
ORDER XXI OF THE CODE OF CIVIL PROCEDURE: A TOOL FOR ENFORCEMENT OR A WEAPON FOR DELAY?

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ABSTRACT

The Code of Civil Procedure, 1908, provides the machinery for the enforcement of decrees and orders through its most extensive provision, Order XXI. This order is the bedrock upon which the finality and efficacy of civil justice rest, designed to ensure that a successful litigant reaps the fruit of a hard-won decree. However, the procedural intricacies and the plethora of applications permissible under this Order have often transformed the execution stage into a second, more arduous round of litigation. This paper critically examines the dual nature Order XXI, analysing whether it serves its intended purpose as a tool for enforcement or has devolved into a weapon for delay wielded by recalcitrant judgment-debtors. The analysis focuses on key areas of contention: applications concerning resistance and obstruction to possession, the proliferation of third-party claims, the doctrine of *lis pendens* in execution, and the resultant multiplicity of proceedings post-decree. The paper further evaluates the concerted efforts by the Supreme Court of India to streamline the execution process and curtail dilatory tactics, culminating in a set of suggestions for legislative and procedural reform aimed at restoring the sanctity of the execution process. This research delves deeper into the procedural chokepoints within Order XXI, particularly the misuse of provisions such as Rule 58 and Rule 97. These Rules intended to protect the rights of genuine third-party claimants and address legitimate obstructions, are frequently exploited by judgment debtors who set up sham objectors to file vexatious applications, thereby stalling the execution for years, if not decades. The paper explores the jurisprudential tightrope walked by executing courts, which are bound by the principle that they cannot go behind the decree, yet are compelled to adjudicate upon a barrage of collateral challenges that effectively re-litigate settled issues. By analysing landmark judgements, this paper highlights the judiciary's shift towards a more proactive and pragmatic approach, emphasizing the need to summarily dismiss frivolous objections and impose exemplary costs to deter such dilatory strategies.

I. INTRODUCTION

The journey of a civil litigant in India is notoriously protracted, but the passing of a decree is often not the end of the ordeal; rather, it marks the beginning of a new, more frustrating phase: its execution. The aphorism, often attributed to English bar, that the difficulties of a litigant in India begin when he has obtained a decree, rings painfully true. Justice V. R. Krishna Iyer eloquently captured this sentiment, observing that the “pathology of our litigation process is the decree-holder’s tragic fate of chasing the will-o’-the-wisp of the fruits of the decree, the judgment-debtor often proving to be a dexterous dodger.”¹ The procedural framework governing this crucial final stage of litigation is encapsulated in Order XXI of the Code of Civil Procedure, 1908 (hereinafter “CPC”). With its 106 rules, it is the longest Order in the CPC, detailing the myriad ways a decree can be enforced.

The fundamental objective of execution proceedings is to give effect to the court’s mandate, ensuring that the judicial process does not culminate in a pyrrhic victory for the decree-holder. A decree that remains unenforced is a mere piece of paper, a hollow promise of justice that erodes public faith in the legal system. Order XXI was conceived as a comprehensive tool to prevent such an outcome, providing mechanism for attachment and sale of property, delivery of possession, arrest and detention and other modes of enforcement. However, the very comprehensiveness of Order XXI, intended to provide for every conceivable contingency, has become its Achilles’ heel. Its provisions are frequently exploited by unscrupulous judgment-debtors to erect procedural barricades, delaying and frustrating the execution process.

II. THE LEGISLATIVE SCHEME OF ORDER XXI CPC

Order XXI of the CPC is the procedural manual for the execution of decrees and orders passed by civil courts. Its scope is vast, covering all aspects of the execution process, from the initial application for execution to the final delivery of relief to the decree-holder. The underlying principle is that the executing court does not go behind the decree; its mandate is to enforce the decree as it stands.²

The order provides for various modes execution, which can be broadly categorized as follows:

¹ *Babulal v. M/s. Hazari Lal Kishori Lal* (1982) 1 SCC 525

² *Vasu P Shetty v. Hotel Vandana Palace* (2014) 5 SCC 660

- Delivery of Property: Rule 35 and 36 provide for the delivery of specific immovable property, either by removing the judgement-debtor or by a symbolic act of proclamation.
- Attachment and Sale of Property: This is the most common method for executing money decrees. Rules 41 to 57 deal with the attachment of various types of property (movable and immovable), and Rules 64-96 lay down the procedure for its sale.
- Arrest and Detention in Civil Prison: As a last resort for the enforcement of money decrees, Rules 37-40 permit the arrest and detention of the judgement-debtor, subject to strict conditions and safeguards.
- Appointment of a Receiver: Under Rule 1 of Order XL, read with Section 51(d) of the CPC, the court can appoint a receiver to manage the property of the judgement-debtor and apply the proceeds towards the satisfaction of the decree.
- Garnishee Orders: Rules 46-A to 46-I allow the court to order a third party (a garnishee) who owes money to the judgement-debtor to pay it directly to the decree-holder.

