

# EXECUTION

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# Execution

- ▶ Meaning of execution
- ▶ About what
- ▶ Form of execution

# Form

- ▶ No. 6
- ▶ Application for Execution of Decree
  - ▶ (O. 21, R. 11)
- ▶ In the Court of. . . . .
- ▶ I . . . . ., decree-holder, hereby apply for execution of the decree herein-below set forth :
- ▶ No. of Suit . . . . .





Who can make application for execution ?

- ▶ Always by decree holder against the judgment debtor.
- ▶ All decree holders should join execution.
- ▶ One of many decree holder may apply for execution for all.
- ▶ Execution by one joint share holder for his share only is not maintainable.

# Against whom execution proceeding can be filed

- ▶ Against the judgment debtor
- ▶ In case of his death, and execution is about property; against the legal representative.



## 39. Transfer of decree

- ▶ (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,
- ▶ (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- ▶ (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- ▶ (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- ▶ (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.



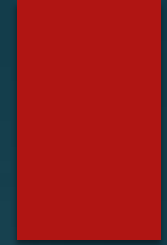
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- ▶ (2) The Court which passed the decree may on its own motion send it for execution to any subordinate Court of competent jurisdiction.
- ▶ S.41. Result of execution proceedings to be certified.— The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

## 42. Powers of Court in executing transferred decree

- ▶ (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.



- ▶ (2) Without prejudice to the generality of the provisions of sub-section (1) the powers of the court under that sub-section shall include the following powers of the court which passed the decree, namely—
- ▶ (a) power to send the decree for execution to another court under section 39.
- ▶ (b) power to execute the decree against the legal representative of the deceased judgment debtor under section 50.
- ▶ (c) power to order attachment of a decree.
- ▶ (d) power to decide any question relating to the bar of limitation to the executability of the decree.



- ▶ (e) power to record payment or adjustment under Rule 2 of order XXI.
- ▶ (f) power to order stay of execution under Rule 29 Order XXI,
- ▶ (g) in the case of a decree passed against a firm power to grant leave to execute such decree against any person other than a person as is referred to in clause (b) or clause (c) of sub-rule (1) of Rule 50 of Order XXI.
- ▶ (3) A court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the court which passed the decree.
- ▶ (4) Nothing in this section shall be deemed to confer on the court to which a decree is sent for execution, the power to order execution at the instance of the transfer of a decree"

# s.46 precept

- ▶ Precept is an order or direction given by one court to another requiring some act to be done.
- ▶ (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.
- ▶ (2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:
- ▶ Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

# Garnishee order

- ▶ A garnishee order is an order of the court served upon the debtor of judgment debtor prohibiting him from making payment thereof until the further order of the court.


## s.47. Questions to be determined by the Court executing decree

- ▶ (1) All questions 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, shall be determined by the Court executing the decree and not by a separate suit.
- ▶ Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.
- ▶ Conditions --
- ▶ The question must relate to the execution, discharge or satisfaction of the decree, and
- ▶ It must arise between the parties to the suit in which the decree was passed or their representative.

# examples

1. Order on an application to bring legal representatives of deceased decree holder,
2. Question as to who are legal representatives of a party,
3. Question as to whether a particular property is liable to be attached and sold,
4. Question as to title of property,
5. Order staying or refusing to stay execution on the ground that execution is or is not barred



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6. Objection by a judgment debtor that the attached property cannot be sold because he held it as mutawalli and not in his individual capacity,
  7. Order setting aside the auction sale as nullity on the ground that the deposit was not paid on the day the sale was held,
  8. Property wrongly taken in execution,
  9. Property taken in execution of decree which has been subsequently amended,
  10. Property not taken in execution of decree subsequently amended,
  11. An injunction granted by a decree



## Not applicable to

1. Question as validity of decree,
2. Mal administration of judgment debtor's estates as a suit lies against the executor and the executing court cannot enter into it,
3. Payment before decree,
4. Question between the decree holder and judgment debtor inter-se,
5. Question between a party and his legal representative,
6. Question as to want of jurisdiction raised in trial court and decided.

