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# **“EXECUTION OF DECREE UNDER THE CIVIL PROCEDURE CODE 1908: ARREST, DETENTION, RELEASE AND SEIZURE”**

AUTHORED BY - ALIND GUPTA

## **Abstract**

*The stage of execution is arguably one of the most crucial stages for the person who approaches the court for relief. It is in this stage that the person gets the fruits of the decree. The present paper focuses on this stage of the civil procedure while looking at the executing court's following powers under Section 51 of the Code of Civil Procedure 1908: arrest, detention, release and seizure. Part 1 maps out the meaning and implications of the stage of execution in a civil case. It deals with the relevant case laws and the reports of the Law Commission of India on the said aspect. Part 2 looks at power of arrest in civil cases and the circumstances in which it can be exercised. Part 3 sheds light on detention and release of the judgment debtor in the context of Sections 58 and 59. Part 4 highlights the power of seizure under the civil process.*

## **INTRODUCTION**

A civil suit comes to an end when a judgment or decree is issued by a civil court. However, till the person in whose favour decree is issued obtains the fruits of the decree, it remains mere piece of paper. The Civil Procedure Code empowers the courts with vast powers to ensure the decree holder is able to obtain the benefits mentioned under the decree.<sup>1</sup> This is called 'Execution of decrees' which is covered under Order XXI of the Civil Procedure Code. The code does not contain any definition for the term "execution". However, Halsbury's Laws of England defines it as 'enforcement of or giving effect to a judgment or order of court of justice'.<sup>2</sup> Execution ensures that the decree holder is able to translate the decree issued in his favour to reality.

Section 51 provides the executing court powers to enforce the decree which includes power to deliver property, attach or sell the property, arrest and detain the judgment debtor, appointment

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<sup>1</sup> CK Thakker, *Civil Procedure* (6<sup>th</sup> edn, Eastern Book Company 2011) 587.

<sup>2</sup> *Halsbury's Laws of England* (vol17, 4<sup>th</sup> edn, 2009) 232.

of receiver and other orders as maybe required.<sup>3</sup>The power to detain is exercised sparingly as it involves curtailment of personal liberty of a person. Because of the gravity of such power, the court shall issue a notice to the judgment debtor in order to give him opportunity to show why he should not be arrested.<sup>4</sup> The court has to satisfy itself with regard to the conditions mentioned in the proviso of Section 51. The power of arrest and detention is contained in Section 55 of the Civil Procedure Code and grounds of release are contained in Sections 58 and 59. This article is limited to powers of arrest, detention, release and seizure in execution of decrees.

## Part 1-EXECUTION OF DECREE

Execution of decrees takes place after a civil suit has concluded nonetheless it is one of the most important stages contained in the Civil Procedure Code. While legally speaking a civil suit comes to an end with the passing of decree by the court, for practical purposes unless the decree-holder gets the fruits of the decree, the decree remains a mere piece of paper. This is because the entire purpose of filing a suit is not to obtain a favourable decree but to get the remedy sought from the court. This remedy is obtained by the execution of a decree obtained from the court.<sup>5</sup>

The term 'execution' has not been defined anywhere in the code. Halsbury's Laws of England defines it as 'enforcement of or giving effect to a judgment or order of court of justice'.<sup>6</sup>Execution in the most basic sense signifies the process of the enforcement of judgement or decree passed by a competent court of justice. Execution also, in a practical sense, completes the suit as it provides the plaintiff what he came to the court for.

The law pertaining to execution is codified in Sections 36-74 and Order 21 of the Civil Procedure Code. The provisions relating to execution are applicable not just to decrees but also to orders.<sup>7</sup>Such decrees can be executed by the court that passed the decree or by the court to which the decree is sent for execution.<sup>8</sup> This makes it clear that the court which passed the decree can be different from the court executing it. This transfer of decree is duly explained under Section 39 which lays down the scenarios in which the court passing a decree can transfer the decree to another court for execution. However, the important thing to note here is that the executing court

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<sup>3</sup> Civil Procedure Code 1908, s51.

<sup>4</sup> *ibid* OXXI R37.

