

## PREPARATORY PROCEDURE OF EXECUTION OF DECREE: A CRITIQUE

DR. VINOD KUMAR , DR. MONA GOAL  
 ( asst professor of law, GNDU, RC Jalandhar)  
 ( asst professor of law , GNDU , RC Jalandhar)

### **Abstract:-**

*This article serves as a comprehensive overview of the execution provisions outlined in the Code of Civil Procedure, 1908. Every effort has been made to explore the multitude of provisions that guide the execution proceedings within the court. The system, as elucidated by these provisions, appears thorough yet extensive. The existing Code meticulously addresses nearly all aspects of the execution process. However, it is the misuse and exploitation of these provisions that often leads to the protraction of enforcement procedures, thereby delaying the dispensation of justice. It is imperative to employ these provisions effectively and promptly. Both decree-holders and the court must exercise vigilance to prevent the exploitation and abuse of the established procedures by the opposing party. Neglecting this responsibility would render the provisions toothless. It is crucial to move forward in the correct direction and implement necessary reforms to ensure that litigants are not subjected to the whims of a select few cunning individuals.*

*Keywords:- Civil procedure, decree, justice, provisions.*

### INTRODUCTION

The last stage of the judicial process is the enforcement of a decree or order passed by the Court. It is a process whereby a judgment or an order of the court is enforced or which it has made effective according to law. Most judgment requires compliances with their terms. It is only in the case of declaratory judgment which merely declares what the right of a party is, without imposing any sanction on a defendant or directing either of the parties to do anything that execution is not called for or levied. Every successful litigant is entitled to the fruit of his judgment. Therefore, the overriding function of the judicial process of enforcement is to enable the decree-holder to reap the fruit of his judgment with a view to obtaining for his satisfaction, compensation, restitution, performance, or compliance with what the court has granted by way of remedy or relief. The process of enforcement is broadly referred to as execution.

The effective and speedy enforcement of judgments and orders which are enforceable in any system is always considered as an issue of national importance. On the pronouncement of judgment, it is often presumed by the layman that his case is finished and he has won the litigation. In order to promote the rule of law, every judgment of the court must be obeyed until it is set aside or declared a nullity. Where the judgment of the court is not obeyed, the court that gave the judgment retains the jurisdiction to invoke its coercive powers to give effect to the judgment by ensuring that the party in whose favour the judgment was given has the benefits of the decision. The failure of enforcement systems has led to the non-enforcement of the rights of parties and has infringed the human right to have speedy justice.

Execution system of India is court- oriented enforcement system. In this system primary responsibility to implement decrees and orders is that of the Court. Besides, regular court proceedings, judges look after the executions proceeding also. Every action and performance is managed and controlled by the court. In order to carry out enforcement proceedings, courts are governed by Code of Civil Procedure, 1908, wherein Order 21 along with section 36 to 74 of Code of Civil Procedure deals with the same.

### 1. COURT EXECUTING THE DECREE

Sections 38 to 46 deal with the subject as to which court can execute the decree and to which court decree can be transferred and powers of transferee courts. The prime question which often arises is to determine the court by which the decree or order is to be executed. The section

37 Code of Civil Procedure defines the executing court. Section 38 of code further extends the definition of executing court and give jurisdiction to two courts to execute the decree i.e.

- (i) The court pronouncing the decree,
- (ii) The court where decree is sent for the purpose of enforcement.

**Execution by the Court Passing the decree.**

As per Code of Civil Procedure Court passing the decree can be defined as :

- (i) The court of first instance which passed the decree i.e. the court having original jurisdiction.
- (ii) In case of decree passed by the appellate court, the court of first instance is the court passing the decree.
- (iii) When the court of first instance is no more in existence by virtue of change in territorial jurisdiction or due to some other reason, then court passing the decree would be the court which would have jurisdiction to try the suit at the time of execution.
- (iv) When the court of first instance is devoid of jurisdiction to execute the decree, then for purpose of section 37 of code, the court passing the decree would be the court has jurisdiction to try the suit.

