

E-LEARNING MODULES
 TOPIC : CODE OF CIVIL PROCEDURE
 CLASS: LLB third year and BALLB fifth year
MODULE 5 Execution

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1	When a Court passed decree in favour of plaintiff, it is expected that defendant should obey orders of Court. But if defendant does not obey such orders, plaintiff has to institute execution proceeding to enforce and implement decree passed by the Court. In execution proceeding person who institute execution proceeding is known as judgment as 'decree holder' and opponent is known as 'judgment debtor'.	
1.1	Who can make application for execution Application for execution can be made by the decree holder or his legal representative.	
1.2	Against whom application for execution can be made Execution proceeding can be made against judgment debtor only.	
1.3	Court by which decree may be executed: A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.	
1.4	Transfer of decree 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.	

1.5	<p>Powers of Court in executing transferred decree</p> <p>Powers of Court shall include the following powers of the Court passed the decree:</p> <ol style="list-style-type: none"> 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. 	
1.6	<p>Precept:</p> <p>Precept means, an order or direction given by one Court to another requiring some act to be done.</p>	
1.7	<p>Garnishee order:</p> <p>Garnishee means, judgment debtor's debtor. Garnisher means the decree holder, who initiates the garnishment proceeding to get property in possession of the garnishee. On application made by the creditor (decree holder), issue notice to the garnishee to pay such debt due from him either in Court to satisfy decree or appear and show cause why he should not do so.¹ Payment made by garnishee on notice, shall be a valid discharge to him as against judgment debtor.</p>	
2	<p>Question to be determined by the Court executing decree:</p> <p>Court executing decree shall determine all questions relating to</p> <ol style="list-style-type: none"> i. Execution, ii. Discharge, or iii. Satisfaction <p>of the decree.</p>	
2.1	<p>Court executing decree cannot go behind the decree:</p> <p>As a general rule, Court executing decree cannot go behind the decree to find legality or correctness.</p>	
3	<p>Modes of execution of a decree:</p> <p>The Court may on the application of the decree holder, order execution of the decree. The main modes of executing a decree are:</p> <ol style="list-style-type: none"> 1. By delivery of any property specifically decreed, 2. By attachment and sale or by the sale without attachment of 	

¹ Order XXI Rule 46A

	<p>any property,</p> <p>3. By arrest and detention in prison,</p> <p>4. By appointment of receiver, or</p> <p>5. In such other manner as the nature of the relief granted may require.²</p>	
4	<p>MODES OF EXECUTING DIFFERENT TYPES OF DECREE:</p> <p>Delivery, attachment, sale, detention in civil prison and appointment of receiver are the main modes of execution of decree. One or more mode may be used by the Court executing a decree.</p>	
4.1	<p>Decree for payment of money:</p> <p>A decree for money including payment for money in alternative may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his property or both.³</p>	
4.2	<p>Decree for specific movable property:</p> <p>Decree for specific movable property or share in it, may be executed by the seizer and by delivery to the party, or by detention in civil prison or by attachment of property or by both.⁴</p>	
4.3	<p>Decree for specific performance or for an injunction</p> <p>Decree for specific performance of contract or injunction may be enforced by detention in civil prison, or by attachment of property or by both.</p>	
4.4	<p>Decree for restitution of conjugal rights</p> <p>Decree for restitution of conjugal right may be enforced against husband by attachment of property. If the order of the Court is not obeyed periodical payments as may be just, may be ordered.</p>	
4.5	<p>Decree for execution of document or endorsement of negotiable instrument</p> <p>Decree holder may prepare draft of the document and deliver it to the Court. After considering the objections raised by the judgment debtor, Court may approve draft or alter it and then executed upon proper stamp papers.</p>	
4.6	<p>Decree for immovable property</p> <p>Possession thereof shall be delivered the party to whom it has</p>	

