

## Frequently Asked Questions on Execution

Q.1 Whether there is a time limit to conclude the execution process.

Ans. Yes, the Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418** has directed the Executing Court to conclude the Execution Cases within a period of six months and in case of any extraordinary circumstances for delay, to record the reasons for the same.

Q.2. Difficulty is faced on account of incomplete or incorrect address of the respondent / Judgement Debtor?

Ans. **Rule 10 Order 21 of the Code** provides that a holder of Decree who desires to get it executed has to apply to the Court. **Rule 11 Order 21 of the Code** deals with the application. Under **sub rule (2)** of the same, in written application, the requisite particulars, are required to be submitted by the Applicant /Decree Holder, duly verified, including the names of the person against whom execution is sought, which includes complete and correct name alongwith complete and correct address.

In the same provision the Applicant /Decree Holder is required to state the mode in which he is seeking the assistance of the Court in execution of the Decree.

Under **Rule 17 Order 21 of the Code**, on receiving such an application for execution of the Decree, it is a duty of the Court to scrutinise to ascertain whether the said particulars have been provided and if not provided to allow the same to be provided then and there only otherwise to grant a period of reasonable short time to provide the same.

Under **Sub Rule (1A) of the said Rule 17**, in the case of Applicant /Decree Holder, who has sought the assistance of the Court in execution of the Decree, fails to provide the complete and correct particulars regarding the name and address of the person against whom the execution of the Decree is sought, the Court is to reject such application.

As per **Rule 13 of the Rules and Orders of the Hon'ble Punjab and Haryana High Court, Volume 1, Chapter 12, Part E**, dealing with procedure of application for execution, if the Applicant /Decree Holder does not take the necessary steps to prosecute his application, which includes providing of complete and correct name and address of the party against whom the execution is sought, the Execution Case is to be dismissed.

Under **Rule 24 Order 21 of the Code**, the Court is expected to issue process for execution, after complying with the requisite requirements (**Rules 11 to 14**) by the Applicant /Decree Holder, which includes providing of complete and correct name and address of the person against whom execution of Decree is sought.

Under **Rule 25 Order 21 of the Code**, the Process Serving Official has to make an endorsement on the process as to the day on which it was executed and as to the manner in which it was executed and the reasons for non execution or delay, if any, in the execution of the process.

Under **Sub Rule (2) of the said Rule 25** the Court has to satisfy itself as to the said report of the Process Serving Official in the endorsement on the process.

Therefore as and when Process Serving Official finds the process containing incomplete or incorrect name and address of the person against whom a process is being issued, can make a report in the endorsement to be submitted by him under the said **Rule 25**.

It is expected from the Executing Court or an official entrusted with the process of preparation of the process, i.e. Ahlmad, to ensure that the name and address are provided by the party in completeness, at the time of preparing of process to be issued, otherwise to bring it to the notice of the Executing Court.

**Rule 4 of the Rules and Orders of the Hon'ble Punjab and Haryana High Court, Volume 1, Chapter 12, Part H**, dealing with Attachment, provides that 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 to 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 scrutinising, before putting their signatures on any such process. The same procedure can be applied for ensuring the sending of any other Process with complete or correct name and address of the person against whom a process is being issued.

Q. 3 Difficulty is faced in execution of Warrants of Attachment of property for want of proof of ownership.

Ans. The Applicant / Decree Holder is seeking the assistance of the Court in execution of Decree by moving a written application with requisite particulars under **Rule 11 (2) Order 21 of the Code**.

Under **Rule 12 Order 21 of the Code**, in case attachment of a movable property is sought which is not in the Judgement Debtor's possession, the Applicant /Decree Holder is required to annex with his application an inventory of the property to be attached containing a reasonable, accurate description of the same.

Under **Rule 13 Order 21 of the Code**, for seeking an attachment of the immovable property the requisite particulars as to the description of the property, boundary numbers in record (if any), share of the Judgement Debtor etc., is to be submitted in the application.

Under **Rule 14 order 21 of the Code**, the Court may require the applicant/ Decree holder to provide the certified Extract from the Register of the office of Collector as to the said land.