<sup>5</sup> CK Thakker, *Civil Procedure* (8<sup>th</sup> edn, Eastern Book Company 2017) 603.

<sup>6</sup> *Halsbury's Laws of England* (4<sup>th</sup> edn, 2009) vol17, 232.

<sup>7</sup> Civil Procedure Code 1908 s36.

<sup>8</sup> Civil Procedure Code 1908 s38.

has no power to change the decree or maker any alterations in the decree. It has to merely execute what's contained in the decree.<sup>9</sup>

In the case of *Ghanshyam Das v. Anant Sinha*<sup>10</sup>, which dealt with the execution of decrees under the Civil Procedure Code, the Supreme Court of India stated that the Civil Procedure Code contains elaborate and exhaustive provisions with respect to execution of decrees. The numerous rules contained in Order 21 of the Civil Procedure Code take care of different situations providing relief to not just the decree holder and judgment debtor but also to any other claimant objector who objects to the execution of decree in a particular way. Even after such detailed remedies if theirs is no provision providing adequate relief to a person, then that person is at full liberty to file another suit. The remedy provided under the Civil Procedure Code is a better and superior remedy as compared to remedies provided under other statutes and courts. This also places a higher burden on the judge to dispense justice.<sup>11</sup>

The stage of execution can be very frustrating for the decree holder since he has already obtained the decree in his favour but has not obtained the fruits of the decree. Various law commissions have tried to identify the issues involved in the stage of execution of decrees. The 14<sup>th</sup> Law Commission Report on 'Reforms of Judicial Administration' stressed that the real difficulty of a litigant begin when he has obtained the decree.<sup>12</sup> It identified that one of the most convenient way to delay the execution proceedings is the dishonest and frivolous tactic of the judgment debtor to file pleas for payment and adjustment. This led the law commission to suggest that orders passed in a money decree (small causes) should be made non-appealable.<sup>13</sup>

In other of its reports<sup>14</sup>, it attempted to strike a balance between right of judgment debtor and expedience required in execution of the decree. It made various recommendations and suggestions to improve the execution of decrees and ensure that fruits of the decree are given to the decree holder.

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<sup>9</sup> *Punjab State Electricity Board v Ramesh Kumar Gupta* (2009) 16 SCC 307.

<sup>10</sup> (1991) 4 SCC 379.

<sup>11</sup> Thakker (n1) 604.

<sup>12</sup> Law Commission of India, *Reforms of Judicial Administration* (14<sup>th</sup> report, 1958) 431 <<http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>> accessed on 20 November 2018.

<sup>13</sup> *ibid* 441.

<sup>14</sup> Law Commission of India, *Civil Procedure Code 1908* (54<sup>th</sup> report, 1973) 72-92 <<http://lawcommissionofindia.nic.in/51-100/Report54.pdf>> accessed on 20 November 2018; Law Commission of India, *Code of Civil Procedure 1908* (27<sup>th</sup> report, 1964) 174-210 <<http://lawcommissionofindia.nic.in/1-50/Report27.pdf>> accessed on 20 November 2018.

Section 51 of the Civil Procedure Code grants wide powers to ensure execution of a decree.<sup>15</sup> As a general rule, the decree holder can, while applying for execution of a decree, avail an option to choose a particular mode of execution of a decree passed in his favour. However, Section 51 makes it clear that this is 'subject to such conditions and limitations as maybe prescribed' by the Code.<sup>1617</sup>

The vast amount of powers has been given to a civil court under the Civil Procedure Code so as to ensure that the fruits of the decree is provided to the decree holder as soon as possible without any delay. Without execution of decree, the decree remains merely a piece of paper, completely useless to the decree holder. Such vast powers include the power to order delivery of property<sup>18</sup>, attachment or sale of property<sup>19</sup>, arrest and detention in prison<sup>20</sup>, appointment of receiver<sup>21</sup> or any other manner as the nature of relief may require<sup>22</sup>.

Despite the need to execute the decree expeditiously, the Civil Procedure Code has also recognized the rights of a judgment debtor and provided him many safeguards to ensure due process is followed. The personal liberty of the judgment debtor has been give due weightage under Section 51 which lays down certain conditions to ensure that the power of arrest or detention is not used against judgment debtor in a rash and extravagant way in the execution of decrees.

