

## **Order-21 EXECUTION OF DECREES AND ORDERS**

### CONTENTS

1. Modes of paying money under decree
2. Payment out of Court to decree-holder
3. Lands situate in more than one jurisdiction
4. Transfer to Courts or Small Causes
5. Mode of transfer
6. Procedure where Court desires that its own decree shall be executed by another Court
7. Court receiving copies of decree, etc. to file same without proof
8. Execution of decree or order by Court to which it is sent
9. Execution by High Court of decree transferred by other Court
10. Application for execution
11. Oral application
- 11A. Application for arrest to state grounds
12. Application for attachment of moveable property not in judgment- debtors possession
13. Application for attachment of immoveable property to contain certain particulars
14. Power to require certified extract from Collectors register in certain cases
15. Application for execution by point decree holder
16. Applications for execution by transferee of decree
17. Procedure on receiving application for execution of decree
18. Execution in case of cross-decrees
19. Execution in case of cross-claims under same decrees
20. Cross-decrees and cross-claims in mortgage suits
21. Simultaneous execution
22. Notice to show cause against execution in certain cases
- 22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale
23. Procedure after issue of notice
24. Process for execution
25. Endorsement on process
26. When Court may stay execution
27. Liability of judgment-debtor discharged
28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to
29. Stay of execution pending suit between decree-holder and judgment debtor
30. Decree for payment of money
31. Decree for specific moveable property
32. Decree for specific performance for restitution of conjugal rights

or for an injunction

33. Discretion of Court in executing decrees for restitution of conjugal rights

34. Decree for execution of document, or endorsement of negotiable instrument

35. Decree for immoveable property

36. Decree for delivery of immoveable property when in occupancy of tenant

37. Discretionary power to permit judgment-debtor or show cause against detention in prison

38. Warrant for arrest to direct judgment-debtor to be brought up

39. Subsistence allowance

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

41. Examination of judgment-debtor as to his property.2

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

43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor

43A. Custody of moveable property

44. Attachment of agricultural produce

45. Provision as to agricultural produce under attachment

46. Attachment of debt, share and other property not in possession of judgment-debtor

46A. Notice to garnishee

46B. Order against garnishee

46C. Trial of disputed questions

46D. Procedure where debt belongs to third person

46E. Order as regards third person

46F. Payment by garnishee to be valid discharge

46G. Costs

46H. Appeals

46I. Application to negotiable instruments

47. Attachment of share in moveables

48. Attachment of salary or allowances of servant of the Government or railway company or local authority

48A. Attachment of salary or allowances of private employees

49. Attachment of partnership property

50. Execution of decree against firm

51. Attachment of negotiable instruments

52. Attachment of property in custody of Court or public officer

53. Attachment of decrees

54. Attachment of immoveable property

55. Removal of attachment after satisfaction of decrees

56. Order for payment of coin or currency notes to party entitled under decree

57. Determination of attachment

58. Adjudication of claims to, or objections to attachment of property

59. Stay of sale

60. Release of property from attachment
61. Disallowance of claim to property attached
62. Continuance of attachment subject to claim of incumbrancer
63. Saving of suits to establish right to attached property
64. Power to order property attached to be sold and proceeds to be paid to person entitled
65. Sales by whom conducted and how made
66. Proclamation of sale by public auction
67. Mode of making proclamation
68. Time of sale
69. Adjournment or stoppage of sale
70. Saving of certain sales
71. Defaulting purchaser answerable for loss on re-sale
72. Decree-holder not to bid for or buy property without permission
- 72A. Mortgagee not to bid at sale without the leave of the Court
73. Restriction on bidding or purchase by officers
74. Sale of agricultural produce
75. Special provisions relating to growing crops
76. Negotiable instruments and shares in corporations
77. Sale by public auction
78. Irregularity not to vitiate sale but any person injured may sue
79. Delivery of moveable property, debts and shares
80. Transfer of negotiable instrument and shares
81. Vesting order in the case of other property
82. What courts may order sales
83. Postponement of sale to enable judgment-debtor to raise amount of decree
84. Deposit by purchaser and re-sale on default
85. Time for payment in full of purchase money
86. Procedure in default of payment
87. Notification on re-sale
88. Bid of co-sharer to have preference
89. Application to set aside sale on deposit
90. Application to set aside sale on ground of irregularity or fraud
91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest
92. Sale when to become absolute or to be set aside
93. Return of purchase-money in certain cases
94. Certificate purchaser
95. Delivery of property in occupancy of judgment-debtor
96. Delivery of property in occupancy of tenant
97. Resistance or obstruction to possession of immoveable property
98. Order after adjudication
99. Dispossession by decree-holder or purchaser
100. Order to be passed upon application complaining of dispossession
101. Question to be determined
102. Rules not applicable to transferee pendente lite
103. Orders to be treated as decrees
104. Order under rule 101 or rule 103 to be subject to the result of

pending suit

105. Hearing of application

106. Setting aside orders passed ex parte, etc

## **Order-21 EXECUTION OF DECREES AND ORDERS**

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### **1. Modes of paying money under decree :-**

(1) All money, payable under a decree shall be paid as follows, namely:

(a) by deposit into the Court whose duty it is to execute the decree, sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under Cl. (a) or Cl. (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under Cl. (a) or Cl. (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under Cl. (a) or Cl. (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the

notice referred to in sub-rule (2).

(5) On any amount paid under Cl. (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment : Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

## **2. Payment out of Court to decree-holder :-**

(1) Where any money payable under a decree of any kind is paid out of Court <sup>1</sup>[or the decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor <sup>2</sup>[or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

Bombay.-The following sub-rule (2) of Order XXI shall be substituted as under : "(2) The judgment-debtor or any person who has become surety for judgment-debtor may also inform the Court by an application in writing supported by an affidavit of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a date to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly."

