

## **EXECUTION OF DECREES**

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1. **Executing Court not to alter the mode of execution directed by court passing the decree** : Interpreting the provisions of Sec. 47 CPC and Or. 21, r. 30 CPC in relation to the execution of money decree, it has been held by the Supreme Court that if the mode of recovery of the decretal amount was prescribed by the court passing the decree then alteration of the manner of recovery of the decretal amount by the executing court is illegal. See : **Radhey Shyam Gupta vs. Punjab National Bank, AIR 2009 SC 930**
  
2. **Duty of executing court in case of dispute regarding payment of decretal amount made out of court u/o. 21, r. 2 CPC** : If the receipts showing payment of decretal amount (amount of maintenance) out of court are filed by the judgment debtor but disputed by the decree holder, it becomes obligatory on executing court to go into the question and decide the facts as to whether payment had actually been made or not. Executing court cannot reject the application of the judgment debtor on the ground that the payments were not certified u/o. 21, r. 2 CPC. See : **Dr. Subhash Chandra Jain vs. Special Judge (E.C. Act), Farrukhabad, AIR 2009 (NOC) 899 (All.)**
  
- 3(A-1). **Section 5 Limitation Act not applicable to deposit of decretal amount** : Section 5 of the Limitation Act, 1963 for condonation of delay is applicable to appeal an application. It does not apply to depositing decretal amount and condoning delay in deposit. See : **Smt. Kusum Devi Vs. Ramji Verma, AIR 2016 (NOC) 393 (All.)**

- 3(A-2).No limitation for filing objection u/s 47 CPC** : No limitation is prescribed for filing objection u/s 47 CPC. See : **Arun Lal v. Union of India, AIR 2011 SC 506.**
- 3(B). Res judicata applies to execution proceedings also** : Where the first application u/s 47 CPC of the objector was already dismissed by the Executing Court and a second application u/s 47 CPC was again moved by him, relying on the law declared by the Hon'ble Supreme Court in Maqbool Alam Vs. Ahodaija, AIR 1966 SC 1194, it has been held by the Hon'ble Allahabad High Court that the principles of res judicata apply also to execution proceedings. See :
- (i) **Smt. Vijai Devi Vs. Ram Swarup, AIR 1975 All 229.**
  - (ii) **Tilak Dhari Singh Vs Addl. District Judge, Jaunpur, 1981 ALJ (NOC) 118 (All)**
- 3(C). Constructive res judicata and Section 47 CPC** : A defence which has not been raised, which could have been raised, shall be deemed to have been raised and decided by reason of principles of constructive res-judicata. The same cannot remain open to be agitated at the time of execution. A defence in the suit cannot be a ground of application under Section 47 inasmuch as it would have the effect of reversing the decree. Such question cannot be gone into by the executing court on the established principle that the executing court cannot go behind the decree. Such question is no more open to be decided in execution proceeding. See : **Jagbir Singh Vs VI Addl. District & Sessions Judge, Bijnor, 1997 (30) ALR 358 (All.)**
- 3(D). Objection as to title raised by third party beyond the scope of Section 47 CPC** : Objection was never taken in the written statement nor raised in suit or appeal. Objection relating to investigation of title of a third party to the decretal property is beyond the scope of Section 47 CPC. See : **Jagbir Singh Vs VI Addl. District & Sessions Judge, Bijnor, 1997 (30) ALR 358 (All.)**
- 4. Factors to be taken into account by the executing court** : An executing court should not consider any factors, facts or reports other than those taken into account by court passing judgment and decree and which formed part of the record. See : **Satyawati Vs. Rajinder Singh & Another, (2013) 9 SCC 491.**

5. **Delayed execution of decree for possession deprecated by the Supreme Court**  
: Where unreasonable delay had taken place in executing a decree for possession u/o 21, rule 35 CPC, explaining the provisions of Order 21, Order 26, rule 9 CPC and Section 47 of the CPC, the Hon'ble Supreme Court has held that there should not be unreasonable delay in execution of a decree because the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain. See : **Satyawati Vs. Rajinder Singh & Another, (2013) 9 SCC 491.**
6. **Order of lower authority merges into that of the superior authority** : A judicial order passed by the trial court merges in the order passed by the appellate or revisional court. It cannot be said that an appellate or revisional decision in which the decision of the trial court has merged is still a case arising out of the original suit. After merger, the decision arising out of the original suit vanishes. See : **Jaswant Singh Vs. Smt. Kusum Lata Devi, 2012 (116) RD 383 (All)(LB).**
- 7(A). **S. 47 CPC and resjudicata** :
  1. "Dismissal of application u/s 47 CPC ---Subsequent application u/s 47 CPC is barred." See : AIR 1975 All 229 (230)
  2. "Question asto who is L.R. of the deceased D.H.---question heard and finally decided--- decision is a decree and will operate as resjudicata. See : AIR 1974 Alld. 229 (F.B.)
  3. "Where an application for setting aside sale by executing court is dismissed and no appeal is filed against---such dismissal, another application for setting aside the sale will be barred by the principles of resjudicata." See : AIR 1987 SC 1443
  4. "Matter directly and substantially in issue in execution proceedings heard and finally decided ---decision operates as resjudicata at a subsequent stage