For the purposes of the present paper, we shall be confined to the power of:

1. arrest
2. detention
3. release
4. seizure.

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<sup>15</sup> Civil Procedure Code 1908 s51.

<sup>16</sup> Thakker (n1) 627.

<sup>17</sup> *Mahadeo Prasad Singh v Ram Lochan* (1980) 4 SCC 354.

<sup>18</sup> Civil Procedure Code 1908 s51(a).

<sup>19</sup> Civil Procedure Code 1908 s51(b).

<sup>20</sup> Civil Procedure Code 1908 s51(c).

<sup>21</sup> Civil Procedure Code 1908 s51(d).

<sup>22</sup> Civil Procedure Code 1908 s51(e).

## PART 2-ARREST

The personal liberty of a person is protected under Article 21 of the Indian Constitution, which forms the core of the chapter of fundamental rights contained in Part III of the Indian Constitution. This requires that the power of arrest may be exercised sparingly, especially in civil cases in which the execution of a decree is required. Clause (c) of Section 51 of the Civil Procedure Code gives a civil court the power to arrest and detain a judgment debtor for the purposes of execution of decree. However, this clause gives immense power to the civil court and must be read in conjunction with the proviso to Section 51 added by amendment of 1936.

Proviso to Section 51 lays down that arrest of a judgment debtor cannot be ordered unless a show-cause notice is given to him as to enable to present his side and convince the court that why he should not arrest. Further, the proviso lays down conditions, one of which must be fulfilled so as to order for his arrest. The conditions are:

*'(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree, -*

*(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or*

*(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or*

*(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or*

*(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account'.<sup>23</sup>*

The provisions are mandatory in nature and cannot be waived in any circumstance because of the importance given to liberty of a person under Indian Constitution.<sup>24</sup> This requires strict compliance of the courts while execution of decree. As opposed to the traditional notion of a prison, the purpose of arrest of a judgment debtor is not to impose punitive sanction.<sup>25</sup> The

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<sup>23</sup> Civil Procedure Code 1908 s51.

<sup>24</sup> Constitution of India 1950 Art 21.

<sup>25</sup> Santanu Dey, 'Legal Provisions of Section 51 of Code of Civil Procedure 1908, (C.P.C.), India – Procedure in Execution' (Share Your Essays) <<http://www.shareyouressays.com/knowledge/legal-provisions-of-section-51-of-code-of-civil-procedure-1908-c-p-c-india-procedure-in-execution/114388>> accessed on 20 November 2018.

primary requirement of arrest is to secure the payment from the judgment debtor and not to punish him.<sup>26</sup>

Section 55 provides many safeguards to the judgment debtor. The judgment debtor cannot be arrested in his dwelling house before or after sunset. The person arresting the judgment debtor cannot break the outer door unless he is being prevented from enforcing the warrant of his arrest. If a room is in possession of a woman, a reasonable amount of time is to be given for the woman to withdraw. Section 56 also makes it clear that a woman cannot be arrested in execution proceedings. If judgment debtor pays the decretal amount along with the cost of arrest, then he may be released. Subsistence allowance needs to be paid by the decree holder for arrest.

In the recent case of *Subrata Roy Sahara v. Union of India*<sup>27</sup>, the Supreme Court of India held that for securing payment of money from the judgment debtor, the executing court may order arrest and detention of the judgment debtor.<sup>28</sup> However, the object of subjecting the judgment debtor to prison to ensure that the fruits of the decree are obtained by the decree holder and not to ensure punishment is given to the judgment debtor for non-payment of money. This implies that a judgment debtor would not be discharged from his liability once he is subjected to arrest and detention. Arrest and detention is only to ensure satisfaction of the decree.

In *Jolly George v. Bank of Cochin*,<sup>29</sup> the Supreme Court held that the power to detain or arrest a judgment debtor must be exercised cautiously. Mere non-payment of the decree amount would not be sufficient to arrest the judgment debtor. Article 11 of the International Covenant on Civil and Political Rights laid down that 'No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation'.<sup>30</sup> India being a signatory to such covenant must honour it by Article 51(c). So, there be an element of bad faith in addition to non-payment in order to arrest a judgment debtor.<sup>31</sup>

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<sup>26</sup> Thakker (n1) 647.