**Transfer of Decree for Execution.**

Under section 39, the court has a discretionary power; the decree- holder has no vested or substantive right to get the decree transferred. His right is to make an application for transfer which is merely a procedural right. The provision of section 39 are permissive and not mandatory. Section 39 provides that decree can be transferred on application by decree holder and it can be transferred only to the court of competent jurisdiction. The word competent jurisdiction is made clear in Section 39(3). It means court having jurisdiction to deal with the suit when application for transfer of decree is made. That clearly means that the court to which decree is to be transferred must satisfy conditions of jurisdiction i.e either Judgment Debtor must residing within jurisdiction of that court or he must be having property therein. It is also provided in sub section 4 of section 39 of CPC that no court has power to execute a decree in respect of the property which is situated out side jurisdiction of that court. Thus, the court of competent jurisdiction, is the court which is authorized to try the suit in which decree is passed.

Further, the property within jurisdiction of court where decree is transferred must be sufficient to satisfy the decree. Decree will not be transferred in case judgment-debtor holds adequate property within the jurisdiction of court passing the decree. Of course the question of property will arise only when it is necessary to attach and sale of that property. If decree is for execution of document or for restitution of conjugal rights etc. it may or may not be necessary to transfer the decree. Thus the primary rule is that the decree can be transferred to the court where judgment debtor reside or work for gains or has business within the jurisdiction of that transferee court or has property within jurisdiction of that court. Section 39 also gives power to the court to transfer the decree to other Court but that purpose the court should come conclusion that some other court can execute the decree effectively and should mention reasons for that purpose.

The transferee court shall have all the powers of original court which transferred the decree. Of course this power is subject to the rule in section 40 which says that if transferee court is in other state then the rules of that state will govern the execution proceedings. It make more clear that that the transferee court has all those powers of original court and also has power to transfer that decree to some other court as per provisions of section 39. It also has got power to proceed against legal representatives of Judgment Debtor as per section 50 and also power to attach the decree which are in favour of Judgment debtor from which amounts can be recovered which Judgment Debtor could have recovered from those decrees. Sub-section (3) states that the copies of orders passed under section 42(2) shall be sent to the original court by which decree is transferred.

## 2. APPLICATION FOR EXECUTIONS

After obtaining the decree, the next step is enforcement. It is provided under Order XXI Rule 10 of Civil Procedure Code that enforcement proceedings are to be initiated on the filing of an application by decree-holder. Whenever the decree holder intends to have execution of decree, then he has to apply to the court passing the decree for the purpose of execution. As per Article 135 and 136 of Limitation Act, an application for enforcement of decree is to be filed within 12 years of decree except in case of mandatory injunction, where time limit is 3 years from date of decree and in case of mandatory injunction from date of decree. There is no prescribed limitation for filing execution application in case of perpetual injunctions. As per Order XXI Rule 10 CPC, court can even order immediate execution on oral application of decree-holder in case of money decrees. In other kind of decrees, written application duly verified by the applicant along with the certified copies of decree are essential to initiate enforcement proceedings.

## 3. PROCEDURE AFTER RECEIPT OF THE APPLICATION

### Admission and Registration of the application.

Rule 17 to order XXI of Code of Civil Procedure, 1908 provides that on receipt of an application for the execution, the first and foremost thing which court is required to see is that if compliance of Rule 11 to 14 of Order XXI has been made or not i.e. prerequisites like it is in writing and contain particulars in tabular form as required by Rule 11(2) to order XXI CPC certified copies of decree, application is accompanied by affidavit in case arrest of judgment-debtor is sought stating the grounds on which arrest is applied, if movable property is intended to be attached, then description of movable property in form of inventory, In case of immovable property, complete description of property and in case property is landed property, then certificate from the collector, assessing the ownership of property required to be attached. When court feels satisfied that aforesaid requisites are fulfilled, then execution application is admitted and registered. In case aforesaid requisites are not fulfilled then party is given time to cure the defect and failure to do so may result in rejection of application. Defective application can be amended to remove the defect with the permission of the court as provision being procedural is to be liberally construed and as long as application is not rejected because of defects it remains viable as application without defects.