of the same execution proceedings." See : (1982) 2 SCC 109 and 1981 ALJ (NOC) 118.

**7(B). Constructive resjudicata & Execution :**

1. "Principles of constructive resjudicata apply to execution proceedings." AIR 1953 SC 65(72).
2. "Execution application dismissed for non-prosecution--decision will not operate as constructive resjudicata." See : AIR 1969 SC 971 (973)
3. "In order to apply principles of constructive resjudicata to execution proceedings, it must be shown that the party affected has had clear notice of the nature of the claim made against him or has had an opportunity of contesting the claim." AIR 1981 Alld. 235 (237) (F.B.)
4. S. 47 : Constructive resjudicata --- Defence available in suit---not raised-- shall be deemed to have been raised and decided ---Not open to be agitated at the time of execution of the decree." See : 1997 (30) ALR 358 (Jagbir Singh Vs. VI ADJ, Bijnor).

**8. Executing Court cannot question validity of decree on objection u/s 47 CPC that the decree was passed without territorial jurisdiction:**

Executing Court cannot question validity of decree on objection u/s 47 CPC that the decree was passed without territorial jurisdiction. A distinction must be made between a jurisdiction with regard to the subject-matter of the suit and that of the territorial and pecuniary jurisdiction. Whereas in the case falling within the former category, the judgement would be a nullity, in the latter it would not be. See:

(i) Sneh Lat Goel Vs. Pushp Lata Goel, AIR 2019 SC 824.

(ii) Mantoo Sarkar Vs. Oriental Insurance Company Limited, (2009) 2 SCC 244 (paras 19 & 20)

9. **Executing court cannot go behind the decree:** Executing court cannot go behind the decree. It must take the decree according to its trainer and cannot

entertain any objection that the decree was incorrect in law or on facts. Until the decree is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. See:

- (i) Sneh Lat Goel Vs. Pushp Lata Goel, AIR 2019 SC 824.
- (ii) Mantoo Sarkar Vs. Oriental Insurance Company Limited, (2009) 2 SCC 244  
(paras 19 & 20)
- (iii) Vashudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman, AIR 1970 SC 1475.

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1. **O. 21, r. 32 CPC : Limitation, compromise decree is executable.**
2. **O. 21, r. 37 & 38 CPC**
3. **Notice in execution**
- 4(A). **S. 50 (Execution against wrong person)**
- 4(B) **Substitute of L.Rs. of Deceased D.H.**
5. **Stay of Decree (execution)**
6. **Merger of Trial Court's decree into appellate court's decree.**
- 7(A). **O. 21, r. 35, 97-103 r/ws. 47 CPC (Dispossession of obstructionist in possession of decretal property and his objections how to be disposed of ?)**
- 7(B). **Identity of Property for delivery of .... Session.**
8. **O. 21, r. 90 (Material Irregularity in conducting or publishing sale)**
9. **Inexcusability of Decree (Declaratory Decree)**
10. **O. 21, r. 105, 106 CPC**
11. **O. 21, r. 56 ---Attachment of A/c**  
**O. 21, r. 48 r/w S. 60--Attachment of Salary**
12. **O. 21, r. 64-68 (sale of attached property)**
13. **Money Decree--Arrest & Detention**
14. **O. 21, r. 54--Attachment of Immovable Property**
15. **R. 106--G.R. Civil--Process Fee in Execution**
16. **S. 152--Amendment of Decree & Ex-executing Court.**

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"O. 21, r. 35, 97 to 103 CPC --- Sale of immovable property in execution of decree---person in possession abstracting the attempt to dispossess him--- Executing Court can consider all questions raised by person offering obstruction against execution and can pass appropriate orders u/r. 103 of order 21 CPC. See : NSS Narayana Sharma Vs. M/s Goldstone Experts (P.) Ltd., 2002 (46) ALR 360 (SC). Same view also laid down in ---Anwarbi Vs. Pramod D.A. Joshi, 2000 (10) SCC 405.

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