

Fundamentals for expeditious disposal of Execution Cases

<u>General Aspects</u>		
Time frame for Execution	<ul style="list-style-type: none"> • 6 months • Extension only by recording reasons in writing for such delay 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
	<ul style="list-style-type: none"> • This direction is meant to be observed 	Dr.Bhoj Raj Garg Vs. Goyal Education and Welfare Society and others, 2022 LiveLaw (SC) 976
Parties are to cooperate with the Executing Court	<ul style="list-style-type: none"> • To complete the Executing Process within six months, the parties are expected to cooperate with the Executing Court • In case that court finds any obstruction or non-cooperation by the parties • it shall proceed to use its powers • including the power to impose suitably heavy costs 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Court must play an active role	<ul style="list-style-type: none"> • To avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties • Court must play an active role • in deciding all such related issues to the subject matter during adjudication of the suit itself, and • ensure that a clear, unambiguous, and executable decree is passed in any suit 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Execution Provisions of the Code of superior judicial quality	<ul style="list-style-type: none"> • In <i>Ghan Shyam Das Gupta v. Anant Kumar Sinha, AIR 1991 SC 2251</i>, Hon'ble Supreme Court had observed • the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and • the Judge, being entrusted exclusively with administration of justice, is expected to do better 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Court cannot go beyond the decree	<ul style="list-style-type: none"> • Executing Court must not go beyond the decree 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Police assistance	<ul style="list-style-type: none"> • The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance • direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. • In case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law • which includes proceeding for commission of an offence under Chapter X of Indian Penal Code, dealing with Contempt of Lawful Authority of Public Servants, especially Section 186 for obstructing public servant in discharge of public functions and Section 187 for omission to assist public servant when bound by law to give assistance 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418

INITIAL STAGE

Application for Execution	<ul style="list-style-type: none"> • Decree holder • desires to execute it • shall apply to the Court 	Order 21 Rule 10
Oral Application	<ul style="list-style-type: none"> • In case of decree for the payment of money • 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 Judgment-debtor is within the precincts of the Court 	Order 21 Rule 11(1)
Written application	<ul style="list-style-type: none"> • Application for the execution of a decree • shall be in writing • signed and verified by the applicant 	Order 21 Rule 11(2)
Particulars of Written application	<ul style="list-style-type: none"> • number of the suit • names of the parties • date of the decree • whether any appeal has been preferred from the decree • 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 • 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 • 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 • amount of the costs (if any) awarded • name of the person against whom execution of the decree is sought • mode in which the assistance of the Court is required whether <ul style="list-style-type: none"> ➤ by the delivery of any property specifically decreed ➤ by the attachment, or by the attachment and sale, or by the sale without attachment, of any property ➤ by the arrest and detention in prison of any person ➤ by the appointment of a receiver ➤ otherwise, as the nature of the relief granted may require 	Order 21 Rule 11(2) (a to j)
Certified copy of the decree	<ul style="list-style-type: none"> • Court may require the applicant to produce a certified copy of the decree 	Order 21 Rule 11(3)
Application for arrest to state grounds	<ul style="list-style-type: none"> • 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 	Order 21 Rule 11A

	<ul style="list-style-type: none"> the grounds on which arrest is applied for 	
Application for attachment of movable property not in judgment-debtor's possession	<ul style="list-style-type: none"> Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession decree-holder shall annex an inventory of the property to be attached containing a reasonably accurate description of the same 	Order 21 Rule 12
Application for attachment of immovable property to contain certain particulars	<ul style="list-style-type: none"> Where an application is made for the attachment of any immovable property belonging to a judgment-debtor it shall contain at the foot- <ul style="list-style-type: none"> 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 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 	Order 21 Rule 13
Power to require certified extract from Collector's register in certain cases	<ul style="list-style-type: none"> Where an application is made for the attachment of any land which is registered in the office of the Collector 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 	Order 21 Rule 14
Scrutiny of application and compliance of requirements	<ul style="list-style-type: none"> On receiving an application for the execution of a decree Court shall ascertain whether such of the requirements of rules 11 to 14 have been complied with; and if they have not been complied with Court shall allow the defect to be remedied then and there or within a time to be fixed by it 	Order 21 Rule 17(1)
If defect not removed	<ul style="list-style-type: none"> If the defect is not so remedied Court shall reject the application 	Order 21 Rule 17(1A)
If the Applicant /Decree Holder does not take the necessary steps to prosecute his application	<ul style="list-style-type: none"> Execution Case is to be dismissed 	Rule 13, Volume 1, Chapter 12, Part E - Rules and Orders of the Hon'ble Punjab and Haryana High Court
Registration and proceeding further	<ul style="list-style-type: none"> When the application is admitted Court shall enter in the proper register a note of the application and the date on which it was made, and Shall order execution of the decree according to the nature of the application 	Order 21 Rule 17(4)