**3**

**4**[(2-A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

(a) the payment is made in the manner, provided in rule 1; or

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

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

**5** (3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

1. Subs. by Act No. 104 of 1976, Sec. 72, for the words, "or the decree is otherwise adjusted".

2. Ins. by C.P.C. (Amendment) Act No. 104 of (1976).. Sec. 72 (w.e.f. 1st February, 1977).

3. Vide Notifn. No. P 0102/77 (w.e.f. 1st October, 1983).

4. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

5. In the application of the Act to Punjab sub-rule (3) has been rep. by the Punjab Relief of Indebtedness Act, 1934 (Punjab 7 of 1934), Sec. 36.

### **3. Lands situate in more than one jurisdiction :-**

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction or two or more courts, any one of such court may attach and sell the entire estate or tenure.

### **4. Transfer to Courts or Small Causes :-**

(1) Where a decree has been passed in a suit to which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small <sup>1</sup>[or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras <sup>1</sup>[or Bombay], as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Bombay.-For the existing rule 4 of Order XXI the following rule 4 shall be substituted as under : "Transfer to Court of Small Causes.-

(1) Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provisional Small Causes Court and the Court which passed it wishes it to be executed in Calcutta or Madras, such Court may send to the Court of Small Causes in Calcutta or Madras, as the case may be the copies and certificates mentioned in rule 6, and

such Court of Small Causes thereupon execute the decree as if it had been passed by itself.

(2) A decree in a suit of the nature described in sub-rule (1) but in which the value as set forth in the plaint did not exceed ten thousand rupees may be sent for execution to and be executed by the Presidency Court of Small Causes at Bombay in the manner prescribed in sub-rule (1)." <sup>3</sup>

1. Subs. by the A.O. 1937 for "Bombay or Rangoon".

3. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

#### **5. Mode of transfer :-**

Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.]

#### **6. Procedure where Court desires that its own decree shall be executed by another Court :-**

The Court sending a decree for execution shall send-

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by the execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which the satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

#### **7. Court receiving copies of decree, etc. to file same without proof :-**

The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

#### **8. Execution of decree or order by Court to which it is sent :-**

Where such copies are so filed, the decree or order may, if the

Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any Subordinate Court of competent jurisdiction.

**9. Execution by High Court of decree transferred by other Court :-**

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction. Application for Execution

**10. Application for execution :-**

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed to this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

**11. Oral application :-**

(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Written application.-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any), what payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any), what previous applications have been made for the execution of the decree, the dates of such

applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the cost (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(i) the mode in which the assistance of the Court is required, whether-

(j) by the delivery of any property specifically decreed;

**1** [ (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

1. Subs. by Act 104 of 1976. Sec. 72 (w.e.f. 1st February, 1977).

**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.]

**12. Application for attachment of moveable property not in judgment- debtors possession :-**

Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

**13. Application for attachment of immoveable property to contain certain particulars :-**

Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall

contain at the foot-

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

**14. Power to require certified extract from Collectors register in certain cases :-**

Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

**15. Application for execution by joint decree holder :-**

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**16. Applications for execution by transferee of decree :-**

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder : Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given

to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution : Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others. <sup>1</sup>[Explanation.-Nothing in this rule shall affect the provisions of Section 146 , 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 as required by this rule.] Bombay.-For the existing rule 16 of Order XXI the following rule 16 shall be substituted as under: "16. Application for execution by transferee of decree.-Where a decree has been passed Jointly in favour of two or more persons the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, or to the Court to which it has been sent for execution, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder: Provided that, where the decree or such interest as aforesaid has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution : Provided further that where the transferee Court holds the assignment proved, it shall forthwith communicate its decision in that behalf to the Court which passed the decree and the latter Court shall make an entry in the Register of Suits indicating that the assignment has been held to be proved : Provided also that, where the decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others. Explanation 1.-In an application under this rule, any payment of money made under a decree or any adjustment in whole or in part of the decree arrived at to the satisfaction of the decree-holder, which payment or adjustment has not been certified or recorded by the Court under rule 2 of this Order, shall not be recognised by the Court entertaining the application. Explanation II.-Nothing in this rule shall effect the provisions of Section 146 , 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 as required by this rule. " <sup>2</sup>

1. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977)
2. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

**17. Procedure on receiving application for execution of decree :-**

(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with <sup>1</sup>[the Court shall allow] the defect to be remedied then and there or within a time to be fixed by it.

<sup>2</sup> [(1-A) If the defect is not so remedied, the Court shall reject the application : Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in Cls. (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.]

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a

1. Subs. by Act 104 of 1976, Sec. 72, for the words "the Court may reject the application, or may allow" (w.e.f. 1st February, 1977).
2. Ins. by ibld .

**18. Execution in case of cross-decrees :-**

(1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same .time by such Court, then-

(a) if the two sums arc equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree (or the smaller sum).

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless-

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

**19. Execution in case of cross-claims under same decrees :-**

Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then-

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

**20. Cross-decrees and cross-claims in mortgage suits :-**

The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

**21. Simultaneous execution :-**

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

**22. Notice to show cause against execution in certain cases :-**

:-

(1) Where an application for execution is made-

(a) more than <sup>1</sup>[two years] after the date of the decree, or

(b) against the legal representative of a party to the decree, <sup>2</sup>[or where an application is made for execution of a decree filed under the provisions of Section 44 - A] <sup>3</sup>[or];

<sup>3</sup>[(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 <sup>1</sup>[two years] having elapsed between the date of the decree and the application for execution if the application is made within <sup>1</sup> [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 applications 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 them.