### Issuance of Process to judgment-debtor

As per Order XXI Rule 22 of Code of 1908, it is not mandatory to issue notice to judgment-debtor in case execution application is filed within two years of the decree. However, in case it is after two years, then it is mandatory to issue show-cause notice to judgment-debtor that why decree should not be executed against him. The purpose behind issuance of notice to the judgment-debtor on receipt of application is that judgment-debtor should not be taken by surprise and he is afforded an opportunity to suffer objections, if he has any. Hon'ble Supreme Court has held that the purpose of issuance of notice is to safeguard the interest of judgment-debtor and is a condition precedent to the validity of the execution proceedings. Order XXI Rule 23 CPC provides that where on issuance of the notice, the judgment-debtor does not show any cause to contrary, then court will proceed with the execution process and in case any objections is filed, then court will decide upon the objections and will proceed accordingly.

### Hearing on the application.

After admission and registration of the application for execution, then court fixes a date for hearing on such application. Rule 105 to Order XXI CPC contains that if the applicant is not present on date of hearing of execution application, then court may dismiss the application and in case the opposite party is not present despite the notice of the court, then court will hear *ex parte* on the application Rule 106 to Order XXI CPC provides that on filing of an appropriate application, the court can set aside *ex parte* order or dismissal order if sufficient cause is shown by the aggrieved party.

### Notice under execution of a decree

After filing of execution petition, court first of all confirms itself as to the genuineness of the decree. This step is followed by service of notice to the judgment-debtor. As per CPC there are four stages for issuance of notice, which are-

- General Notice under Order XXI R 22 CPC filed immediately after presentation of execution petition.
- Notice under Order XXI Rule 37 CPC , which is issued before arrest
- Notice under Order XXI Rule 41 CPC for discovery of assets.
- Notice under Order XXI Rule 66 CPC, before sale and after attachment of property.

The purpose of all the aforesaid notices is to see that Judgment Debtor remains intimated about each and every proceedings of the court. All the notices are not even mandatory. Notice at the very inception of execution petition is not mandatory. As per Order XXI Rule 22 of CPC, notice is mandatory only when execution of decree is not filed within two years of passing of decree or is filed against LRs of Judgment- Debtor. However, notice is being sent in a routine, even in those cases where it can be dispensed with.

**Section 22. Notice to show cause against execution in certain cases.**-(1) *Where an application for execution is made—*

*(a) more than two years after the date of the decree, or*

*(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or*

*(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent).*

*the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:*

*Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last Order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.*

*(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the end of justice.*

### OBJECTIONS

Judgement-debtor adopts delaying tactics almost at every stage of execution. Both judicial officers and advocates have stated that these tactics are the hurdles in way of enforcement procedure for execution of decree. Though code of civil procedure provides for filing of objections/claims by JD under section 47 of CPC but this provision is being misused to greater extent and is resulting into abuse of law. Filing of objections by JD and their disposal is the stage which not only takes time but waste the precious time of the court. It has been observed that objections filed by JD are generally those objections which are available with them at the time of decree and sometimes even taken and disposed of by the court passing the decree. These are filed just to delay the implementation of decree. Certain kinds of objections filed by JD are:

- Objection as to validity of decree.
- Objection regarding maintainability of execution petition itself.
- Objection on the attachment of decree.
- Objection as to auctioning and sale.
- Objection as to the jurisdiction of court passing the decree.
- Objections on misjoinder and non-joinder of parties.

- Objection to resist delivery of possession.
- Objection that DH has suppressed material facts.
- Objection that property in question has already been sold.
- Objection that appeal to decree is pending.
- In case of ex-parte decrees, objection as to pendency of application for setting aside decree or appeal is pending
- Objection as to identification of property.

#### **Warrant of Attachment**

Warrant of attachment is mode of seizure of property of the judgment- debtor to coerce him to obey the decree. By attaching the property, court prevent the judgment debtor from alienating it or changing its nature. Warrant of attachment is issued before the sale of the property of the Judgment- debtor. Moveable property can be attached by taking in the custody by seizure officer or by putting it in custody of some respectable person known as sapurdar. Immoveable property can be attached by making of relevant entry in the revenue record. In such cases of warrant of attachment are sent to revenue officials for compliance. In case of money decrees, the core responsibility of the court is to ascertain the property of the judgement debtor to satisfy the decree and thereupon to proceed for its attachment before sale. Besides, money decrees there are other kinds of decrees, where attachment is being done in order to coerce the judgement debtor for effective and timely satisfaction of decree. The purpose behind adopting this mode of execution is two fold:-1) to coerce the Judgment Debtor to satisfy the decree 2.) Effective execution of decree so that Decree-holder can enjoy the benefit of decree. But courts are facing lots of difficulties in executing warrant of attachment. Various difficulties faced in case of attachment of property are:

1. Non-disclosure of assets by Judgment-Debtor.
2. Ineffective implementation of Order XXI Rule 41 CPC (asking judgment debtor to provide details of his property himself.)
3. Objections as to attachment of property by Judgment Debtor and third party who have some interest in the property so attached
4. Statutory Exemption of property from attachment.
5. Non- identity and description of the property.
6. Difficult in determining the extent of property to be attached proportional to quantum of the involved in the decree.
7. Obstacles in assessing the ownership of movable assets.
8. Non-availability of sapurdar in case of attachment of movable properties specially articles which cannot be conveniently removed.

#### **Warrant of sale**

Attachment of property is followed by the sale of such property. Rules 64 to 104 of order XXI CPC prescribe the procedure for the sale of property of judgment debtor so attached in the execution of decree. Depending upon the nature of property, moveable or immovable, the difficulties faced in the sale of such property are different. The following difficulties are faced in the sale of the property.

1. Properties other than immovable properties like Jewellery, household articles, vehicle etc., are at the first place are handed over to Sapurdar in order to coerce the Judgment- Debtor. If judgment debtor still fail to satisfy the decree such article are brought to court, for the purpose of handing them over to court auctioneer so as to complete the sale. such procedure is technical as well as time consuming.
2. In case of immovable property, position is different. This procedure is even cumbersome and time consuming as compared to the procedure adopted for the sale of moveable property. For the sale of immoveable property, four dates are fixed as follows:



Despite the detailed procedure as to sale, there are lot of difficulties at ground level. Ground realities are more bitter. To this regard, researcher has taken the subjective view of the respondents by way of informal interview. The hurdles faced in the sale of immovable property to are summarised below

1. **Problem in appraisal of assets.** The court auction is loss for both judgment debtor and decree holder. The auction property is generally bided and sold below 50% of its market value.
2. First notice is served to the Judgment debtor as soon as the execution petition is filed by decree holder. Second notice is served as to proclamation of sale of the attached property. Despite the issuance of notice, JD abstains to appear, so that he could challenge the sale afterwards.
3. Sometimes, there is absence of official auctioneer to conduct the sale. In such situation, court has to wait till the appointment of new court auctioneer.
4. **Lack of bidders to bid** in the sale auction which is also a major hurdle in execution of sale warrants.
5. There are four steps for purpose of execution of sale **and failure of one of step leads to rescheduling** of all steps and extends the procedure for 2 to 3 months.
6. **Sale adjournment under order XXI Rule 69 CPC** is one of the reason for delay in execution as it gives lot of discretion to adjourn auction .It also provides that in case sale is adjourned beyond 30 days , then fresh proclamation is to be issued. Thus, repetition of whole process and delay in enforcement proceedings.

**Warrant of possession:-** Recovery of possession is one of the major facet in execution proceedings. In a decree for recovery of possession, ejection petitions etc. Order XXI Rule 35 and 36 of code of civil procedure, 1908 comes into play. When it is matter of delivery of property purchased in auction sale, then provision of Rule 95 and 96 to Order XXI of code of civil procedure are to be applied. Further, Rules 97 to Rule 107 to order XXI of code are applicable in case of resistance to delivery of possession. It has been seen that due to procedural complexities, Decree Holder instead of enjoying the fruits of decree, often becomes puppet in hand of the system. Most of the times, it result in giving undue benefit to judgment- debtor to halt the proceedings of execution. Difficulties in way of delivery of possession are as follows:

#### 4. MODE OF EXECUTION

Section 51 defines the jurisdiction and power of the court to enforce execution. Rule 30 to 36 lays down the manner of executing a decree. A reading of Section 51 of CPC, itself shows the specific instances in which the right mode of execution may be applied and it is possible that the decree-holder may be entitled to more than such a mode. He must nevertheless show cause as to how he has been entitled to more than one mode.

In K.M.Kannu Gounder v. Mahboob Ali Sahib and another the Principal Bench of Madras High Court has held that as far as the choice whether the decree-holder could adopt and file execution petition for attachment or arrest simultaneously, it is viewed that before invoking arrest as a mode of execution, the other procedures must be exhausted first.