<sup>27</sup> (2014) 8 SCC 470.

<sup>28</sup> Anoop Koneeri, 'Supreme Court rejects Subrata Roy's plea against his detention' (Live Law, May 2014) < <https://www.livelaw.in/supreme-court-rejects-subrata-roys-plea-detention/>> accessed on 20 November 2018.

<sup>29</sup> AIR 1980 SC 470.

<sup>30</sup> International Covenant on Civil and Political Rights Art 11.

<sup>31</sup> Harpreet Kaur, 'Arrest and detention under civil law' < <https://www.lawctopus.com/academike/arrest-and-detention-under-civil-law/>> accessed on 20 November 2018.

## PART 3-DETENTION AND RELEASE

Section 58 contains the law relating to detention of a judgment debtor in execution of a decree by an executing court. A judgement debtor may be arrested upto 3 months if the total amount of decree exceeds 5000 rupees, upto 6 weeks if the amount is between 2000 and 5000 rupees and if the amount is less than rupees 2000, a judgment debtor cannot be detained.

The total amount of decree includes the future interest that is accrued from the non-payment of the decretal amount since it is obtained by the decree itself. This forms part of the decree when it is mentioned by the court passing such decree. However, the cost of arrest and police aid is not to be included in the total amount of decree.<sup>32</sup>

If the court determines that the judgment debtor should be detained, it must reasons for its decision for the purposes of execution of decree secured by the decree holder by a competent court of justice.<sup>33</sup>The requirement to record reasons is a mandatory requirement. Failure by the court to record reasons for its satisfaction constitutes a disregard for a crucial and obligatory legal provision. These reasons should be documented in all proceedings when the judgment debtor is instructed to be incarcerated..<sup>34</sup>

Section 58 also lays certain conditions in which the judgement debtor can be released before the period of detention is complete. Those are:

*'(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or*  
*(ii) on the decree against him being otherwise fully satisfied, or*  
*(iii) on the request of the person on whose application he has been so detained, or*  
*(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance'.<sup>35</sup>*

Section 58 of the Civil Procedure Code was amended in 1976 in order to give discretion to the court as to the term for which a person may be subjected to detention in civil prison for execution of a decree for the payment of money.<sup>36</sup>

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<sup>32</sup> *Bhagwandas Agrawal v Shriram Govinda* 1979 SCCOnLine Bom 94.

<sup>33</sup> *Thakker* (n1) 651.

<sup>34</sup> *PG Rangnatha v Mayavaram Financial Corporation* AIR 1974 Mad 1.

<sup>35</sup> Civil Procedure Code 1908 s58.

<sup>36</sup> MP Jain, *The Code of Civil Procedure* (3<sup>rd</sup> edn, 2011) 232.

The court while ordering the detention of the judgment debtor in execution proceedings must specify the period for which the judgment debtor is to be kept in detention. Failure to specify the period would result in setting aside of such order.<sup>37</sup>

Further the 1999 amendment raised the value of money from 500 and 1000 to 2000 and 5000 keeping in view the decrease in value of money.<sup>38</sup>

Section 59 incorporates a humanitarian provision and provides that a judgment debtor can be released or his warrant can be cancelled on the ground of illness.<sup>39</sup> The object of such a section is to give effect to a humanitarian aspect of law in which health of a person becomes a relevant issue. If a judgment debtor is experiencing a severe illness, the court is obligated to grant them release in order to avoid any moral liability in the event that something should happen to them while in prison.<sup>40</sup>

The court has a duty to consider the plea of the judgement debtor that he is suffering from illness while ordering for his arrest. Section 59 gives the power to the executing court to cancel the arrest on humanitarian grounds. The court can consider such plea of the judgment debtor and pass relevant orders.<sup>41</sup>

## PART 4-SEIZURE

The power of seizure is also very important in execution of a decree obtained by the decree holder, although it is not as serious as the power of arrest or detention. The power of seizure of property is given to the executing court in furtherance of the court's power to order delivery or attachment of the property. In a way, the power of seizure supplements the court's power to order for delivery or attachment of property.