(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 ends of justice.

1. Subs. by Act 104 of 1976, Sec. 72, for the words "one year" (w.e.f. 1st February, 1977).

2. Ins.. by Act 8 of 1937, Sec. 3.

3. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

**22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale :-**

Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set

aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.]

**23. Procedure after issue of notice :-**

(1) Where the person to whom notice is issued under <sup>1</sup> [rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution .of the decree, the Court shall consider such objection and make such order as it thinks fit.

1. Subs. by Act 38 of 1978, for the words "the last preceding rule".

**24. Process for execution :-**

(1) Where the preliminary measure (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

<sup>1</sup>[(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day or its return is specified therein.]

Bombay.-For the existing rule 24 of Order XXI the following rule 24 shall be substituted as under: "24. Process /or execution.-(1) When the preliminary measure (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued and shall be signed by the Judge or such officer as the Court may appoint in this behalf and shall be sealed with the seal of the Court and delivered to the proper officer to be executed: Provided that a Civil Judge, Senior Division may, in his special jurisdiction, send the process to another court in the same district for execution by the proper officer in that court.

(3) In every such process a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void, if no day for its return is specified therein."

**2**

1. Subs. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

2. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

## **25. Endorsement on process :-**

(1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

High Court Amendment Bombay.-A colon for full stop at the end of rule 25 of Order XXI shall be substituted and the following proviso shall be added as under: "Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this rule." **1**

1. Vide Notin No. P.O. 102/77 (w.e.f. 1st October, 1983).

## **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.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon judgment-debtor.-Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, <sup>1</sup> [the Court shall require] such security from, or impose such condition upon, the judgment-debtor as it thinks fit.

1. Subs. by Act 104 of 1976, Sec. 72, for the words "the Court may require" (w.e.f. 1st February, 1977).

**27. Liability of judgment-debtor discharged :-**

No order of restitution or discharge under rule 26 prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

**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.

**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 <sup>1</sup>[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: <sup>1</sup> [Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]

1. Ins, by Act 104 of 1976. Sec. 72 (w.e.f. 1st February, 1977).

**30. Decree for payment of money :-**

Every decree for the payment of money, including a decree (or 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 both.

**31. Decree for specific moveable property :-**

(1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such persons 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.

(2) Where any attachment under sub-rule (1) has remained in force for <sup>1</sup> [three months], if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, where, at the end of [three months] from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

1. Subs. by Act 104 of 1976, Sec. 72, for the words "six months" (w.e.f. 1st February, 1977) . see also Faramananda Panda v. Krishna ChandraPanda, 1990 (69) C.L.T. 170 (Orissa).

### **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 (or 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 <sup>1</sup>[in the case 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.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has

remained in force for <sup>2</sup>[six months] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds, the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of <sup>2</sup>[six months]

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree. Illustration A, a person of little substance erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings.

#### **4**

"Explanation.- For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.";

1. Ins. by Act 29 of 1923, Sec 2.

2. Subs by Act 104 of 1976. Sec 72, for the words "one year" (w.e.f. 1st February, 1977).

4. In Rule 32, after sub-rule (5), Explanation shall be Inserted by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT 2002.[22 of 2002], published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002

### **33. Discretion of Court in executing decrees for restitution of conjugal rights :-**

(1) Notwithstanding anything in rule 32, the Court either at the time of passing a decree <sup>1</sup>[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree <sup>2</sup>[shall be executed in the manner provided in this rule].

(2) Where the Court has made an order under sub-rule (1) <sup>3</sup> [\* \* \*] it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub- rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money, so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money-order to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

1. Ins. by Act 29 of 1923, Sec. 3.

2. Subs. by Sec. 3. Act 29 of 1923, for "shall not be executed by detention In prison"

3. The words "and the decree-holder Is the wife" omitted by Sec. 3. Act 29 of 1923.

#### **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 of 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 fixed in this behalf.

(3) Where the judgment-debtor objects to the draft, his elections 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 debtor-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

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely: "C. D., Judge of the Court of- (as the case may be), for A.B., in a suit E.F. against A B.", and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

#### **1 [(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 authorized 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].

1. Subs. by Act 104 of 1976, Sec. 72, for rule (6) (w.e.f. 1st February, 1977).

#### **35. 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 by 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.

**36. Decree for delivery of immoveable property when in occupancy of tenant :-**

Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy; the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

**37. Discretionary power to permit judgment-debtor or show cause against detention in prison :-**

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court <sup>1</sup>[shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

<sup>2</sup> [Provided that such notice shall not be -necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the .decree, the judgment-debtor is likely to abscond or leave the local limits of jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall if the decree-holder so requires, issue a warrant (or the arrest of the judgment-debtor.

1. Subs. by Act 21 of 1936, Sec. 31, for the word "may".

2. Ins. by Sec. 3, Act 21 of 1936.

**38. Warrant for arrest to direct judgment-debtor to be brought up :-**

Every warrant for the arrest of a judgment-debtor shall direct the

officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

**39. Subsistence allowance :-**

(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays 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.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under Section 57 , or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payment (if any) shall be made to the officer-in-charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment- debtor in the civil prison shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in -the civil prison or arrested on account of any sum so disbursed.

High Court Amendment Bombay.-For rule 39 of Order XXI the following rule 39 shall be substituted as under:

**40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest :-**

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37 or is brought before the Court after being

(2) Pending the conclusion of the inquiry under sub-rule (1) the

Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of Section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention leave the judgment-debtor in the custody of officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.)