In A.K.Subramania Chettiar v. A.Ponnuswamy Chettiar, it has been held that simultaneous execution by both modes of attachment of property and arrest of the judgment-debtor can be permitted under Order XXI Rule 30 of C.P.C but the Court has the discretion to refuse simultaneous execution under Order XXI Rule 21 CPC . Thus permitting judgment-creditor to



seek one mode of execution at a time.

**In State Bank of India v. Messers. Indexport Registered and others** the Hon'ble Supreme Court has held that it is the right of decree-holder to proceed in the way he likes i.e. it is the discretion of decree-holder to choose the mode of execution.

From the aforesaid decisions, it is clear that it is for decree-holder to choose the mode of execution. It is his choice as to by which method he wants the decree in its favor to get satisfied. However, the executing court being the ultimate authority must enquire and find out if the chosen mode is the appropriate mode for the execution of the decree.

**In Jolly George Varghese v. Bank of Cochin, P.G. Ranganatha Padayachi vs The Mayavaram Financial** it has been held that in case of directing the mode of execution of the decree, the executing court must give its findings regarding the same and these findings must be based on the inquiry made by the court. In case the execution by attachment and arrest can be done simultaneously, then for ordering the arrest the court must be satisfied with the conditions given therein only in the petition when an order for detention in civil prison is made by the Court.

#### **Police help to be taken where required**

It is generally seen that when a warrant of attachment or warrant of possession is sent then, a lot of tussle takes place between the parties to the suit. To obstruct the execution, sometimes physical altercation along with verbal altercation takes place. It is viewed that in such a situation timely police help will not only lead to peaceful execution of the warrant of possession but also in speedy disposal of execution.

**In Satyajit Guha v. Srimati Rati Sen Sharma**, a title suit was filed before the learned Assistant District Judge, who after hearing the parties passed the decree of eviction directing the petitioner/ applicant to deliver clear possession of the suit property. The learned judge also passed the decree of mesne profit. Thereafter the plaintiff/decree holder filed an execution petition and also applied under the rule 208 of the civil rules and order for police help. After considering the evidence the execution court allowed the prayer for police help under rule 208 of the civil rules and order, although the plaintiff /DH did not file any application under order 21 rule 97 of the CPC. Meanwhile, Additional district judge passed a stay order whereby all the proceedings in title execution were stayed and the executing court recalled the writ for delivery of possession. Ultimately, the learned Additional District Judge dismissed the appeal affirming the judgment and decree of the Trial Court. The DH filed another application to the High Court for police help. JD / Petitioner took the contention that the application of police help cannot be allowed unless DH proved any resistance or make an application under Order 97 of CPC. In the absence of any application under XXI rules 97 (1) of CPC, the application under rule 208 of the civil rules and orders becomes infructuous. Court held that it would not be wrong to allow police to help, if there is the apprehension of breach of peace even in the absence of the actual resistance.

**In Mr. Ajit Kumar Ray v. Jnanendra Nath Dey**, it was held that the prayer for police help may be made by the decree-holder either in the application under rule 97 and 98 of Order XXI CPC or separately without filing such application or before any specific obstruction made by a particular person. However, the police help is to be taken into exceptional circumstances when the court will be of opinion that unless police help is taken there will be a danger to the public peace on account of the execution of the decree. It was also held that the grant of police help is discretionary relief, which is solely vested with the court dealing with the execution.

From the above discussion, it can be concluded that a grant of police help where there is a breach of the peace or there is an apprehension of breach of peace is an appropriate remedy. However, this is to be resorted to only after complete satisfaction of the court that no other way for the execution of warrants of possession is left.

#### **5. QUESTIONS TO BE DETERMINED BY COURT EXECUTING THE DECREE**

The object behind the provision is to avoid multiplicity of litigation. Section 47 of the Code deals with Questions to be decided by the court by which decree is to be enforced. It is settled proposition of law that court executing the decree cannot travel beyond the terms of the decree. This implies that the executing court has to enforce decree as it stands. But it never means that



court enforcing the decree is restrained from finding the true implications of the decree. In appropriate cases, court implementing the decree has to consider the pleadings and proceedings of the suit in which decree was passed. In order to know the real meaning of the words used in the decree, the executing court has to ascertain the situation and condition in which such words are used in the decree.