Under **Rule 11 (2) Order 21 of the Code**, every application submitted in writing for seeking the assistance of the Court in execution of the Decree is required to be signed and verified by the applicant.

It has been seen that the precious time of the Executing Court gets wasted in case of Warrants of Attachment of property are issued and it gets discovered that the said property is either not owned by the Judgement Debtor or is not capable of attachment under law. In order to successfully conclude an Execution Case within the mandatory period of six months, it would be required at the part of the Execution Court and the official entrusted with process of preparation, i.e. Ahlmad, to ensure the obtaining of the copy of the document as to the ownership, where available, of the Judgement Debtor and to see as to the property sought to be attached is capable of attachment under law or not, as provided under **Section 60 of the Code**.

**Rule 4 of the Rules and Orders of the Hon'ble Punjab and Haryana High Court, Volume 1, Chapter 12, Part H**, dealing with Attachment, provides that 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.

Q.4 The concerned police station does not provide the requisite police assistance in execution of process by the Court.

Ans. The procedure to be followed for rendering Police Assistance in execution of Process is provided in **Volume 4, Chapter 7, Part J, dealing with Police Assistance, Rules and Orders of the Hon'ble Punjab and Haryana High Court**.

As per the same, the Police Assistance is to be sought from the head of the Police Department (Commissioner of Police/ Senior Superintendent of Police / Superintendent of Police) through learned District Judge or the learned Civil Judge (Senior Division), of the Sessions Division. This is a little time consuming formality.

The Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418** has passed certain directions one of which is that Executing Court can direct the concerned Police Station to provide the requisite Police Assistance to the Process Serving Official of the Court to facilitate the same. This means now an Executing Court can directly write to the Station House Officer of Police Station for providing the Police Assistance.

The Hon'ble Supreme Court in said directions has further directed that if Station House Officer of said Police Station does not discharge its duties as per directions of the Executing Court, to take stringent legal action required in the facts and circumstances of the case against such officer. The Police Assistance includes the requisite, meaningful and substantial Police Assistance as per the facts and circumstances of the case. In case any difficulty is found in discharge of its duties by the concerned

Station House Officer of said Police Station, the Executing Court should always take the requisite stringent legal action, 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.

Q.5 Difficulty is felt in execution of process of warrants against government officer / official?

Ans. The Bailiff entrusted with process against the Government Officer / Official is to execute it as per the directions contained in the process. In case of any resistance or non cooperation in the same, it is to be reported in the endorsement required to be submitted under **Rule 25 Order 21 of the Code**, by the Process Serving Official.

It is thereafter incumbent upon Executing Court to take suitable legal action in the matter against the Government Officer / Official who has resisted the process of the Court or who has not cooperated in the service of the process, 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 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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 180** for refusing to sign statement, **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.

It is expected that the name and particulars in the process should be complete and correct before it being entrusted to the Process Serving Official for its execution, the duty of the Ahlmad and Reader of the Executing Court.

Q.6 Difficulty is faced in release of Spurdary articles during the execution of warrants for delivery of possession.

Ans. Under **Rule 43A Order 21 of the Code**, where the movable property is attached and it is of such a nature that it cannot be conveniently removed then Bailiff at the instance of the Judgement Debtor or at the instance of the Decree holder or at the instance of any other person claiming interest in such property, can leave it in village or the place where it has been kept, in the custody of any respectable person, who will be custodian and will be liable to produce it in the same condition as per the orders of the Court.

Under **Order 43 Order 21 of the Code**, if movable property is capable of conveniently removed, other than agricultural produce, and is in possession of the Judgement Debtor, such property is required to be seized by the Bailiff and to be kept in his own custody or in the custody of one of his subordinates.

Therefore the property which is capable of removable is not to be left in the custody of any respectable person rather is to be taken in his custody by the Bailiff, otherwise, it is only in case of a property which cannot be conveniently removed that the custody of this property is to be given to any person, deems fit by Bailiff.

There is no specific provision for entrusting the duty to arrange the respectable person to obtain the custody of such a property, however, Executing Court, keeping in view the facts and circumstances of the case, is required to ask the Decree Holder / Applicant to arrange any such respectable person or to obtain its custody himself, as he is seeking the assistance, exercising Inherent Powers provided under **Section 151 of the Code**.