High Court Amendment Bombay.-After sub-rule (5) of rule 40 of Order XXI the following sub-rules shall be inserted as under:

"(6) When a judgment-debtor is ordered to be detained in the custody of an officer of a court under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as, having regard to the specified or probable length of detention, will provide:

(a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scales fixed under Section 57 , and ,

(b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed or such fees (including lodging charges) in respect thereof as the Court may by order fix: Provided-

(i) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and

(ii) that the Court may from time to time require the decree holder to deposit such further sums as it deems necessary.

(7) If a decree-holder fails to deposit any sum as required under sub-rule (6) above, the Court may disallow the application and direct the release of the judgment-debtor.

(8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the suit: Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed." <sup>1</sup> Attachment of Property

1. Vide Notifn. No. P 0102/77 (w.e.f. 1st October, 1983).

#### **41. Examination of judgment-debtor as to his property.2 :-**

1 [(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) <sup>1</sup>[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 for the

<sup>2</sup> [(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.I

1. Subs. by Act 104 of 1976., for the words "In case of a corporation" (w.e.f. 1st February, 1977).

2. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

#### **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.

**43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor :-**

Where the property to be attached is moveable 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: Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

**43A. Custody of moveable property :-**

(1) Where the property attached consists of livestock, 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").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,-

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced-

(i) at the instance of the decree-holder, as if the custodian were a

surety under Section 145 ;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.]

High Court Amendment Bombay.-The following new rule shall be inserted as under: "43-A. Attachment of live-stock.-(1) When an application is made for the attachment of live-stock the Court may demand in advance in cash at rates to be fixed half-yearly or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the live-stock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance, and all other charges requisite for the maintenance and custody of the live-stock. (2) If the live-stock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the live-stock or a part thereof, may, at the discretion of the Court be paid to the custodian of the live-stock for their maintenance. The produce, such as, milk, eggs, etc. if any, may either be sold as promptly as possible for the benefit of the judgment-debtor or may, at the discretion of the Court, be set-off against the cost of maintenance of the live-stock." <sup>1</sup>

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

#### **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 Cou, 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.

High Court Amendment Bombay.-The following new rule 44-A of Order XXI shall be inserted as under: "44-A. Copy of the warrant of attachment to be suit to the Collector where agricultural produce is attached.-Where the property to be attached is agricultural produce, a copy of the warrant or the order of attachment shall be sent by post to the office of the Collector of the District in which land is situate."

**45. Provision as to agricultural produce under attachment :-**

(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

High Court Amendment Bombay.-For the existing sub-rule (1) of rule 45 of Order XXI the following sub-rule (1) shall be substituted as under: "(1) Provision as to agricultural produce under attachment.-Where agricultural produce is attached, the Court shall make such arrangement for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of growing crop shall specify the time at which it is likely to be fit to be cut or gathered, and the applicant shall deposit in court at the time of the application such sum as the Court shall deem sufficient to defray the cost of watching and attending the crop till such time." (2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the cost incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree. (3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil. (4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment. (5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

**46. Attachment of debt, share and other property not in possession of judgment-debtor :-**

(1) In the case of-

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of any Court, the attachment shall be made by a written order prohibiting-

(i) in the case of the debt, the creditor 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 moveable 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 moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under Cl. (i) of sub-rule (1) may pay the amount of his debt into. Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

**46A. Notice to garnishee :-**

(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor.

(3). Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

**46B. Order against garnishee :-**

Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient, to satisfy the decree and the cost of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

**46C. Trial of disputed questions :-**

Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit: Provided that if the debt in respect of which the application under rule 46-A is made in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

**46D. Procedure where debt belongs to third person :-**

Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove that same.

**46E. Order as regards third person :-**

After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may

make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

**46F. Payment by garnishee to be valid discharge :-**

Payment made by the garnishee on notice under rule 46-A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46-A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

**46G. Costs :-**

The costs of any application made under rule 46-A and of an' proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

**46H. Appeals :-**

An order made under rule 46-B, rule 46-C or rule 46-E shall be appealable as a decree.

**46I. Application to negotiable instruments :-**

The provisions of rules 46-A to 46-H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.] High Court Amendments Bombay.-For the existing rules 46-A to 46-J of Order XXI the following rules shall be substituted as under: "46-A. (1) Upon the application of the decree-holder, the Court may in the case of- (1) any debt (other than a debt secured by a mortgage or a charge or a negotiable instrument) of which the Civil Courts are not precluded from adjudicating upon by any law for the time being in force and which has been attached under rule 46 of this Order, or (2) any moveable property not in possession of the judgment-debtor which has been attached under rule 46 of this Order, or (3) any negotiable instrument which has been attached under rule 51, of this Order, or (4) any moveable property of the nature referred to in (1) to (3) above in the custody of any public officer other than officer of any Court, which has been attached under rule 52 of the Order, issue notice to any person liable to pay to the judgment-debtor such debt or the amount due under such negotiable instrument or liable to deliver such moveable property or to account for it to the judgment-debtor (hereinafter referred to as "the