Attachment signifies that the judgment debtor is restrained from alienating the property which has been attached by the order of the court. The judgment debtor loses all rights over the property and cannot create any charge over the property. The property is transferred to the executing court

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<sup>37</sup> *Doraswamy Reddy v. Kodananda Naidu* (1997) 2 AP LJ 107 (SN).

<sup>38</sup> *ibid.*

<sup>39</sup> Civil Procedure Code 1908 s59.

<sup>40</sup> *Jain* (n31) 233.

<sup>41</sup> *S Mohan v Rani Ammal* 2010 SCC OnLine Mad 2129.

on attachment and is further used for the execution of decree in favour of the decree holder. The law relating to attachability of property is contained in Section 60 of the Code of Civil Procedure.

Black's law dictionary defines seizure as

*'The act performed by an officer of the law, under the authority and exigence of a writ in taking into the custody of the law the property, real or personal, of a person against whom the judgment of a competent court has passed, condemning him to pay a certain sum of money, in order that such property may be sold, by authority and due course of law, to satisfy the judgment.'*<sup>42</sup>

When the execution pertains to any specific movable property, the same may be done (i) by seizure and delivery of the property; or (ii) by detention of the judgment debtor; or (iii) by the attachment and sale of his property; or (iv) by attachment and detention both.<sup>43</sup> The law concerning seizure of movable property is contained in Section 62 of the Code of Civil Procedure. While section 55 deals with arrest of a judgment debtor in execution of a decree, section 62 has corresponding provisions for seizure of movable property of the judgement debtor.<sup>44</sup> This power is exercised when the judgment debtor is not complying with court's order of delivery of property. In *Teeka v. State of Uttar Pradesh*,<sup>45</sup> in relation to Rule 43 of Order XXI, the Supreme Court ruled that the attachment of movable property, excluding agricultural produce, must be carried out through actual seizure. The officer responsible for attaching the property must ensure that it remains in his possession or the possession of his subordinates, and he will be held accountable for its proper safekeeping. Seizure, in its true sense, refers to the transfer of possession from the debtor who has been ruled against to the court.

## **CONCLUSION**

The stage of execution comes into the picture when a person has already received a judgment in his favour. However, unfortunately all his troubles do not end there. The Supreme Court has remarked numerous times that the "difficulties of a litigant 'begin when he has obtained a decree'".<sup>46</sup> The difficulties faced by the litigants in executing their decrees have found recognition by multiple Law Commission Reports. The Supreme Court, taking note of the injustice caused due to lack of timely execution of decrees, has recently issued mandatory directions for all courts dealing with execution proceedings.<sup>47</sup>

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<sup>42</sup> Black's Law Dictionary (2<sup>nd</sup> edn) < <https://dictionary.thelaw.com/seizure/>> accessed 20 November 2018.

<sup>43</sup> Takwani (n5).

<sup>44</sup> Jain (n31) 247.

<sup>45</sup> AIR 1961 SC 803.

<sup>46</sup> *Shyam Singh v Collector, Hamirpur* 1993 Supp (1) SCC 693.

<sup>47</sup> *Rahul Shah v Jinendra Kumar Gandhi* 2021 SCC OnLine SC 341.

The present paper looks at the stage of execution in a civil case and the powers that are available to an executing Court in order to discharge its functions. The same demonstrates the executing Court has multi-faceted powers under Section 51 of the Code of Civil Procedure 1908 including the power of arrest and seizure of property. While it is critical to ensure that execution proceedings are smoothly culminated, it is equally, if not more, important to safeguard the rights of the judgment debtor.

The same has found place in the provisions of the Code of Civil Procedure. The proviso under Section 51 lays down various conditions that must be fulfilled before the personal liberty of the judgment debtor could be curtailed. The Supreme Court has also cautioned against the arrest of judgment debtor in cases of where the person is simply unable to pay the decretal amount.<sup>48</sup> Therefore, while the focus should be to expedite the execution proceedings so that the rights of the judgment creditor do remain illusory, the same should not be done at the cost of dilution of judgment debtor's rights.

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