The court will not entertain any objection as to validity of decree qua which execution is to be done. It is for appellate or revisional court to pronounce upon the validity of the court. Even erroneous decree and judgment is binding on the parties. From, the statutory provisions it can be deduced that once the suit is decreed, it is the executing court alone that has to decide all disputes arising in enforcement proceedings and filing of a separate suit for the said purpose is barred. In other words, section 47 CPC deals with all the matters in connection with the execution of the decree, so liberal construction must be given, so as to empower the court to determine all such questions, unless they clearly fall outside the scope and purview of it. However power given under section 47 cannot be placed at the equal footing as that of appeal or review and objections does not means reopening of the matter. Executing Court has to go by the decree.

The object of section 47 is to prevent the unnecessary expenditure and multiplicity of litigation. Basic principle behind aforesaid provision is that no separate suit is to be filed for deciding the dispute arising between the parties during course of enforcement proceedings of the decree. Before insertion of Explanation II to section 47, a stranger auction purchaser was not considered as a party to the suit, and, therefore section 47 was not applicable to him but now after the ruling of supreme court the third party if he is purchaser can be a party to the suit for the purpose of section 47.

Hon'ble Supreme Court has held that where in execution of a decree for ejection, the decree holder has obtained possession and satisfaction of the decree was recorded and thereafter the judgment debtor applies for redelivery on the ground that the order for delivery was illegal, then, if the decree is completely satisfied or not is question related to execution, satisfaction and discharge of decree and should be tried under Section 47. Thus, we can say that when a decree holder takes in execution a property which is not included in the decree, then the judgment debtor can proceed by way of an application for .It is also settled that what has been decided and also questions which ought to have been raised and have not been raised would also be questions which cannot be gone into by the executing court.

**6. ENFORCEMENT OF VARIOUS KINDS OF DECREES: PROCEDURAL ANALYSIS**

After discussion as to various enforcement systems, the next thing which is of utmost importance is to discuss various steps involved in various kinds of the decree. As a part of his study researcher has gone through various court files to deduce the step involved in various kinds of decrees. Decrees other than a decree for specific performance and injunction have almost similar procedural steps. These steps involved in various kinds of decrees can be categorized as:

1. Procedural steps involved in Decrees other than specific performance and injunctions.
2. Procedural steps involved in Decree for specific performance.
3. Procedural steps involved in Decree for an injunction.

**Showing the Procedural steps involved in execution except in case of execution of the decree for specific performance:**

STEP	NAME OF STEP
Step I	Filing of application for execution
Step II	Report of Execution clerk/ Ahlmad
Step III	Summon/Notice issued to JD
Step IV	Objections are filed by JD
Step V	Sometimes issues are framed for purpose of disposal of objections
Step VI	List of property of JD to be filed by DH
Step VII	Warrant of attachment





Step VIII	Warrant of Sale
Step IX	Warrant of possession
Step X	Decree Stands Executed

Aforesaid steps are general in nature and consist of many other sub-steps which varies from nature of decrees to be executed and problems and different questions being raised in different kind of cases. In some cases, objections raised by JD are so peculiar that issues are framed for disposal of these objections. Not only JD but sometimes, some third party also raises objection as to warrant of attachment or warrant of possession or warrant of sale, this also takes time and also in some cases call for framing of issues and taking of evidence for disposal of objections. Besides, there are certain kinds of decrees like eviction orders, decrees of possession where straightaway warrants of possession are issued as property in such cases are identifiable in the decree itself. Other than this decree for specific performance of the agreement to sell calls for the different procedure which is shown in the table below

**Showing the Procedural steps in the execution of the decree for specific performance of the agreement to sell.**

STEP	NAME OF STEP
Step I	Filing of application for execution
Step II	Report of Execution clerk/ Ahlmad
Step III	Summon/Notice issued to JD
Step IV	Objections are filed by JD
Step V	Sometimes issues are framed for purpose of disposal of objections
Step VI	Filing of draft sale deed
Step VII	Report of reader is taken to ascertain if draft sale deed is in terms of the decree passed.
Step VIII	Appointment of court official for purpose of execution of sale deed on behalf of JD, if JD refuses to execute sale deed as per decree of the court.
Step IX	Report of the commissioner as to the execution of sale deed
Step X	After execution of sale deed, warrant of possession issued for actual/symbolic possession of the property in question
Step XI	Decree stands executed.