garnishee") calling upon him within the period specified in the notice either to pay into Court the said debt or amount payable under the said negotiable instrument or deliver into Court the said moveable property, as the case may be, or so much thereof as may be sufficient to satisfy the decree or order and the cost of execution or to appear before the Court and show cause why he should not be ordered to do so. The notice shall be served on the garnishee and, if the Court so directs on the judgment-debtor also. The notice shall be served eight clear days before the returnable date thereof: Provided that, subject to the proviso to rule 46-C, if by any law for the time being in force, the jurisdiction to adjudicate upon the debt or claim relating to the negotiable instrument or moveable property in respect of which the application aforesaid is made is conferred on a Civil Court other than the execution Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court shall transfer the case to the competent Court and on such transfer the Court to which the case is transferred will deal with it in the same manner as if it had been originally instituted in that Court. Explanation.-When the District Court itself is the competent Court it may deal with the case in the same manner as if it had been originally instituted in that-Court. (2) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment- debtor or that the property belongs to the judgment-debtor. 46-B. Where the garnishee does not within the time specified in the notice or within such time as the Court may allow to pay into Court the said debt or the amount payable under the said negotiable instrument or does not deliver into Court the said property or so much of the debt or amount or property as is sufficient to satisfy the decree or order and the cost of the execution or does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice or pass such other order as it may deem fit. 46-C. If the garnishee disputes his liability, the Court instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as it may think fit: Provided that if the amount of the debt or the amount payable under the negotiable instrument of the value of the property in respect of which the application aforesaid is made exceeds the pecuniary jurisdiction of the Court, the Court shall send the execution case to the District Court to

which the said Court is subordinate and thereupon the District Court or any other competent Court to which it may be transferred by the District Court will deal with it in the same manner as if it had been originally institute in that Court. 46-D. If the garnishee appears in answer to the garnishee notice shows cause to the satisfaction of the Court, the notice shall be dismissed and upon such dismissal the attachment ordered underrules 46, 51 or 52 of this Order shall stand raised and the prohibitory order, if any, shall stand discharged. 46-E. Whenever in the course of proceedings against the garnishee it is alleged or appears to the Court to be probable that some person other than the judgment-debtor is or claims to be entitled to the debt attached or the amount payable under the negotiable instrument or the property attached or claims to have a charge or lien upon or interest in such debt or amount or property the Court may order such third person to appear before it and state the nature of his claim with particulars thereof and, if necessary prove the same. 46-F. After hearing such third person and any other person who may subsequently be ordered to appear, or in case of such third person or other person not appearing when ordered, the Court may pass such order as is provided under rules 46-B, 46-C, or 46-D or such other order or orders upon such terms, if any, with respect to the lien or charge or interest if any of such third or other person as it may deem fit and proper including an order that any question or issue necessary (or determining the validity of the claim of the third or other person be tried as though it were an issue in a suit. 46-G. (a) An order made by the Court under rules 46-B, 46-C or 46-F against the garnishee shall be executable as if it were a decree of the Court in favour of the decree-holder. (b) When money or negotiable instrument or property is received in Court as a result of an order under rules' 46-B, 46-C or 46-F above, the money shall not be paid and further steps in execution in respect of the negotiable instrument or property shall not be taken till the time for filing an appeal against the said order is over and whatever an appeal is filed till further orders of the Appellate Court. 46-H. Any payment or delivery made by a garnishee in compliance with a garnishee notice or order made against him under rules' 46-B, 46-C or 46-F of this order or any money or property realised in execution of an order under these rules shall be a valid discharge of the garnishee liability to the judgment-debtor and to any other person or persons ordered to appear under rules 46-E or 46-F of this Order for the amount paid or levied or property delivered or property realised in execution,

although the decree in execution of which the application under rule 46-A was made, or the order passed in the proceedings on such application may be set aside or reversed. 46-I. Where a debt due by a firm to the judgment-debtor has been attached it may be proceeded against under rules 46-A to 46-H of this Order in the same manner as in the case of an ordinary garnishee, and provisions of Order XXX of this Code shall, so far as applicable, apply to such proceedings although one or more partners of such firm may be resident outside the jurisdiction of the Court: Provided that any person having the control or management of the partnership business or any partner of the firm who is within the jurisdiction of the Court is served with garnishee notice. An appearance by any partner pursuant to such notice shall be sufficient appearance by the firm. 46-J. The cost of any application under rule 46-A of this Order and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court. 46-K. Any order made under rules 46-B, 46-C, 46-F or 46-G of this Order shall be appealable as a decree." <sup>1</sup>

1. Vide Noli fn. No. P. 0102/77 (w.e.f. 1st October, 1983).

#### **47. Attachment of share in moveables :-**

Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

#### **48. Attachment of salary or allowances of servant of the Government or railway company or local authority :-**

(1) Where the property to be attached is the salary or allowances of the <sup>1</sup>[servant of the Government] or of a servant of a railway company or local authority, <sup>2</sup>[or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in Section 617 of the Companies Act, 1956 ] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon a notice of the order to such officer as <sup>3</sup>[the appropriate Government may by notification

in the official Gazette] appoint <sup>4</sup>[in this behalf,-

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be,

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.]

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a court in pursuance of previous and unsatisfied order of attachment, the officer appointed by <sup>5</sup>[the appropriate Government] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

<sup>6</sup>[(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the Funds of railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in <sup>7</sup> [Explanation.-In this rule, "appropriate Government" means,- (i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or

any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Government or partly by the Central Government and partly by one or more State Governments, the Central Government; (ii) as respects any other servant of the Government or a servant of any other local or other authority or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any Other-Government company, the State Government.]

1. Subs. by Act 5 of 1943, Sec. 3, for the words "public officer".
2. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).
3. Subs. by Act 25 of 1942, Sec. 3 and Sch. II, for the words "the Central Government or the Provincial Government may by notification in their official Gazette".
4. Subs. by Act 26 of 1939, Sec. 2, for the original words.
5. Subs. by Act 25 of 1942, Sec. 3 and Sch. II, for the words "Central Government or the Provincial Government as the case may be".
6. Subs. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).
7. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977) ; see also Babu Ram v. Presiding Officer Motor Accident Claims Tribunal, 1990 (1) C.L.J. (C. Cr. R.)471 at p. 472 (P. and H.).

**48A. Attachment of salary or allowances of private employees :-**

(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction may order that the amount shall, subject to the provisions of Section 60 , be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in

accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.]