Q.7 Difficulties are faced in getting the requisite cooperation by the Chaukidars, Municipal Councillors in identifying the person against whom the process is issued and witnessing any execution of process.

Ans. 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.

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 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 Chaukidar for his misconduct and neglect of duty, under **Rule 11 of The Punjab Chaukidara Rules** and **Headmen/Lambardar** under **Rule 16 of The Punjab Land Revenue Rules**.

**Rule 1, Volume IV, Chapter 7, PART G**, dealing with Assistance by Village Officers in Process Serving, **Rules and Orders of the Hon'ble Punjab and Haryana High Court**, provides the issuance of directions by the Financial Commissioners to Lambardars 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 Lambardars and not to hesitate in moving the Hon'ble High Court through the proper channel if matters do not improve even then.

**Rule 2, Volume IV, Chapter 7, PART G, Rules and Orders of the Hon'ble Punjab and Haryana High Court**, dealing with Assistance by Village Officers in Process Serving, further provides that in order to reduce the possibility of false reports being made on notices of Sale it should be attested by a Lambardar and, whenever possible, also by the village Patwari or School Master.

Otherwise in villages, assistance can be sought from any Panch or Sarpanch of the Gram Panchayat, the elected public representatives. Otherwise under **Rule 17 Order 5 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 **Rule 25 Order 21 of the Code**.

Similarly, if in an Urban Area a Municipal Councillor do not come forward to identify a person or to witness a process, an Ex-Municipal Council can be joined or any other respectable person of the area can be joined in identifying a person or witnessing the process, otherwise the Process Serving Official is to report in the endorsement on the back of the process, under **Rule 25 Order 21 of the Code**.

Otherwise, the Executing Court can always direct the Process Serving Official to take the assistance of the Decree Holder / Applicant for service of process where no Chauwkidar/Panch/Sarpanch of village is available to identify the subject matter of the process.

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.

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.

Q.8 Villagers are reluctant to sign the reports as witnesses after the refusal from the party concerned.

Ans. **Rule 25 Order 21** of the Code requires the making of endorsement on the process issued by the Court as to the day on which it was executed and the manner in which it was executed.

If no villager comes forward to witness the report, the Process Server can always in his endorsement mention the same and he being a Public Official entrusted with the process of execution will be believed.

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 180** for refusing to sign statement and **Section 187** for omission to assist public servant when bound by law to give assistance.

Q.9 The women of the village do not open the door nor receive the processes.

Ans. In case woman in village do not open the door for receiving the process such a process can be affixed on the outer door with an endorsement to that effect.

Under **Rule 15 Order 5 of the Code**, due to non availability of defendant, service can be effected through any adult member of the family, whether male or female, who is residing with him. Under **Rule 16 Order 5 of the Code**, person served/through served is required to put signatures as an acknowledgment of service, endorsed on the original summons. Under **Rule 17 Order 5 of the Code**, on refusal to accept service or on non availability of any person, the Serving Officer is to (shall) affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (**if any**) by whom the house was identified and in whose presence the copy was affixed.

However, **Rule 1, Volume IV, Chapter 7, PART B(a), Rules and Orders of the Hon'ble Punjab and Haryana High Court**, dealing with Service of Process, (a) Mode of Service, requires that 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.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **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.

Q.10 In some of the cases very short dates are given to execute the processes.

Ans. The Hon'ble Supreme in **Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors., (2021) 6 SCC 418**, has directed the Courts to complete the execution process within a period of six months. Therefore, the dates are required to be given accordingly and long dates are otherwise not justifiable. Further a reasonable time must be given requiring the facts and circumstances to execute the process, otherwise it will be a wastage of time.

Q.11 In the case of Proclamation (Munadi), mostly, drummers are not available to convey the contents of the proclamation to the general public by rendering his services. In the absence of the drummers, execution of the proclamation cannot be got done.

Ans. The Applicant / Decree Holder can always be asked to arrange a drummer for execution of a process through Munadi and in every station list of the drummers with their contact numbers can always be maintained by the Process Serving Agency and in case of unavailability of one of a drummer, the other drummer can be asked to join the execution of the process.

