
CONSTITUTIONALITY OF PROVISIONS RELATED TO EXECUTION OF DECREE IN THE CODE OF CIVIL PROCEDURE: LEGAL DISCOURSE

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ABSTRACT

Code of civil procedure is the parent law to provide for matters related to procedure in civil cases in India. Order XXI of the CPC provides for 'Execution'. Order XXI rules 31 and 32 of the CPC empowers the Court of execution to attach the property of the judgment-debtor in order to enforce the decree for specific movable property. This paper endeavours to review the constitutionality of sub-rule (3) to rule 31 of Order XXI of CPC in the light of the purpose of execution proceedings and the restriction upon the mechanism of adjudication through the express words of the statute.

This paper contemplated the purposes of sub-rule (3) to rule 31 of Order XXI of CPC and sub-rule (4) to rule 32 of Order XXI of CPC in the light of its objective and the tenets of rule of law. The golden rule of interpretation has been used in this paper in order to interpret in line to the object of enactment or intent of the legislature. It finally concludes with a provision for review of the provisions related to cessation of attachment in case of rejection of the application for sale by the Court of execution.

INTRODUCTION

Code of Civil Procedure (hereinafter 'CPC') is the basic law that provides for procedure related to the disputes of civil nature¹. It specifies the procedural prerequisites for filing of a petition in a Court of law in the form of a plaint² which comprises rules relating to Court fees, jurisdiction, subject-matter of suit, the value of property (or value of claim in cases of money suit), etc. It further provides procedure related to issues which require immediate relief in the form of injunction³. The decree⁴ of a Civil Court could be enforced only by the process of 'execution'. The task of execution is specifically conferred to the executing Court. The Court of execution is generally not the court which passes the decree and do have powers limited to the process of execution. However, it could not interfere with the content of decree passed by the Court issuing the decree.

Order XXI of CPC provides the procedure of Execution. Order XXI rule 31 of the CPC empowers the Court of execution to attach the property of the judgment-debtor in order to enforce the decree for specific movable property. This paper endeavours to review the constitutionality of sub-rule (3) to rule 31 of Order XXI of CPC in the light of the purpose of execution proceedings and the restriction upon the mechanism of adjudication through the express words of the statute.

PROCEDURE OF EXECUTION IN CIVIL CASES:

Order XXI, Rules 30 to 36 of CPC provides the 'mode of execution'. It provides the means through which the process of execution could be enforced by the Court of execution and these enforcement measures differ according to the subject matter of execution proceedings before the Court of execution. Order XXI rule 30 of CPC provides for enforcement measures in cases of money decree. Order XXI rule 31, sub-rule (1) of CPC provides the mode of execution in case of a decree for specific movable property.

CONSTITUTIONALITY OF SUB-RULE (3) TO RULE 31 OF ORDER XXI OF CPC:

Order XXI Rule 31, sub-Rule (1) Of CPC provides that the execution of specific movable property could be performed by the seizure of the specific movable or a part of it, in case of

¹ Section 9 of CPC defines the term 'civil nature'.

² Order VII of CPC provides about 'plaint' and Rule 1 to Order VII of CPC provides for contents of a plaint.

³ Order XXXIX of CPC provides for rules related to grant of 'injunction'.

⁴ Section 2(2) of CPC defines the term 'decree'.

entitlement to a share in the specific movable property. It further states that the execution of a specific movable property could also be enforced by the detention in the civil prison of the judgment-debtor, or by the attachment of his property or by both.

Order XXI, rule 31, sub-rule (2) of CPC provides that:

Where any attachment under sub-rule (1) has remained in force for three months and 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 movable 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.

Order XXI, rule 31, sub-rule (3) of CPC provides the circumstances in which the attachment shall cease. These circumstances are:

- (i) where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or,
- (ii) where at the end of three months from the date of the attachment, no application to have the property sold has been made, on behalf of the decree holder, or,
- (iii) where at the end of three months from the date of the attachment, any application to have the property sold has been made, on behalf of the decree holder, the Court of execution has refused such application.

It is pertinent to note that the latter terms bind the Court of execution specifically by stating that if at the end of three months from the date of attachment, the application to have the attached property sold is presented by the decree-holder but the same is refused or disallowed by the Court of execution, then the attachment of property shall cease. Therefore, the text of Order XXI, Rule 31, sub-rule (3) of CPC in reference to cessation of attachment may be contemplated on following grounds:

1. The attachment of property of the judgment-debtor is provided as one of the modes of execution for enforcement of the decree for specific movable property in Order XXI, Rule 31, sub-rule (1) of CPC. The attachment of property of the judgment-debtor could

continue for a maximum period of three months from the date of attachment⁵ in case where no application for sale of the attached property has been made on behalf of the decree-holder or any such application has been refused or dismissed by the Court of execution. Such cessation of attachment would, therefore, amount to review of the order of same Court without the filing of application to review before it. This is because once the Court of execution initiates the process of enforcement of decree through attachment of property of the judgment-debtor, the attachment shall continue till the final enforcement/ satisfaction of the decree or till the attached property is realized for the purposes of enforcement of the decree according to the orders of the Court of execution.