#### **49. Attachment of partnership property :-**

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served to the judgment-debtor and on his partners or such of them as are within [India].

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within [India].

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all partners, and all orders made on such application shall be similarly served-

#### **50. Execution of decree against firm :-**

(1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under

rule 6 or rule 7 of Order XXX or who has admitted on the pleading that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

**1** [S.30 of the Indian Partnership Act, 1932].

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), Cls. (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may, order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

**2** [(5) Nothing in this rule shall apply to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX.]

1. Subs. by Act 104 of 1976, Sec. 72, for the words and figures "Sec. 247 of the Indian Contract Act, 1872 (9 of 1872)".

2. Ins. by Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977). Sec. 72 (w.e.f. 1st February, 1977).

### **51. Attachment of negotiable instruments :-**

Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

### **52. Attachment of property in custody of Court or public officer :-**

Where the property to be attached is in the custody of any Court or

public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued: Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court.

### **53. Attachment of decrees :-**

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,-

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until- (i) the Court which passed the decree sought to be executed cancels the notice, or <sup>1</sup>(ii) (a) the holder of the decree sought to be executed, or (b) his judgment-debtor with the previous consent in writing of such decree- holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree).

High Court Amendment Bombay.-For sub-rule (1) (b) of rule 53 of Order XXI the following sub-rule (1) (b) shall be substituted as under: "(b) If the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court and to any other Court to which the decree has been transferred for execution to stay the execution of its decree unless and until- (i) the Court which passed the decree sought to be executed cancels the notice, or (ii) (a) the holder of the decree sought to be executed, or (b) his judgment-debtor with the previous consent in writing of such decree- holder, or with the permission of the attaching Court, applies, to the Court receiving such notice to execute the attached decree." <sup>2</sup>

(2) Where a court makes an order under Cl. (a) of sub-rule (1) or receives an application under sub-head (it) of Cl. (b) of the said

sub-rule, it shall, on the application of the creditor who had attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceed in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

High Court Amendment Bombay.-The following sub-rule (4) of rule 53 of Order XXI shall be substituted as under: "(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring the same in any way; and where such decree has been passed by any other court also by sending to such other Court and to any other Court to which the decree has been transferred for execution of a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent."<sup>1</sup>

(5) The holder of a decree under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such to the judgment-debtor bound by the decree attached; and no payment or adjustment of the decree made by the judgment-debtor in contravention of such order <sup>3</sup> [with knowledge thereof or] after receipt of notice there, either through the Court or otherwise shall be recognized by any court so long as the attachment remains in force.

1. Subs. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).
2. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October. 1983).
3. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

#### **54. Attachment of immoveable property :-**

(1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment- debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

<sup>1</sup>[(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court- house, and also, where the property is land-paying revenue to the Government, in the office of the Collector of the district in which the land is situate [and, where the

High Court Amendments Allahabad.-In its application to State of Uttar Pradesh, in Order XXI rule 54 the following sub-rule (3) shall be inserted :- "(3) The attachment shall be deemed to have been made against transferees without consideration from the judgment-debtor, from the date of the order of attachment; and as against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub-rule (1) whichever is earlier"<sup>2</sup>order was duly proclaimed under sub-rule (1) whichever is earlier". Bombay.-For rule 54 of Order XXI the following rule shall be substituted as under: "54. Attachment of immoveable property.- (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment- debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged. (1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for setting the terms of the proclamation of sale. (2) Copies of the order shall also be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be

caused to be made in the revenue records, city survey records, or village panchayat records as may be required in the particular case. (3) The order shall be proclaimed at same place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court house, and also, where the property is land-paying revenue to the Government, In the office of the Collector of the district in which the land is situate, and also, where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned, and, where the property land situate in a village also in the office of the Gram Panchayat if any, having jurisdiction over that village." <sup>3</sup>

1. Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

2. Ins. by High Court of Judicature Allahabad [Administrative (G) Anubhag] Notification No. 447/Vld-24, dated 31st August, 1982, published in Uttar Pradesh Gasette, Part II. dated 3rd February, 1983, pp. 14.15 (w.e.f. 5th February, 1983).

3. Vide Notifn. No. P 0102/77 (w.e.f. 1st October, 1983).

#### **55. Removal of attachment after satisfaction of decrees :-**

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

(c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immoveable 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.

#### **56. Order for payment of coin or currency notes to party entitled under decree :-**

Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

#### **57. Determination of attachment :-**

(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the

application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to such attachment shall cease.

(2) If the Court omits to give such direction the attachment shall be deemed to have ceased].

High Court Amendment Bombay.-For the existing rule 57 of Order XXI the following rule 57 shall be substituted as under; "57. Determination of attachment.-Where any property has been attached in execution of a decree and the Court for any reason passes an order dismissing an execution application, the Court shall direct whether the attachment shall continue or cease. If the Court omits to make an order and if the order dismissing the execution application is appealable the attachment shall continue till expiry of the period prescribed for filing an appeal or where appeal has been filed, till such further period as the Appellate Court may direct." <sup>1</sup>

1. Vide Notifn. No. P.0102/77 (w.e.f. 1st October. 1983).

### **58. Adjudication of claims to, or objections to attachment of property :-**

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(a) allow that claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person, or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1) refuses to entertain it, the party against whom such order is made, may institute a suit to establish the right which he claims to the property in dispute; but subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.]

**59. Stay of sale :-**

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

(a) if the property is moveable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immoveable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale not be confirmed, and any such order may be made subject to such terms and conditions as to security or

otherwise as the Court thinks fit.]