Q.12 The phone number of the addressee should be mentioned on summons so that the addressee may be contacted in case he/she is not found present at the given address.

Ans. The service through phone is not an accepted mode. Once an address has been given the Applicant/ Decree Holder has to ensure that it is complete and correct and can always be directed to assist the Process Server to locate the said address.

Q.13 The Process Servers/Bailiffs are not permitted by the parties to the case to affix the copy of the summons at the outside of the house, in case refusal is made by the addressee.

Ans. In case a Process Server/ Bailiff is not permitted by a party to affix the copy of the same outside the house, the Process Server /Bailiff can make a report in his endorsement under **Rule 25** to that effect and can also affix the said process at any nearest conspicuous public place of the area, with the Orders of the Court.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **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.

Q.14 Prescribed Munadi Fee of the proclamation is Rupees 100/- only and the drummers are reluctant to render their services. This amount should be increased.

Ans. 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**.

Q.15 With regard to Warrant of attachment/Conditional Warrant, mostly the Decree-Holder does not make his presence on the spot and on being asked by the Bailiff, Decree-holder is reluctant to accompany him. Resultantly, the Warrants remain unexecuted.

Ans. In case Decree Holder does not perform his part in obtaining assistance of the Court in execution of decree, **Volume 1, Chapter 12, Part E**, dealing with Procedure on application for Executing, **Rule 13 of the Rules and Orders of the Hon'ble Punjab and Haryana High Court**, provides that the Execution Case is to be dismissed if the Applicant / Decree Holder does not take necessary steps to prosecute his application (which includes assisting the Execution Process by accompanying the Official).

Q.16 The addressees mentioned in the summons are always reluctant in getting their photographs clicked on the spot.

Ans. In case somebody is reluctant in getting his photograph clicked, the Process Server in his report, to be endorsed on the back of the process under **Rule 25 Order 21** of the Code, can always mention so.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **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.

Q.17 In some cases, when the possession of the disputed premises is taken/obtained by the Bailiff in pursuant to the Warrant of possession/attachment and thereafter, the JD is requested to vacate the premises, however, instead of removing his belonging/articles from the disputed premises, he starts arguing and goes away from the spot and his assets continue to be in the demised premises. In this situation, on the assurance of Decree-Holder, an inventory of the lying articles is prepared and all the articles are placed outside the premises, however, after taking the vacant possession of the premises and after applying lock at the doors of the premises, the Decree Holder refuses to shoulder the responsibility with regard to the articles. This situation leaves the Bailiff in a fix that as to whom the articles should be handed over.

Ans. In case Judgement Debtor do not cooperate in vacating the property after the orders of the Court under **Rule 95 Order 21** of the Code, such a Judgement Debtor alongwith his articles can be removed from the premises, if need to that effect arises, and in case still resistance is shown then under **Rule 98**

such Judgement Debtor can be ordered to be detained in the civil prison for a term which may extent to 30 days.

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 183** for resistance to the taking of property by the lawful authority of a public servant, **Section 186** for obstructing public servant in discharge of public functions, **Section 187** for omission to assist public servant when bound by law to give assistance.

Q.18 Is there any requirement for paying attention to service of any process?

Ans. Yes, However, **Rules 1 to 10, Volume IV, Chapter 7, PART B(b), Rules and Orders of the Hon'ble Punjab and Haryana High Court**, dealing with Service of Process, (b) Personal attention to service, requires that Presiding Officers to pay personal attention to matters connected with the issue and service of processes, which includes, besides other steps, obtaining of adequate details, reasonably sufficient to secure service, of the persons to be served and further that Parties should be encouraged throughout to take Dasti summons to accompany the Process Servers and to render all assistance in their power.

Q.19 Difficulty is faced in the service of Government Officer / Official.

