, Rule 92 CPC.
2. Due to insertion of sub-rules (4) and (5) in Rule 92, Order 21 CPC.
1. As per Substitution of Order 21, Rule 99 by Act No. 104 of 1976.