² Section 51

³ Order XXI Rule 30

⁴ Order XXI Rule 31

	been adjudicated, by removing any person bound by the decree who refuses to vacate the property.	
5	EXECUTION BY ARREST AND DETENTION Object of arresting a judgment debtor and detaining in civil prison is not to punish him but to create a force or create burden so that he should obey decree.	
5.1	Grounds for arrest and detention <ol style="list-style-type: none"> a. That the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree, <ol style="list-style-type: none"> 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 c. That the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.⁵ 	
5.2	Duration of detention: Every person detained in the civil prison in execution of a decree shall be so detained, <ol style="list-style-type: none"> 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. 	
6	EXECUTION BY ATTACHMENT Attachment is an act or process of taking, apprehending or seizing property of a person by judicial order. Where the judgment debtor is not obeying decree, decree holder can make application to the Court for issuing order to attach property of judgment debtor.	
6.1	Property which can be attached: All other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of	

⁵ Section 51

	which, he has a disposing power which he may exercise for his own benefit can be attached.	
6.2	<p>Property which cannot be attached</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>d) Books of account;</p> <p>e) A mere right to sue for damages;</p> <p>f) Any right of personal service;</p> <p>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;</p> <p>h) The wages of labourers and domestic servants, whether payable in money or in kind;</p> <p>i) Salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance.</p> <p>ia) one-third of the salary in execution of any decree for maintenance;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>kb) All moneys payable under a policy of insurance on the</p>	

	<p>life of the judgment-debtor;</p> <p>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;</p> <p>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;</p> <p>m) An expectancy of succession by survivorship or other merely contingent or possible right or interest;</p> <p>n) A right to future maintenance;</p> <p>o) Any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and</p> <p>p) Where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of arrears of such revenue.</p>	
6.3	<p>Removal of attachment:</p> <p>The attachment under execution is deemed to be withdrawn when:</p> <ol style="list-style-type: none"> i. The amount of decree is paid into Court, ii. There is otherwise satisfaction of decree, iii. The decree is set aside or reversed. 	
7	<p>EXECUTION BY SALE</p> <p>Where judgment debtor is not obeying money decree, his property may be sold to satisfy decree. A property which has been attached may be sold or a property may be sold without attachment also.</p>	
7.1	<p>Conduct of Sale</p> <p>The sale is conducted by any officer authorised by the Court by way of public auction.</p> <p>Notice is given to judgment debtor and then after a proclamation is drawn.</p> <p>Proclamation shall state the intended sale of property in execution, time and place of auction sale, description of the property, estimated value of property, revenue assessed upon it, any encumbrance on it and the amount to be recovered.</p> <p>When immovable property is sold by public auction, the purchaser shall pay immediately a deposit of 25% of purchase amount.</p>	

7.2	<p>Proceeds of sale Shall be used for</p> <ol style="list-style-type: none"> 1. In defraying the expenses of the sale, 2. In discharging the amount due under the decree, 3. In discharging the interest and principal moneys due on subsequent encumbrances (if any), 4. In discharging rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof. 	
7.3	<p>Setting aside sale Application to set aside sale in execution may be made by any person claiming an interest in the property, decree holder, purchaser, or any other person entitled to rateable interest in the property.</p>	
8	<p>STAY OF EXECUTION Stay of execution means to suspend execution proceeding.</p>	
8.1	<p>Stay by appellate Court The appeal by itself does not operate as stay to execution proceeding but appellate Court has to pass stay order to the Court executing decree until next order or until pendency of appeal.</p>	
8.2	<p>Stay by Court which passed decree Court which passed the decree may on sufficient cause being shown, order the execution to be stayed.</p>	

Questions for practice.

1. What is execution? What are modes of execution?
2. What are the powers of court executing decree?
3. How different types of decree may be executed by a court?
4. State provisions for arrest and detention during execution of decree.
5. How sale is effected by court executing decree?
6. When stay to execution is granted?

For more information and study read Code of Civil Procedure 1908 with commentary and case laws.