Ans. Under **Rule 27 Order 5 of the Code** service on Public Officer is to be effected through the Head of the Office of the employee. In case any Government Officer / Official shows resistance or do not cooperate with the Process Serving Official, the remedy is to report so in the endorsement to be submitted by the Process Serving Official, under **Rule 25 Order 21 of the Code**.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 175** for omission to produce document to public servant by person legally bound to produce it, **Section 176** for omission to give notice or information to public servant by person legally bound to give it, **Section 177** for furnishing false information, **Section 180** for refusing to sign statement, **Section 186** for obstructing public servant in discharge of public functions, **Section 187** for omission to assist public servant when bound by law to give assistance and **Section 189** for threat of injury to public servant.

Q.20 At the time of service of process, if any fight / quarrel takes place, police shows hesitation in recording complaints of Process Serving Official.

Ans. In such case scenario the Process Serving Official is expected to report in the endorsement on the process to be given under **Rule 25 Order 21 of the Code**, and Complaint, if any, can be moved through Executing Court.

Q.21 In gated private Societies the Security Guard do not permit the Process Serving Official to enter the Societies and serve the process.

Ans. The Process Serving Official in such a scenario is to submit his report in the endorsement to be given by him under **Rule 25 Order 21 of the Code**, to the Executing Court, which shall pass the necessary orders, including providing of Police Assistance in serving the process and further to proceed against such a person, under relevant section of **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof and **Section 186** for obstructing public servant in discharge of public functions.

Q.22 In some cases Process Serving Official face abusive conduct from the party.

Ans. Process Serving Official is to submit the report in the endorsement on the process under **Rule 25 Order 21 of the Code**, to the Executing Court, which is competent to proceed against such a person, under relevant section of **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 189** for threat of injury to public servant.

Q.23 While executing process at given address nobody shows Identity Proof and orally states that the person to be served do not stay at the given address and further refuse to give same in writing or append the signatures.

Ans. The Process Serving Official is to take assistance of a respectable person, if available, or the Applicant / Decree Holder in identifying the address of the person to be served and the person also for serving process, otherwise to submit in his report whatever has transpired in the endorsement to be submitted on the process under **Rule 25 Order 21 of the Code**.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 175** for omission to produce document to public servant by person legally bound to produce it, **Section 176** for omission to give notice or information to public servant by person legally bound to give it, **Section 177** for furnishing false information, **Section 180** for refusing to sign statement, **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.

Q.24 In place where cameras are installed the parties do not open the door.

Ans. The Process Serving Official is expected to affix the notice on the outer door of the address and submit said fact of act of not opening the door in report to be submitted as endorsement under **Rule 25 Order 21 of the Code**.

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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **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.

Q.25 Process Serving Official faces restrictions in entry to Defence Area or any other Gated/Protected/Restricted Area due to the security or sensitivity of area.

Ans. Process Serving Official is a Government Servant performing his duties as per the directions of the Executing Court. In case any such difficulty is faced the same is to be reported in the endorsement to be submitted under **Rule 25 Order 21 of the Code**, upon which Executing Court is competent to take up the matter with the Officer In-charge of the said Area and can work out the solution.

Q.26 Process Serving Official is not familiar with the party as such party generally conceal identity from him to avoid service.

Ans. Process Serving Official, in the facts and circumstances of the case, should take the assistance of the Applicant / Decree Holder or any respectable person of the area, if available, in locating the party as well as the address for service of the process.



Q.27 In preparation of the list of Inventory Articles lying in the shops / offices etc. most of the time Judgement Debtors do not cooperate with Bailiff.

Ans. In such case the Bailiff is to submit his report in endorsement to be submitted on the process under **Rule 25 Order 21 of the Code** and the Executing Court in the facts and circumstances of the case can pass the necessary order including the providing of police assistance to the Bailiff.

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 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.

Q.28 Process Serving Officials have to pay Parking Fee at Railway Station/Bus Stand from their own pocket.

Ans. Process serving Agency should brought the said fact to the notice of the learned District and Sessions Judge who can take the matter through District Administration for exempting of parking fee to the Process Serving Officials, while performing their duties.

Q.29 At times parties give their incomplete address or address is not sufficient for want of better particulars including nearby landmark. The old address is given which parties have already left.