2. Section 99 of CPC states that:

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court: provided that nothing in this section shall apply to non-joinder of a necessary party.'

Therefore, section 99 of the CPC does not empower the appellate Court to interfere with the contents of the decree on account of any error, defect or irregularity in any proceedings in the suit that do not affect the merits of the case or the jurisdiction of the Court. Similarly, section 99-A of CPC specifically states that though the Court of execution has jurisdiction to decide the issues stipulated in clause (1) of section 47 of CPC, but it could not reverse or vary any order substantially unless such error, defect or irregularity has prejudicially affected the decision of the case. These provisions lucidly purport that the appellate Court and the Court of execution shall not reverse or substantially vary the decree on account of any error that does not affect merits of the case. So, in reference to Order XXI of CPC, the setting aside of attachment of the suit property either movable or immovable by the Court of execution would make the decree completely infructuous without assigning any reasons for the same. Thus, it would amount to substantial variation with the decree by the Court of execution though it does not have jurisdiction for the same.

3. There is absence of parameters on non-compliance of which such application, on behalf of the decree holder, to 'sell' the attached property could be refused by the Court of

⁵ Order XXI, Rule 31, sub-rule (3) of CPC.

execution;

4. There is absence of an alternative efficacious remedy to the decree-holder in case of refusal (dismissal) of the application to sell the property attached and it would render the decree holder remedy less for enforcement of the decree issued in his favour;
5. It is pertinent to note that the Court of execution could have reasons to disallow the application on the part of the decree holder for sale of the attached property at any stage of execution of the property but the dismissal of such application could not amount to cessation of the execution proceedings without satisfaction of the contents of the decree;
6. It is requisite to apprehend that sub-rule (3) to Rule 31 of Order XXI of CPC provides that the attachment of the suit property shall cease if the application for 'sale' of the attached property has been made by the decree holder within a period of three months from the date of the attachment and the Court of execution has declined to grant permission of such 'sale' of the attached property. Therefore, the provision in question indirectly persuades the Court to permit sale of the attached property in order to ensure proper enforcement of the decree in favour of the decree holder;
7. It is worthy to state that the provision binds the Court of execution to either sale the suit property on application by the decree holder or refuse which would automatically render the attached property to return back to the judgment-debtor without satisfaction of the decree.
8. It is worthy to note that the provisions related to 'Execution' in a civil case contained in Order XXI of the CPC is of British origin. The abrupt cessation of attached property of the judgment-debtor just on refusal or dismissal of the application to sell the attached property (made on behalf of the decree-holder) by the Court of execution seems to be arbitrary for the decree-holder and is therefore, against the basic tenets of civil jurisprudence.

Therefore, in light of these grounds, the provision on automatic cessation of attachment without any reference to it by the Court of execution in the order rejecting the application for sale of the attached property requires review in order to ensure its consistency with the principles of rule of law.

REVIEW OF SUB-RULE (3) TO RULE 31 OF ORDER XXI OF CPC:

Order XXI, Rule 31, sub-rule (3) of CPC provides that where at the end of three months from

the date of the attachment, any application to have the attached property sold has been made, on behalf of the decree holder, and the Court of execution has refused such application, then the attached property of the judgment-debtor shall cease automatically. A review of this provision may be contemplated on following grounds:

It is pertinent to note that sub-rule (3) to Rule 31 of Order XXI of CPC has set the maximum limit of three months for continuation of the attachment of property of the judgment-debtor. Therefore, it is requisite to amend the terms "or, if made, has been refused, the attachment shall cease." occurring in sub-rule (3) to Rule 31 of Order XXI of CPC and include following points in it:

Firstly, that the Court of execution be at liberty to provide next date for sale of the attached property if it dismisses the application, of the decree-holder, for the sale of the attached property for reasons such as fluctuation in the market value of attached property to the extent that it would interfere with due enforcement of the decree or non-receipt of report by the Court of execution about the number of purchasers, the date of auction, etc.

Secondly, to empower the Court of execution to compute the costs already paid by the judgment-debtor during continuation of the proceedings of execution after the attachment by the Court of execution. These costs are necessary to be computed because sub-rule (3) to Rule 31 of Order XXI of CPC provides that the attachment shall cease if the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay. However, the text of sub-rule (3) to Rule 31 of Order XXI of CPC provides for automatic cessation of attachment if no application for sale of the attached property is made by the judgment-debtor within a period of three months from the date of the attachment. Therefore, if there is no such application made by the judgment-debtor and the judgment-debtor has managed to deposit a part of the value of decree, it would be in consonance with the principles of justice to continue the attachment till full realization of the decretal amount from the judgment-debtor instead of the statutory mandate of three months from the date of the attachment.

