

**CONSTITUTIONALITY OF PROVISIONS FOR EXECUTION OF DECREE FOR
PAYMENT OF MONEY IN THE CODE OF CIVIL PROCEDURE: LEGAL
DISCOURSE**

by

Adv. Vaibhav Karitkeya Agrawal

ABSTRACT:

Code of Civil Procedure (hereinafter "CPC") provides provisions for procedure of adjudication of disputes of civil nature. CPC consists of 158 Sections, and the First Schedule. Order XXI of CPC provides provisions for execution of decree. Order XXI, rule 42 of CPC provides provisions for attachment of property of the judgment-debtor, in cases of decree for rent or mesne profits, etc., before the amount due from him has been ascertained. This paper endeavours to review the constitutionality of such an attachment of property of the judgment debtor. The paper concludes that a legislative review of such prejudicial powers for attachment is necessary and would add to the legal jurisprudence.

INTRODUCTION:

Code of Civil Procedure (hereinafter "CPC") provides provisions for procedure of adjudication of disputes of civil nature. CPC consists of 158 Sections, and the First Schedule. Order XXI of CPC provides provisions for execution of decree. Order XXI rule 42 of CPC provides provisions in relation to attachment of property of the judgment-debtor, in cases of decree for rent or mesne profits, etc., before the amount due from him has been ascertained. This paper endeavours to review the constitutionality of such an attachment of property of the judgment debtor. The paper concludes that a legislative review of such prejudicial powers for attachment is necessary and would add to the legal jurisprudence.

**EXECUTION OF DECREE FOR PAYMENT OF RENT OR MESNE PROFITS
UNDER RULE 42 OF ORDER XXI OF CPC:**

Order XXI, Rule 42 of CPC states:

"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."

There are two limbs of this provision:

- I. to determine the amount of rent or mesne profits ;
- II. the amount of rent or mesne profits which the judgment debtor is liable to pay through the decree.

It is this second limb which is of consideration before the Court of execution. It is because usually a decree would conclusively determine¹ the person who stands in the capacity of landlord and tenant, and would conclusively determine the amount of rent or mesne profits for which the civil suit has been filed. Order XXI, rule 42 of CPC confers discretion on the Court of Execution to attach the property of the judgment debtor, in a case of rent or mesne profits, before the amount due from him has been ascertained.

Such attachment of the property of the judgment-debtor by the provision of rule 42 of Order XXI of CPC should be contemplated on following grounds:

1. the decree for rent or mesne profits would specifically state the liability of the tenant or the judgment-debtor to the decree holder either with or without interest. Once the liability is imposed upon the judgment-debtor and he chooses to discharge its liability in installments, the Court of execution would be required to ascertain the amount due from him. If the decree leaves it for the Court of execution to determine the extent of liability leviable through attachment of property of the judgment-debtor for

¹ Section 2(2) of the Code of Civil Procedure defines the term 'decree'. It states that the decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Hence, a decree, by its definition, purports to a instrument issued by the Court of law that conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. A decree therefore, would not direct the Court of execution to determine the extent of right or entitlement of any party to a suit. The decree would specifically state the amount of money which the decree holder is entitled to with interests and costs, if any.

satisfaction of the decree, it would be against the rule of natural justice to direct the attachment of whole of the property movable or immovable or assets or all inclusive prior to assessment of the extent of liability of such judgment-debtor in reference to the petition for execution of decree.

2. the judgment-debtor is entitled to be heard by the Court of execution in order to ascertain the amount already paid by him to the decree holder out of the Court, the amount paid to the decree holder on direction of the Court or in the Court premises and the amount remaining for fulfilment of the decree in favour of the decree holder. Also, it is necessary to ascertain from the judgment-debtor, whether it wants to fulfil the decree against him through sale of the property owned by him or craves leave of the Court to grant sufficient time for fulfilment of the decree. This is evident from the text of sub-rule (2) of Rule 31 of Order XXI of CPC which expressly confers three months time for satisfaction of the decree for specific movable property. Similar provision is stated in sub-rule (3) of Rule 32 of Order XXI of CPC where the Court may order for sale of the attached property after the lapse of six months from the date of attachment. The latter provision is applicable in cases of restitution of conjugal rights, decree for the specific performance of a contract or for an injunction.
3. It is significant to note that the attachment of the property of the judgment-debtor in the preliminary stage of hearing is of the nature of confiscation of property in a criminal case as envisaged by section 82 of the Code of Criminal Procedure 1973. It resembles the proceedings of the Court against a proclaimed offender.
4. it is imperative to note that such proceedings for attachment of property could dispossess the judgment-debtor and ensue a cause for civil suit for damages if at the latter stage the Court orders for cessation of attachment of the property on fulfilment of the decree.
5. it is imperative that a person charged for arrears of rent or for mesne profits is usually dependent upon income that he would likely earn from its labour and skill and would not deposit the rent out of the money deposited in past. This is because if he is so wealthy that he possesses considerable assets of value from the past, then the plausible reason for arrears of rent is his intentional omission to pay the rent rather than paucity of funds. However, if on the contrary, the rent holder sustains himself from daily wages, etc., the attachment of whole of the property of the judgment debtor just in order to have an inquiry into the rent or mesne profits would cause pathetic condition for his livelihood and life. Such an attachment would lead to violation of his