## O.XXI Stay of execution

- ▶ R.26 . When Court may stay execution— (1) the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

## R.28 . Order of Court which passed decree or of Appellate Court to be binding upon Court applied to

- ▶ Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

## R.29 . Stay of execution pending suit between decree-holder and judgment-debtor

- ▶ Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

# Modes of execution of decree

- ▶ S. 51. Powers of Court to enforce execution— Subject to such conditions and limitations as may be prescribed, the Court
- ▶ may, on the application of the decree-holder, order execution of the decree—
- ▶ (a) by delivery of any property specifically decreed;
- ▶ (b) by attachment and sale or by the sale without attachment of any property;
- ▶ (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- ▶ (d) by appointing a receiver; or
- ▶ (e) in such other manner as the nature of the relief granted may require:


## Circumstances when execution by detention in prison may be ordered (s. 51-58, O.XXI R11)

- ▶ This is last recourse of a court in executing decree is by sending the judgment debtor to civil prison.
- ▶ But all precaution should be taken to avoid hardship.
- ▶ 11A . Application for arrest to state grounds— Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for
- ▶ In absence of ground court cannot take action.
- ▶ A notice is generally issued to the judgment debtor as to show cause why he should not be remanded to civil prison.
- ▶ Court may set him at liberty when his avoidance of the decree was not deliberate but was simply due to poverty or some other cause.

# Grounds of arrest


- ▶ for reasons recorded in writing, court is satisfied—
- ▶ (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
- ▶ (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
- ▶ (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- ▶ (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or



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- ▶ (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.
  - ▶ Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.



- ▶ 55. Arrest and detention— (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:
- ▶ Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise

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- ▶ Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found :
  - ▶ Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

▶ 56. Prohibition of arrest or detention of women in execution of decree for money—

Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

s. 58. Detention and release

(1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding five thousand rupees, for a period not exceeding three months, and

(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks



- ▶ Provided that he shall be released from such detention before the expiration of the said period of detention
- ▶ (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- ▶ (ii) on the decree against him being otherwise fully satisfied, or
- ▶ (iii) on the request of the person on whose application he has been so detained, or
- ▶ (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance :
- ▶ Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

## O.XXI R. 30, Execution of decree for payment of money

- ▶ Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

## O.XXI R.31 . Decree for specific movable property

- ▶ (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.



O.XXI R.32 . Decree for specific performance for restitution of conjugal rights, or for an injunction

- ▶ (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.


R. 33 – in restitution of conjugal rights, court may order for periodical payment which may be altered in future.





## O.XXI R.34 . Decree for execution of document, or endorsement of negotiable instrument

- ▶ (1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.
- ▶ (2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.
- ▶ (3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.
- ▶ (4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

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- ▶ R.(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.
  - ▶ (b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.
  - ▶ (c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.

## O.XXI R35 . Decree for immovable property

- ▶ (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
- ▶ (2) Where a decree is for the 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 the beat of drum, or other customary mode, at some convenient place, the substance of the decree.
- ▶ (3) 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 Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country 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.

# Execution of decree against firm

- ▶ Execution be granted against –
  1. Any property of partnership,
  2. Any person who has appeared in his own name or who has admitted in the pleadings that he is or who has been adjudged to be a partner,
  3. Any person who has been individually served as a partner with a summons and has failed to appear.

Decree can be executed against the personal property of such persons.

## Execution court cannot go behind the decree

- ▶ A court executing a decree cannot go behind the decree between the parties or their representatives.
- ▶ Court cannot entertain any objection that it is incorrect in law or on facts.
- ▶ A decree, though may not be according to law or erroneous, is binding and conclusive between the parties until it is set aside either in appeal or in revision.
- ▶ Exception to this rule are...
  1. Where the decree is a nullity,
  2. Where the decree is ambiguous,
  3. Where the decree has been made by a court without jurisdiction.