In case of decree for the specific performance difference is that instead of calling a list of property of the Judgement-debtor, the draft sale deed is sought from the decree-holder. This is in terms of the decree. The reader of the court is supposed to check if the draft sale deed is in terms of decree or not. After confirming the same, the commissioner is appointed for purpose of execution of sale deed. This commissioner is court official and acts as a representative of the court acting on behalf of Judgement-debtor to execute the decree in terms of the decree itself.

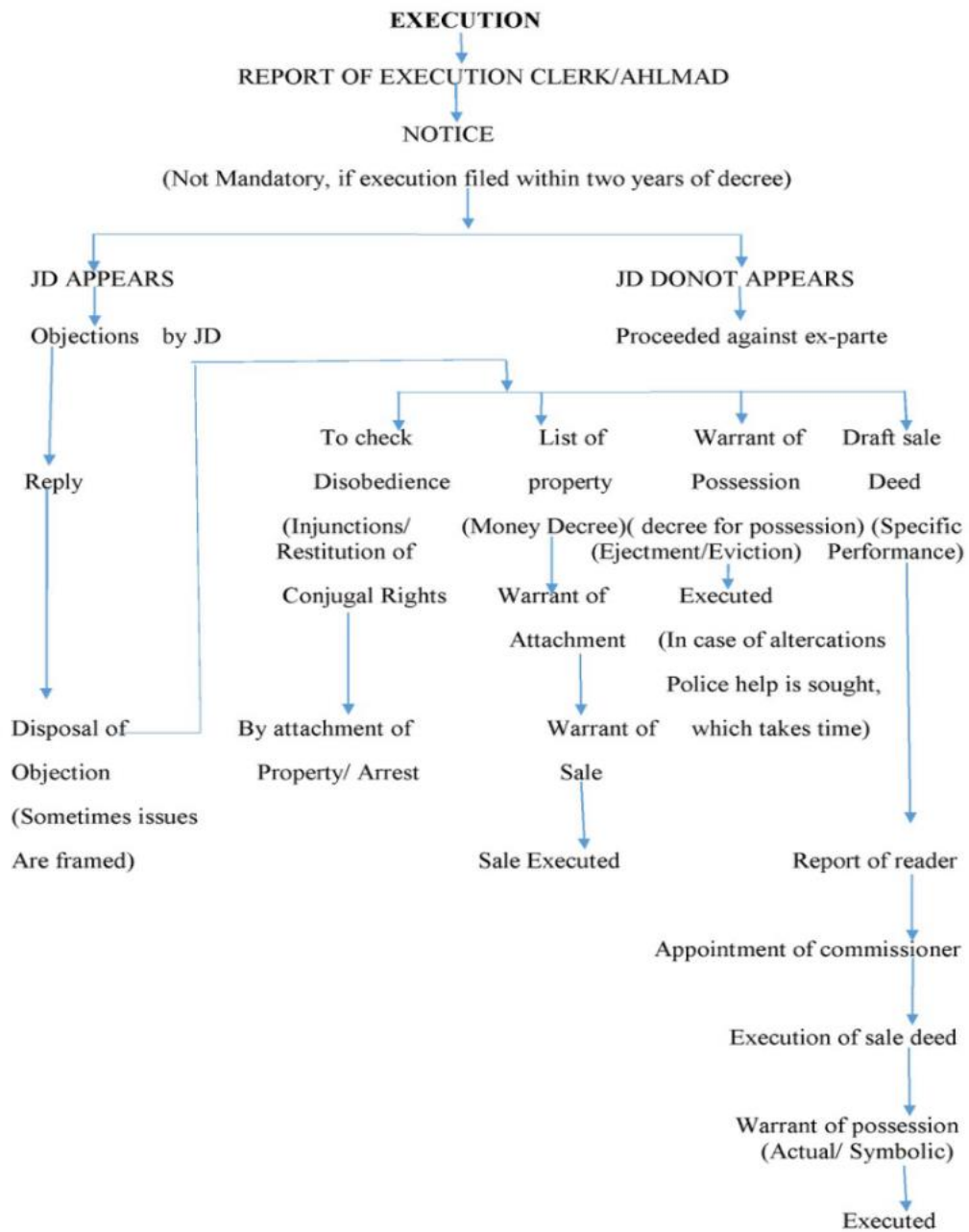
**Showing the Procedural steps in the execution of a decree for injunction/ contempt petition**