This elaborate framework is designed to provide the decree-holder with effective remedies while simultaneously incorporating safeguards to protect the judgement-debtor from undue hardship. However, the procedural avenues for raising objections, particularly those concerning resistance to possession and claim by third parties, are where the process often falters and become susceptible to abuse.

III. RESISTANCE AND OBSTRUCTION APPLICATIONS: RULES 97-103

One of the most significant hurdles in executing decrees for possession of immovable property arises from resistance or obstruction. Rules 97 to 103 of Order XXI provide a mechanism for dealing with such situations. When a decree-holder is met with resistance, they may file an application under Rule 97 complaining of such resistance. The executing court is then obligated to adjudicate upon this application as if it were a suit.

While this mechanism is intended to resolve genuine claims of right by the person offering resistance, it has notoriously become a tool for initiating a fresh round of litigation. A judgement-debtor, having exhausted all remedies in the main suit, often sets up a third person

to resist possession, thereby compelling the decree-holder to file a Rule 97 application. The subsequent adjudication, involving the framing of issues and recording of evidence, can take as long as the original suit itself.

The Supreme Court has repeatedly sought to define and limit the scope of inquiry in such proceedings. In *Shreenath and Anr. v. Rajesh and Ors.*, the court held that the purpose of the 1976 amendment to these rules was to ensure that all questions relating to right, title, or interest in the property arising between the parties are determined by the executing court itself and not by a separate suit.³ This was intended to be a time-saving measure. However, the Court also clarified that the executing court's inquiry is limited to the questions raised in the application.

Despite such clarifications, the practice of filing frivolous resistance applications persists. The core issue is that the executing court must conduct a full-fledged inquiry, which inherently consumes time. A judgment debtor acting in collusion with a third party, can easily manufacture semblance of a claim, forcing the Court's hand and delaying the inevitable for several years. This strategic use of Rules 97-103 fundamentally subverts the goal of expeditious execution, turning a protective shield for genuine claimants into a sword for the judgment-debtor.

IV. THIRD-PARTY CLAIMS AND THE DOCTRINE OF LIS PENDENS

Another potent weapon for delay is the filing of claims by third parties under Order XXI, Rule 58 (for attachment) or Rule 99 (for possession). These provisions allow a person other than the judgment-debtor, who claims an independent right to the property, to have their claim adjudicated by the executing court. As with resistance applications, while the provision is essential to protect the right of bonafide third parties, it is widely misused.

A particularly vexing issue arises from transfer of property made by the judgment-debtor during the pendency of the suit (*pendente lite*). The doctrine of *lis pendens*, codified in section 52 of the Transfer of Property Act, 1882, dictates that property which is the subject matter of a suit cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree which may be made therein. Order XXI, Ryle 102 explicitly state that the provisions relating to resistance and obstruction (Rules 98 and 100) shall not apply to a

³ *Shreenath and Anr. v. Rajesh and Ors.* AIR 1998 SC 1827

transferee *pendente lite*.

The legal position is clear: a transferee *pendente lite* is bound by the decree passed against their transferor (the judgment-debtor) and cannot claim an independent right to resist execution. The Supreme Court, in cases like *Usha Singh v. Dina Ram*, has unequivocally held that a transferee *pendente lite* is a representative-in-interest of the judgment-debtor and is bound by the decree.⁴ Such a person cannot resist the decree or set up an independent title. Despite this settled position of law, transferees *pendente lite* frequently file applications and objections, often claiming ignorance of the pending litigation. They initiate fresh proceedings, which are eventually dismissed, but only after consuming significant judicial time. This tactic is classic example of vexatious litigation designed solely to tire out the decree-holder. The judgement-debtor, having created a third-party interest, steps back and allows the new “claimant” to fight the battle, effectively starting the litigation cycle anew.

V. MULTIPLE ROUNDS OF LITIGATION AFTER DECREE

The cumulative effect of the aforementioned procedural avenues is the creation of multiple, overlapping rounds of litigation after a decree has attained finality. A determined judgment-debtor can orchestrate a multi-pronged attack on the execution proceedings:

- Objections under Section 47 CPC
- Resistance and obstruction
- Third-Party Claims
- Appeals and Revisions
- Separate Suits

This complex process ensures that the decree-holder remains entangled in litigation for years, if not decades, after obtaining the decree. The financial and emotional toll is immense, often compelling the decree-holder to either abandon the execution or settle for a fraction of their rightful claim.

⁴ (2008) 7 SCC 144

VI. SUPREME COURT ATTEMPTS TO STREAMLINE EXECUTION

Cognizant of the systemic malaise plaguing execution proceedings, the Supreme Court of India has, over the years, delivered several landmark judgements aimed at curbing dilatory tactics and reinforcing the sanctity of decrees. The judicial sentiment has shifted from a passive procedural oversight to an active managerial role in ensuring the timely conclusion of execution.