The amendment of sub-rule (3) to Rule 31 of Order XXI of CPC in the above lines would empower the Court of execution to review the continuation or cessation of the attachment of the property of the judgment-debtor rather than the automatic statutory cessation of attachment which is without any review by the order of Court of execution. Such a review is based on the golden rule of interpretation stated by Maxwell in his *Principles of Statutory Interpretation*.

Maxwell says that the Golden Rule of Interpretation is that the words used in Statute should be accepted in their ordinary meanings until the words are used for any specific meaning or meaning different from its complete meaning till then they should be given literal or grammatical meaning while interpreting.⁶ Also, in *State of M.P. v. Rajesh Sharma*⁷, the Madhya Pradesh High Court stated:

"The aforesaid **golden rule** of interpretation can be departed from only in cases where understanding or interpreting the words in their ordinary or popular sense would lead to some absurdity or would defeat the object, purpose and context in which the words have been used and would therefore, suggest to the contrary. While examining the aforesaid aspect, the courts are also required to see as to whether reading of the statute or the Section as a whole requires the court to give a different meaning to a word used therein with a view to avoid absurdity or repugnancy and to make the statutory provisions effective in achieving the object and purpose for which it has been introduced in the statute." Hon'ble Supreme Court in *R.M.D. Chamarbaughwala v. Union of India*⁸, stated: 'In determining whether the valid parts of a statute are severable from the invalid parts, the intention of the legislature is the determining factor, The severable invalid provision may be struck down not only to restrict but also to enlarge the application of the law if such enlargement will save the law.'⁹

REVIEW OF SUB-RULE (4) TO RULE 32 OF ORDER XXI OF CPC:

Rule 32 to Order XXI of the CPC provides provisions related to attachment of immovable property as a part of due execution of the decree. These provisions are similar to the text in sub-rule (3) to rule 31 of Order XXI of CPC with the exception that the time limit of six months has been provided in case of cessation of attachment of the immovable property during the proceedings of execution. It would be pertinent to mention the text of sub-rule (4) to rule 32 of Order XXI of CPC:

"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 six 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."

⁶ *Moxs v/s Doncouster Calories Ltd.*, [(1940) 3 All E.R. 549]HL. 5531]

⁷ WP/ 2552/ 2000.

⁸ AIR 1957 SC 628.

⁹ *D.S. Nakara v. Union of India*, AIR 1983 SC 130.

Therefore, it is clear from the text of sub-rule (4) to rule 32 of Order XXI of CPC that the attachment of immovable property shall cease automatically within a period of six months of such attachment, on following grounds:

- i. that the judgment-debtor has paid all costs of execution of the decree for which the immovable property has been attached;
- ii. if the decree holder has not filed any application for the sale of attached immovable property within a period of six months from the date of such attachment;
- iii. if the application for sale of the attached immovable property by the decree holder is rejected by the Court of execution, with or without mention of reasons.

It is pertinent to mention that the latter terms stating cessation of attachment of the immovable property due to rejection of the application for sale of such attached property by the Court of execution indirectly bind the court of execution to grant the relief of sale of such attached property. Hence, the grounds of contemplation in case of rejection of the application by the decree holder for sale of the attached movable property under sub-rule (3) to rule 31 of Order XXI of CPC would ipso facto apply in case of attached immovable property under sub-rule (4) to Rule 32 of Order XXI of CPC. Further, the provisions related to 'review' of sub-rule (3) to rule 31 of Order XXI of CPC stated in the previous section, would also apply in case of sub-rule (4) to rule 32 of Order XXI of CPC in a similar manner subject to the exception that the period of attachment of immovable property in the latter provision extends to six months.

CONCLUSION

Justice Holmes stated, “A word is not crystal, transparent and unchanged. It is the skin of the living thought and it may vary greatly in colour and content according to the circumstances and the time in which the word is used.”¹⁰ The provisions related to execution of decree by attachment of movable or immovable property of the judgment-debtor is provided in rules 31 and 32 to Order XXI of CPC. These rules mandate the Court of execution to decide the application for sale of the attached property in favour of the decree holder. Such mandate of adjudication by the statutory provision does not require the Court to mention any reasons for the same. But such an order could substantially interfere with the content of the decree passed by the Court of original civil jurisdiction to which any executing Court has no authority to review. Therefore, this paper endeavours to review the constitutionality of provisions related

¹⁰ <https://www.iilsindia.com/blogs/golden-rule-of-interpretation/> (last visited 16.12.2021).

to the cessation of attachment of the movable or immovable property, as the case may be, by mere rejection of the application for sale of such attached property by the Court of execution.

This paper concludes that a review of the provisions related to cessation of attached movable or immovable property, as the case may be, must be made in order to ensure proper satisfaction of the contents of the decree.