STEP	NAME OF STEP
Step I	Filing of application for execution
Step II	Report of Execution clerk/ Ahlmad
Step III	Summon/Notice issued to JD
Step IV	Reply to the application/contempt petition
Step V	Sometimes issues are framed and evidence is taken on the same to know if disobedience to the decree of the court has been made or not.
Step VI	To reach the conclusion. In case no disobedience is found, then dismissal of the petition and in case there is disobedience then issuance of the warrant of arrest or attachment are to be issued as the case may be.

Step VII	Disobedience if any, is punished by the arrest of Judgement-debtor or by attachment of his property.
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In case of decree for an injunction, its disobedience is known as contempt and is punishable by way of either arrest of Judgement-debtor or by way of attachment of his property. The purpose behind the same is to exercise coercion, so that violation of injunction can be avoided.

Further, based upon the study and different categories of decrees being passed, the whole process of execution as noted by the researcher can be summed up as follows:



Aforesaid flow chart reflects the procedural steps adopted by courts in different situations to achieve the ends of the decree. As per CPC, there is no stage of objections but it is seen that files are being kept for objections and even months, and sometimes years are being wasted on the same. While deciding objections, sometimes issues are framed and evidence is taken on these issues. This is a kind of retrial of the suit. Sometimes more time is consumed in the disposal of objections than the time taken in disposal of the main suit. The researcher during his interaction with court staff and advocates found that though in some cases it is necessary to decide upon certain issues as to the description of property etc. Yet there is one hidden cause for framing of

issues in execution i.e. execution becomes contested only when issues are framed and evidence is taken on these issues. This not only gives more units but also fetches one case in the contested category. During a study, the researcher has found that besides objection filed by the JD, third parties are also filing objections on the issuance of a warrant of possession or warrant of sale generally. These kinds of objections are a major hindrance in way of expeditious disposal of executions. It is also seen that most times when a warrant of possession is issued then same returns unexecuted due to various reasons, like DH not accompanied bailiff, DH not bringing Sapurdar i.e. the person who is ready to take custody of the articles of the JD, if any, lying in the property, possession of which has to be delivered to DH. In some files, it was also found that altercation takes place on the spot due to which police help is sought and takes months in getting the same. It has been found that some of the following kinds of reports are being made on warrants of possession /attachment /sale which often delay the disposal of execution:-

- Report of short time i.e. time between receipt and execution of a warrant is short /less for its execution.
- Whereabouts of the property could not be found.
- Description/Nature of property has been changed on the spot.
- In case of enclosed properties like house/shops etc., report of house locked /property being locked are coming.
- DH not accompanying the executing staff/Bailiff.
- DH not bringing Sapurdar to take articles of JD lying in disputed premises on sapurdari.
- Altercation taking place /apprehension of physical violence and demand for police help.


Aforesaid are certain kind of reports which are being found routinely in warrants of possession/attachment etc. being sent by the court for execution of the decree. Whenever warrant is received back unexecuted /unserved extends the disposal of execution by almost one month every time. As a result whole procedure of execution is delayed.

## 11.CONCLUSION

To conclude with the chapter, it can be said that instant chapter is an insight into the various provisions dealing with the execution as prescribed by the Code of Civil Procedure, 1908. An attempt has been made to go through all possible provisions, through which executions proceedings pass through in the court. The system as reflected from these provision is quite comprehensive and lengthy. Existing Code has covered almost all the areas in detailed manner. However, it is the abuse and misuse of these provisions, which often results in the delayed enforcement procedure, which ultimately delays the justice. The effective and expeditious use of these provisions is needed. Vigilance on the part of decree-holders as well as the court is needed, so that the other party do not get chance to exploit the situation and misuse the existing procedure. Failure at this front would mean enjoying grams without teeth. This is high time to work in right direction and to have rectifications wherever needed, so that litigants should not suffer in hands of few shrewd persons.

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