In *B. Gangadhar v. B.G. Rajalingam*, the court expressed its anguish at the state of affairs, noting that the law courts are not only for passing decrees but are also for ensuring their execution.⁵ The court emphasized that the executing court must be vigilant and proactive in thwarting attempts to delay execution. A more structured and comprehensive attempt to reform the process came in the case of *Rahul S. Shah v. Jitendra Kumar Gandhi*.⁶ The judgment represents a watershed moment, moving from mere condemnation of delays to prescribing a concrete, time-bound procedural framework. It reflects a judicial recognition that without systematic intervention, the problem of execution delays will persist.

Furthermore, in *Vinod Seth v. Devinder Bajaj & Anr.*, while dealing with the issue of litigation costs, the Supreme Court highlighted the need to impose heavy, realistic costs as a deterrent against frivolous and vexatious litigation, a principle that is directly applicable to the abuse of process seen in execution proceedings.⁷ The court observed that the current system of nominal costs encourages parties to indulge in dilatory tactics.

VII. CRITICAL ASSESSMENT: ENFORCEMENT OR DELAY?

The analysis reveals a stark dichotomy. In its text and intent, Order XXI is undeniably a tool for enforcement. It provides a robust and detailed framework to ensure that a decree is not a dead letter, its provisions for adjudicating third-party claims and resistance are, in principle, necessary safeguards to prevent injustice to those not party to the original suit.

However, in practice, the procedural safeguards have been weaponized. The system, which presumes good faith, is ill equipped to handle the strategic and bad faith litigation tactics of a recalcitrant judgement-debtor. The problem is not merely with the law but with its application

⁵ AIR 1996 SC 780

⁶ (2021) 6 SCC 418

⁷ 2010 8 SCC 1

and the adversarial culture that incentivizes delay. The executing courts, burdened with a heavy caseload, often adopt a formulae approach, entertaining every application and allowing the process to drag on, rather than taking a firm, managerial stance to weed out frivolous objections at the threshold.

The result is that Order XXI functions as a double-edged sword. For the bonafide decree-holder, it is a necessary but often frustratingly slow tool. For the mala fide judgement-debtor, it is a formidable weapon, an arsenal of procedural ploys to indefinitely postpone the day of reckoning. The balance has, in many cases, tilted alarmingly in favour of the latter.

VIII. SUGGESTIONS FOR REFORM

While the Supreme Court's directives in Rahul S. Shah are a significant step forward, a more comprehensive reform is necessary to address the deep-rooted problems of execution delays. The following suggestions are proposed:

- **Dedicated Execution Benches:** High Court should consider creating dedicated benches or designating specific judges in the district judiciary to exclusively handle execution proceedings. Specialization would lead to faster and more consistent disposal.
- **Stricter Timelines and Summary Procedures:** The Six-month timeline proposed by the Supreme Court should be developed for the initial screening of objections, with full inquiries reserved only for cases where a prima facie substantial question of law or fact is established.
- **Pre-emptive Cost Deposits:** For any objections filed by a third party or a resistance application, the court should have the discretion to require the applicant to deposit a substantial amount as security for costs, which would be forfeited if the application is found to be frivolous or intended to cause delay.
- **Technological Integration:** The use of technology for tracking execution cases, serving notices and conducting virtual inspections through court-appointed commissioners can significantly reduce delays. A centralized national database of execution proceedings could also help identify patterns of vexatious litigation by repeat players.
- **Strengthening the Doctrine of *Lis Pendens*:** Courts must take a stricter view of claims

by transferees pendente lite. The burden of proof should be heavily on the transferee to demonstrate that they are a bonafide purchaser without notice, and such claims should be dismissed at the threshold of collusion with the judgment-debtor is apparent.

IX. CONCLUSION

The efficacy of a judicial system is not measured by its ability to deliver judgements, but by its capacity to ensure that those judgements are enforced. Order XXI of Code of Civil Procedure, the primary instrument of enforcement, stands at a critical crossroads. Conceived as a shield for the decree-holder, it has been consorted into a sword for the judgement-debtor. The procedural complexities, coupled with a culture of litigation that rewards delay, have created a system where the fruits of decree remain tantalizingly out of reach for years.

The proactive stance of Supreme Court offers a glimmer of hope, signalling a much need shift towards a more pragmatic and result- oriented approach to execution. However, judicial directives alone cannot solve a problem that is both procedural and cultural. Meaningful, change requires a consorted effort involving legislative amendment, administrative reform within the judiciary, and a change in mindset among legal practitioners. The challenge is to re-engineer the process to make it swift and effective, to weed out frivolous objections without compromising the rights of genuine claimants. Until then, the lament of the decree-holder will continue to echo in the corridors of justice and Order XXI will remain a paradoxical provision- a powerful tool for enforcement that is all too often a potent weapon for delay.