ISSUANCE OF NOTICE

<p>Notice to show cause against execution in certain cases</p>	<ul style="list-style-type: none"> • Where an application for execution is made- • more than two years after the date of the decree (last order-Proviso), or • against the legal representative of a party to the decree or • where an application is made for execution of a decree filed under the provisions of section 44A (Execution of decrees passed by Courts in reciprocating territory), or • against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent • 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 	<p>Order 21 Rule 22(1)</p>
<p>Court can issue any process without issuing the notice</p>	<ul style="list-style-type: none"> • Court not precluded • 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 	<p>Order 21 Rule 22(2)</p>
<p>Practice of issuing Notice is anti-thesis to the scheme of Civil Procedure Code</p>	<ul style="list-style-type: none"> • This is anti-thesis to the scheme of Civil Procedure Code • which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial 	<p>Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418</p>
<p>Procedure after issue of notice</p>	<ul style="list-style-type: none"> • Where the person to whom notice is issued under rule 22 • does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed • Court shall order the decree to be executed • 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 	<p>Order 21 Rule 23</p>

	<u>OBJECTIONS DISPOSAL</u>	
Questions to be determined by the Court executing decree	<ul style="list-style-type: none"> • All questions arising between the parties to the suit in which the decree was passed, or their representatives, and • relating to the execution, discharge or satisfaction of the decree • shall be determined by the Court executing the decree and not by a separate suit 	Section 47
Parties to Suits	<p>Rule 1: Who may be joined as plaintiff</p> <ul style="list-style-type: none"> • any person in whom a right to relief exist • having common dispute of law/fact <p>Rule 3: Who may be joined as defendants</p> <ul style="list-style-type: none"> • any person against whom a right to relief exist • having common dispute of law/fact <p>Rule 10: Suit in name of wrong party</p> <ul style="list-style-type: none"> • any person to be substituted or added as party • whose presence is necessary for the determination of the real matter in dispute • whose presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit 	ORDER I
Frame of Suit	<p>Rule 1: Frame of suit</p> <ul style="list-style-type: none"> • Every suit shall • as far as practicable • be framed so as to afford ground for final decision upon the subjects in dispute and • to prevent further litigation concerning them <p>Rule 2: Suit to include the whole claim</p> <ul style="list-style-type: none"> • Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action • Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim • he shall not afterwards sue in respect of the portion so omitted or relinquished • except with the leave of the Court <p>Rule 3: Joinder of causes of action</p>	ORDER II
No mechanical Notice in third party Objections	<ul style="list-style-type: none"> • The Court exercising jurisdiction under Section 47 or under Order XXI of CPC • must not issue notice on an application of third-party claiming rights • in a mechanical manner 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Court should refrain from entertaining application(s) that has already been considered by the Court	<ul style="list-style-type: none"> • Court should refrain from entertaining any such application(s) • that has already been considered by the Court • while adjudicating the suit or • which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418
Taking of evidence only in exceptional and rare cases	<ul style="list-style-type: none"> • The Court should allow taking of evidence during the execution proceedings • only in exceptional and rare cases • where the question of fact could not be decided by resorting to any other expeditious method like • appointment of Commissioner or calling for electronic materials including photographs or video with affidavits. 	Rahul S Shah vs Jinendra Kumar Gandhi & Others (2021) 6 SCC 418