**60. Release of property from attachment :-**

]-Rep. by the C.P.C. (Amendment) Act of 1976, Sec. 72.

**61. Disallowance of claim to property attached :-**

]-Rep. by the C.P.C. (Amendment) Act of 1976, Sec. 72.

**62. Continuance of attachment subject to claim of incumbrancer :-**

]-Rep. by the C.P.C. (Amendment) Act of 1976, Sec. 72.

**63. Saving of suits to establish right to attached property :-**

]-Rep. by the C.P.C. (Amendment) Act of 1976, Sec. 72. Sale

generally

**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 seem 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.

**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 sale 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 drawn 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 or part of 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 incumbrance 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 judgment-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

(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 verifications, 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.

**67. Mode of making proclamation :-**

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise, be given.

**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 immoveable property and of at least <sup>1</sup> [seven days] in the case of moveable 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.

1. Subs. by Ins. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).. for the word "fifteen days" (w.e.f. 1st February, 1977).

**69. Adjournment or stoppage of sale :-**

(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons (or the adjournment):

Provided that, where the sale is made in, or within the precincts of the Court- house, no such adjournment shall be made without the

leave of the Court. High Court Amendment Bombay.-For sub-rule (1) of rule 69 of Order XXI the following sub-rule (1) shall be substituted as follows: "69. Adjournment or stoppage of sale.- (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour and the officer conducting any such sale may, in his discretion, adjourn the sale to a specified day and hour, recording his reasons for such adjournment: Provided that, where the sale is made in, or within the precincts of the Court-house, no such adjournment shall be made without the leave of the Court." <sup>1</sup>

(2) Where a sale is adjourned under sub-rule (1) for a longer period than <sup>2</sup> [thirty days], a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down; the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs have been paid into the Court which ordered the sale.

1. Vide Notifn. No P 0102/77 (w.e.f. 1st October, 1983).

2. Subs. by Act 104 of 1976, Sec. 72, for the word "seven days" (w.e.f. 1st February, 1977).

#### **70. Saving of certain sales :-**

Rep by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), Sec. 14.

#### **71. Defaulting purchaser answerable for loss on re-sale :-**

Any deficiency of price which may happen on a re-sale by lesson of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court <sup>1</sup> [\* \* \*] by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

1. The words "or to the Collectors or subordinate of the Collectors, as the case may be", omitted by Act 66 of 1955, Sec. 14.

#### **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.

(2) Where decree-holder purchases, amount of decree may be

taken as payment.-Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may subject to the provisions of Section 73, be set-off against one another and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale, and the costs of such application and order and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

**72A. Mortgagee not to bid at sale without the leave of the Court :-**

{1) Notwithstanding anything contained in rule 72, a mortgagee of immoveable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be-

(a) not less than the amount then due for principal, interests and costs in

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(4) In other respects, the provisions of sub-rules (2) and (3) of rule 72 apply in relation to purchase by the decree-holder under that rule.]

**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.

**74. Sale of agricultural produce :-**

(1) Where the property to be sold is agricultural produce, the sale

shall be held,- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or (b) if such produce has been cut or gathered, at or near the like threshing-floor or place for treading out" grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,-

(a) a fair price, in the estimation of the person holding the sale is not offered for it, and

(b) the owner of the produce or a person authorised to act in his behalf applies to have the sale postponed till the next day or; if a market is held at the place of sale the next market-day, the sale shall be postponed accordingly and shall be then completed whatever price may be offered for the produce.

#### **75. Special provisions relating to growing crops :-**

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

High Court Amendment Bombay.-For sub-rule (2) of rule 75 of Order XXI the following sub-rule shall be substituted as under: "(2) Where the crop from its nature does not admit of being stored, or where it appears to the Court that the crop shall be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered and the purchaser shall be entitled to enter on the land, and to do all that is necessary (or the purpose of tending and cutting or gathering it."<sup>1</sup>

1. Vide Notifn. No. P0102/77 (w.e.f. 1st October, 1983)

#### **76. Negotiable instruments and shares in corporations :-**

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be

made by public auction, authorize the sale of such instrument of share through a broker.

**77. Sale by public auction :-**

(1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property

(2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the sale, and the sale shall become absolute.

(3) Where the moveable property to be sold as a share in goods belonging to the judgment-debtor and co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

**78. Irregularity not to vitiate sale but any person injured may sue :-**

No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reasons of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specified property and for compensation in default of such recovery.

**79. Delivery of moveable property, debts and shares :-**

(1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice, to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing

from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

**80. Transfer of negotiable instrument and shares :-**

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing, is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely: A. B. by C.D., Judge of the Court of (or as the case may be), in a suit by E.F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

**81. Vesting order in the case of other property :-**

In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly. **Safe of Immoveable Property**

**82. What courts may order sales :-**

Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

**83. Postponement of sale to enable judgment-debtor to raise amount of decree :-**

(1) Where an order for the sale of immoveable property has been made if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some party thereof or of any other immoveable property of the judgment-debtor, the Court may, on his application postpone the

sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing within a period to be mentioned therein, and notwithstanding anything contained in Section 64, to make the proposed mortgage, lease or sale: Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court: Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on such property.

#### **84. Deposit by purchaser and re-sale on default :-**

On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. On the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit the property shall forthwith be re-sold.