Fundamental Rights under Article 21 of the Constitution of India. In *Maneka Gandhi v. Union of India*², Hon'ble Supreme Court held the term life in Article 21 of the Constitution to include all the amenities of life, rather than mere animal existence.

6. Even if the judgment-debtor defaults in satisfaction of the decree for payment of money of rent or mesne profits, it would be prejudicial to direct attachment of whole or any part of the property of the judgment debtor at the preliminary stage itself. It is imperative to note that Order XXI rule 2 of CPC provides that: "Where any payment is made under clause (a) or clause (c) of sub-rule (1)³, the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgement due." Therefore, in cases, where the judgment-debtor defaults in sending the notice of its payment to the decree holder or where the notice does not reach the decree holder before or on the date listed for hearing before the Court of Execution, it would be just and reasonable to require the judgment-debtor to submit the credentials about the amount due or paid, instead of attachment of its property.
7. It would be pertinent to note that rule 22 of Order XXI of CPC⁴ specifically provides requirement of issuance of notice before the execution of decree.

² AIR 1978 SC 597

³ Order XXI rule 1 of CPC states:

"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, or 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."

⁴ rule 22 of Order XXI of CPC states:

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

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

(b) against the legal representative of a party to the decree 2[or where an application is made for execution of a decree filed under the provisions of section 44A], 3[or

1[(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 2[two years] having elapsed between the date of the decree and the application for execution if the application is made within 2[two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

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

8. In *Balaram Kumawat v. Union of India & Ors.*⁵, this Court [Hon'ble Supreme Court] while elaborately discussing the basic rules of interpretation observed at para 20: "Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of "ex visceribus actus" should be resorted to in a situation of this nature." So, it would be imperative to apply the method of contextual reading for interpretation of the text of rule 42 of Order XXI of CPC.

Therefore, in my view, the power of attachment of the property of the judgment-debtor conferred by rule 42 of Order XXI of CPC is provided to the Court of execution specifically by rule 30 of Order XXI of CPC which provides "Decree for payment of money". Further, rule 42 of Order XXI of CPC merely confers power to ascertain the amount due from the judgment-debtor prior to issuance of any orders which would conclusively impose liability upon the judgment-debtor in concurrence with the terms of the decree. So, the power to attach the property of the judgment debtor emanates from the text of rule 30 of Order XXI of CPC. Thus, rule 42 of Order XXI of CPC must be amended to state:

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

CONCLUSION:

Order XXI of CPC provides provisions for execution of decree. Order XXI rule 42 of CPC provides provisions in relation to attachment of property of the judgment-debtor in cases of decree for rent or mesne profits, etc. before the amount due from him has been ascertained. This paper endeavours to state that any such attachment of the property of the judgment debtor before the ascertainment of amount due from him would be prejudicial in nature. Thus, the provision rule 42 of Order XXI of CPC is required to be amended for the reason that, firstly, the provision of notice to show cause against execution has been provided in rule 22 of Order XXI of CPC and this is a general rule applicable for all cases of execution of a decree; secondly, the execution of a decree for payment of money is specifically provided in rule 30 of Order XXI of CPC. Therefore, the paper concludes that the amendment of rule 42

⁵ (2003) 7 SCC 628

of Order XXI of CPC would ensure that in cases of decree for rent or mesne profits or any other matter envisaged by rule 42 of Order XXI of CPC, the procedural safeguards for the judgment-debtor would be consistent to that in cases of execution for specific movable property in rule 31 of Order XXI of CPC and for specific immovable property in rule 35 of Order XXI of CPC. This is because 'Law is the product of human reason and is intimately related to the notion of purpose_...'⁶ An analysis of the judicial method shows that law is not a body of rules, but an organic body of principles with an inherent power of growth.⁷



⁶ G.W. Paton, *A Text-book of Jurisprudence* 4 (3rd ed. 1964, English Language Book Society and Oxford University Press).

⁷ *Id* at 9. Sir Henry Maine stated '...the sign of a progressive human society is whether law keeps on growing after its codification'. see M.P. Jain, *M.P. Jain Outlines of Indian Legal and Constitutional History* 501 (Lexis Nexis Butterworths Wadhwa Nagpur, 6th edn. 2006, reprint 2009).