ISSUE OF PROCESS

Issuance of process for execution	<ul style="list-style-type: none"> • When the preliminary measures (if any) required by the foregoing rules have been taken • Court shall issue its process for the execution of the decree 	Order 21 Rule 24(1)
Formalities in Issuance of process	<ul style="list-style-type: none"> • Every such process • shall bear date the day on which it is issued, and • shall be signed by the Judge, and • shall be sealed with the seal of the Court and • delivered to the proper officer to be executed 	Order 21 Rule 24(2)
Specifying the days in Issuance of process	<ul style="list-style-type: none"> • 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 	Order 21 Rule 24(3)
Endorsement on process by Process-server/ Bailiff	<ul style="list-style-type: none"> • 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 exceeded, the reason of the delay, or • if it was not executed, the reason why it was not executed, and • shall return the process with such endorsement to the Court 	Order 21 Rule 25(1)
Court to examine any inability	<ul style="list-style-type: none"> • Where the endorsement is to the effect that such officer is unable to execute the process • Court shall examine him touching his alleged inability, and • May summon and examine witnesses as to such inability, and • shall record the result 	Order 21 Rule 25(2)
Note on the Process by the Reader of the Court regarding compliance of legal formalities	<ul style="list-style-type: none"> • All Executing Courts are required to seek • a Note on the Warrant of Attachment or File • to be recorded by the Reader of the Court that • the specific formalities required by the law (including the ownership proof where available, affidavit in support of the application and property being capable of attachment under law) have been actually complied with • The Presiding Officers of the Executing Courts are required to carefully scrutinise such Note and initial it in token of its scrutiny, before putting their signatures on any such process i.e. Warrant of Attachment of the property 	Rule 4, Volume 1, Chapter 12, Part H - Rules and Orders of the Hon'ble Punjab and Haryana High Court
Manner of service of Process	<ul style="list-style-type: none"> • Every attempt should be made to effect personal service in the first instance and failing that • service on an agent or a member of the family and further that • the Process Server should go again and again for this purpose 	Rule 1, Volume IV, Chapter 7, PART B(a) - Rules and Orders of the Hon'ble Punjab and Haryana High Court
Chaukidar and Headmen/Lambardar are to assist Process Servers	<ul style="list-style-type: none"> • In villages there is normally a Chaukidar appointed under The Punjab Chaukidara Rules and • Headmen/Lambardar appointed under The Punjab Land Revenue Rules • to perform certain duties • which also includes assisting the Process Server of an Executing Court to identify a person and witness the process 	The Punjab Chaukidara Rules/ The Punjab Land Revenue Rules
	<ul style="list-style-type: none"> • In case a report under Rule 25 Order 21 of the Code is received from the Process Server, regarding non providing of the requisite assistance, then 	Rule:11 - The Punjab Chaukidara Rules

Non assistance by Chaukidar and Headmen/Lambardar	<ul style="list-style-type: none"> the Executing Court is expected to proceed against such Chaukidar or Headmen/Lambardar not only under the provisions of law including Section 187 of Indian Penal Code (Omission to assist a Public Servant when bound by law to give assistance) but also by writing to the Deputy Commissioner to dismiss such a <i>Chaukidar</i> for his misconduct and neglect of duty, under Rule 11 of The Punjab Chaukidara Rules and <i>Headmen/Lambardar</i> under Rule 16 of The Punjab Land Revenue Rules Otherwise, the Executing Court can proceed in accordance with law, which includes proceeding for commission of an offence under Chapter X of Indian Penal Code, dealing with Contempt of Lawful Authority of Public Servants, especially Section 176 for omission to give notice or information to public servant by person legally bound to give it, Section 186 for obstructing public servant in discharge of public functions and Section 187 for omission to assist public servant when bound by law to give assistance. 	Rule:16 - The Punjab Land Revenue Rules
Directions by FCRs to Chaukidar and Headmen/Lambardar to assist Process Servers	<ul style="list-style-type: none"> directions by the Financial Commissioners to <i>Lambardars</i> to assist the Process Servers in serving processes and Subordinate Courts to bring to the notice of the Collectors case of willful negligence of duty in this direction on the part of <i>Lambardars</i> and not to hesitate in moving the Hon'ble High Court through the proper channel if matters do not improve even then 	Rule 1, Volume IV, Chapter 7, PART G - Rules and Orders of the Hon'ble Punjab and Haryana High Court
Attesting the Reports by Chaukidar and Headmen/Lambardar	<ul style="list-style-type: none"> in order to reduce the possibility of false reports being made on notices of Sale it should be attested by a <i>Lambardar</i> and whenever possible, also by the <i>village Patwari</i> or <i>School Master</i> 	Rule 2, Volume IV, Chapter 7, PART G - Rules and Orders of the Hon'ble Punjab and Haryana High Court
Order 5 Rule 17 - wording is "if any"	<ul style="list-style-type: none"> Otherwise in villages, assistance can be sought from any <i>Panch</i> or <i>Sarpanch</i> of the Gram Panchayat, the elected public representatives Otherwise under Order 5 Rule 17 of the Code wording is "if any" person is available for identifying the person and witnessing the process That means in case nobody comes forward to identify a person or to witness a process, the Process Serving Official can execute the process and to submit such facts in his report to be endorsed on the back of the process, under Order 21 Rule 25 of the Code 	Order 5 Rule 17
Extra charging in Process Execution	<ul style="list-style-type: none"> If a drummer is not coming forward to beat the drum for rupees 100/- the extra money which he requires can be got paid through the Decree Holder/applicant and can be considered as cost of the execution process, ultimately to be realised from the Judgement Debtor. Under Rule 11(2) Order 21 of the Code, the Decree Holder/Applicant is basically seeking assistance of the Court in Execution Process. Section 151 of the Code provides inherent powers to Court to pass any order necessary for the ends of justice, as there is no specific provision in the Code, however almost similar eventualities are dealt under Rule 32(5), Rule 45(2) and Rule 67(2) Order 21 of the Code 	Section 151 and Order 21 Rule 32(5), Rule 45(2) and Rule 67(2) of the Code.

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