## S. 60. Property liable to attachment and sale in execution of decree

- ▶ (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf
- ▶ Provided that the following particulars shall not be liable to such attachment or sale, namely:



- ▶ (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- ▶ (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- ▶ (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;
- ▶ (d) books of account;
- ▶ (e) a mere right to sue for damages;
- ▶ (f) any right of personal service;
- ▶ (g) stipends and gratuities allowed to pensioners of the government or of a local authority or of any other employer or payable out of any service pension fund notified in the Official Gazette by the Central Government or the State government in this behalf, and political pension;

- ▶ (h) the wages of labourers and domestic servants, whether payable in money or in kind;
- ▶ (i) salary to the extent of the one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance.
- ▶ Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.]
- ▶ ia) one-third of the salary in execution of any decree for maintenance;
- ▶ (j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act (62 of 1957), applies;
- ▶ (k) all compulsory deposits and other sums in or derived from any fund to which the Provident funds Act, 1925, (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- ▶ (ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968) for the time being applies in so far as they are declared by the said Act as not to be



- ▶ (kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;
- ▶ (kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;
- ▶ (l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to any such servant while under suspension;
- ▶ (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- ▶ (n) a right to future maintenance;
- ▶ ia) one-third of the salary in execution of any decree for maintenance;
- ▶ (j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act (62 of 1957), applies;
- ▶ (k) all compulsory deposits and other sums in or derived from and fund to which the Provident funds Act, 1925, (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- ▶ (ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968) for the time being applies in so far as they are declared by the said Act as not to be liable to attachment

## O. XXI, Attachment of property

- ▶ R.41 . Examination of judgment-debtor as to his property
- ▶ (1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—
- ▶ (a) The judgment-debtor, or
- ▶ (b) where the judgment-debtor is a corporation, any officer thereof, or
- ▶ (c) any other person,
- ▶ be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and or the production of any books or documents.
- ▶ (2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.
- ▶ (3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.



R.42 . Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined

- ▶ Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

R. 43 . Attachment of movable property, other than agricultural produce, in possession of judgment-debtor—

Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:




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- ▶ 43A . Custody of movable property—
- ▶ (1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian")

## 44 . Attachment of agricultural produce

- ▶ Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—
- ▶ (a) where such produce is a growing crop, on the land on which such crop has grown, or
- ▶ (b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,
- ▶ and another copy on the outer door or on some other conspicuous part of the house in which the judgment- debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

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- ▶ 46. Attachment of debt, share and other property not in possession of Judgment-debtor the attachment shall be made by a written order prohibiting,—
  - ▶ (i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;
  - ▶ (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
  - ▶ (iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.
  - ▶ (2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

## O.XXI R.55 . Removal of attachment after satisfaction of decree

- ▶ Where—
- ▶ (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- ▶ (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- ▶ (c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.



O.XXI Sale generally



R.64 . Power to order property attached to be sold and proceeds to be paid to person entitled

- ▶ Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.


R.65 . Sales by whom conducted and how made


Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed

## 66 . Proclamation of sales by public auction

- ▶ (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.
- ▶ (2) Such proclamation shall be draw up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible -
  - ▶ (a) the property to be sold or, where a part of the property would be sufficient to satisfy the decree, such part;

- ▶ (b) the revenue assessed upon the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- ▶ (c) any encumbrance to which the property is liable;
- ▶ (d) the amount for the recovery of which the sale is ordered; and
- ▶ (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property;
- ▶ Provided that where notice of the date for settling the terms of the proclamation has been given to the judgement-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs
- ▶ Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate if any, given, by either or both of the parties

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- ▶ (3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.
  - ▶ (4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

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- ▶ 68 . Time of sale— Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least fifteen days in the case of immovable property, and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.
  - ▶ Non compliance with the mandatory provisions of Order 21 rule 66; the auction sale held on a particular date and its subsequent confirmation, were held to be illegal.
  - ▶ 72 . Decree holder not to bid for or buy property without permission— (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
  - ▶ 73 . Restriction on bidding or purchase by officers— No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

## R.89 . Application to set aside sale on deposit

- ▶ (1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his deposition in Court,—
- ▶ (a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and
- ▶ (b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree- holder.

## R.90 . Application to set aside sale on ground of irregularity or fraud

- ▶ (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conduction it.
- ▶ (2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.
- ▶ (3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up

## R.91 . Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest

- ▶ The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

## R.92 . Sale when to become absolute or be set aside

(1) When no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute

94 . Certificate to purchaser— Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale of is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.