(2) Where, the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

#### **85. Time for payment in full of purchase money :-**

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property: Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72. High Court Amendment Bombay.-The following rule 85 of Order XXI shall be substituted as under: "85. Time for payment in full of purchase money.-The full amount of purchase money payable, together with the amount required for the general stamp paper for the certificate under rule 94, shall be paid by the purchaser into Court before the Court closes on the 15th day from the date of the sale of the property: Provided that, in respect of the purchase money, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72: Provided further that if as

a result of some bona fide mistake or miscalculation the amount deposited falls short of the full amount of the purchase money the Court may, in its discretion, allow the shortfall to be made up after fifteen days of the sale, and if the full amount of the purchase money is deposited within such time as the Court may allow, the Court may condone the delay if it considers it just and proper to do so. Explanation.-Where an amount is tendered in Court on any day after 1.00 p.m. but is not accepted by the Court and is paid into Court on the next working day between 11.00 a.m. and 1.00 p.m. the payment shall be deemed to have been made on the day on which the tender is made." <sup>1</sup>

1. Vide Notifn. No. P0102/77 (w.e.f. 1st October, 1983).

**86. Procedure in default of payment :-**

In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

**87. Notification on re-sale :-**

Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale. High Court Amendment Bombay.-In Order XXI, rule 87, for the words "of the purchase money", the words "of the amount mentioned in rule 85" shall be substituted.

**88. Bid of co-sharer to have preference :-**

Where the property sold is a share of undivided immovable property and two or more persons of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-share.

**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 depositing 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.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

**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, or 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 conducting 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. Explanation.-The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

**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.

**92. Sale when to become absolute or to be set aside :-**

(1) Where 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:

**1**[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.) High Court Amendment Bombay.-The following proviso shall be added at the end of rule 92(1) of Order XXI, namely: "Provided that before confirming the sale the Court shall satisfy itself that the amount paid under rule 85 for the purchase of general stamp paper for the certificate under rule 94 is sufficient for the purpose in accordance with the rate in force at the time of the confirmation and may, notwithstanding anything contained in rule 86; give the purchaser such time as it thinks fit for making good any deficiency." **2**

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within **3**[sixty days] from the date of sale **4**[or in cases where the amount deposited under rule 89, is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale]:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby. .

**5**

"Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002."

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

**6** [ Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) 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-proceeding in which the sale had been held shall unless, the Court otherwise directs be revived at the stage at which the sale was ordered.]

1. Ins. by Act 104 of 1976. Sec. 72 (w.e.f. 1st February, 1977).
2. Vide Notifn. No. P 0102/77 (w.e.f. 1st October, 1983). '
3. The Words Substituted by THE CODE OF CIVILPROCEDURE (AMENDMENT) ACT, 2002.[22 of 2002] published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002
4. Subs. by Act 104 of 1976, Sec. 72, or the words "the Court shall make an order setting aside the sale" (w.e.f. 1st February, 1977).
5. The Proviso Shall be Inserted by THE CODEOF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. [22 of 2002] in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002
6. Ins. by by Act 104 of 1976. (w.e.f. 1st February, 1977).

### **93. Return of purchase-money in certain cases :-**

Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

### **94. Certificate purchaser :-**

Where a sale of immoveable 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 is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute. High Court Amendment Bombay.-The following rule 94 of Order XXI shall stand substituted as under: "94. Certificate to purchaser.-Where a sale of immoveable property has become absolute the Court shall grant certificate specifying the property sold, the amount of the purchase money and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date, the day on which the sale became absolute." <sup>1</sup>

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October. 1983).

### **95. Delivery of property in occupancy o,f judgment-debtor :-**

Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment- debtor subsequently to attachment of such property and a certificate in respect there- of has been granted under rule 94, the Court shall,

on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

**96. Delivery of property in occupancy of tenant :-**

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

**97. Resistance or obstruction to possession of immoveable property :-**

(1) Where 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 in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

**1** [(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.)

1. Subs. by Act 104 of 1976, Sec. 72 (w.e.f. 1st February, 1977).

**98. Order after adjudication :-**

(1) Upon the determination of the questions referred to in rule 101, the- Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or

on his behalf or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.]

Bombay.-The following sub-rule (2) of rule 98 Order XXI shall be substituted as under: "(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf or by any transferee where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant order the judgment-debtor, or any person acting on his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder or the purchaser, as the case may be for the delay and expenses caused to him in obtaining possession. Any order made under this rule shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree." <sup>1</sup>

1. Vide Notifin. No. 0102/77 (w.e.f. 1st October, 1983).

### **99. Dispossession by decree-holder or purchaser :-**

(1) Where any person other than the judgment-debtor is dispossessed of immoveable 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 the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

### **100. Order to be passed upon application complaining of dispossession :-**

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the

applicant be put into the possession of the property or dismissing the application; or

(b) pass such order as, in the circumstances of the case, it may deem fit.]

Bombay.-The following proviso to rule 100 of Order XXI shall be added namely: "Where it is determined that the application is made by person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above" <sup>1</sup>

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

**101. Question to be determined :-**

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction , to decide such questions.] High Court Amendment Bombay.-The following proviso to rule 101 of Order XXI shall be added as under: "Provided that when the Court is not competent to decide such questions due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court." <sup>1</sup>

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

**102. Rules not applicable to transferee pendente lite :-**

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. Explanation.-In this rule, "transfer" includes a transfer by operation of law]. High Court Amendment Bombay.-Rule 102 of Order XXI shall stand deleted. <sup>1</sup>

1. Vide Notifn No. P. 0102/77 (w.e.f. 1st October, 1988).

**103. Orders to be treated as decrees :-**

Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.]

**104. Order under rule 101 or rule 103 to be subject to the result of pending suit :-**

Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of -the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of property.]

**105. Hearing of application :-**

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite-party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit. Explanation.-An application referred to in sub-rule (1) includes a claim or objection made under rule 58.]

**106. Setting aside orders passed ex parte, etc :-**

(1) The applicant, against whom an order is made under sub-rule (1) of rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1)

unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from that date when the applicant had knowledge of the order.]