Ans. Process Serving Official is to report said fact in the endorsement to be submitted on the process under **Rule 25 Order 21 of the Code** upon which the Applicant / Decree Holder can be directed by Executing Court to furnish the same. On the failure of the applicant/ decree holder to furnish the same, the execution applicant can be rejected under **Rule 17(1A) of the Order 21 of the Code** or it can be dismissed under **Rule 13 of the Rules and Orders of the Hon'ble Punjab and Haryana High Court, Volume 1, Chapter 12, Part E**.

Q.30 In many cases the police do not cooperate with the Bailiff and make him to sit in the Police Station for long time and then refuse him on the flimsy ground of non available of the police force.

Ans. As per directions given by Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418**, upon receiving such report in the endorsement on the process from the Bailiff under **Rule 25 Order 21 of the Code**, the Executing Court is expected to take a stringent legal action against the Station House Officer of the said Police Station, 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 184** for obstructing sale of property offered for sale by authority of public servant, **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.

Q.31 Sometimes list of the articles mentioned in the Execution Application do not match with the articles at the spot and sometimes do not belong to the Judgement Debtor rather belong to the other family member.

Ans. Bailiff is to submit his report in the endorsement to be submitted on the process under **Rule 25 Order 21 of the Code**, upon which the Executing Court is to seek the fresh List of Property sought to be attached from the Applicant / Decree Holder and can always press for furnishing the proof of its ownership of the Judgement Debtor, where available, otherwise to obtain an Affidavit from the Decree Holder/ Applicant, so as to avoid unnecessary delay in completion of Execution Case within a mandatory period of six months as per the directions of the Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418**.

Q.32 After the attachment of a vehicle belonging to Government difficulty is faced by the Bailiff to carry it to the District Courts in the absence of any driver provided to assist him.

Ans. The Bailiff is only to submit his report in the endorsement on the process under **Rule 25 Order 21 of the Code**, and it is for the Executing Court to pass the necessary directions, including fixing responsibility of the Applicant/ Decree Holder to arrange a driver to carry said vehicle to the district courts.

Q.33 Ascertaining the identity of person against whom the process to be served is a tedious task.

Ans. In the Execution Application filed under **Rule 11(2) Order 21 of the Code**, the Applicant / Decree Holder is obtaining the assistance from the Executing Court in relation to implementation of his decree. He should submit names and addresses of the person against whom the process is issued. In case the same is incomplete, under **Rule 17 Order 21 of the Code**, the Executing Court is to obtain it from Applicant/ Decree Holder and on his failure to reject the applicant under **Sub Rule 1(A) of said Rule 17**. Even if with complete name and complete address the Process Serving Official is unable to locate the person / address, he is to submit said report in the endorsement on the process under **Rule 25 Order 21 of the Code**, upon which the Executing Court can always ask Applicant/ Decree Holder to assist the Process Serving Official in locating the person / address.

Q.34 Sometimes parties get the Process Serving Official beaten from their dogs.

Ans. Process Serving Official is a Public Servant discharging his official duty. Upon receiving such report in endorsement on the process under **Rule 25 Order 21 of the Code**, the Executing Court is to take suitable action in the matter, including forwarding of complaint for setting criminal law in motion against such person, 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 173** for preventing service of summons (including lawful affixing to any place of any such summons) or other proceeding, or preventing publication thereof, **Section 186** for obstructing public servant in discharge of public functions, **Section 187** for omission to assist public servant when bound by law to give assistance and **Section 189** for threat of injury to public servant.

Q.35 Sometimes Kissan Unions exercise their influence in obstructing the execution process.

Ans. Process Serving Official is to submit the said obstruction in his report to be submitted in the endorsement on the process under **Rule 25 Order 21 of the Code**, upon which the Executing Court can proceed in accordance with the law, including providing requisite police assistance and proceeding for commission of an offence under **Chapter X of Indian Penal Code**, dealing with Contempt of Lawful Authority of Public Servants, especially **Section 184** for obstructing sale of property offered for sale by authority of public servant, **Section 186** for obstructing public servant in discharge of public functions, **Section 187** for omission to assist public servant when bound by law to give assistance and **Section 189** for threat of injury to public servant.

Q.36 Sometimes at many places properties are not being sold for want of Court Auctioneer.

Ans. Executing Court can entrust the process of Public Auction to any other suitable Officer / Official, including the Nazir of the station.

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