

ARREST AND DETENTION: A MODE TO EXECUTE THE DECREES

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Introduction

Execution of decree and order is the most important aspect in attaining the final relief claimed in civil litigation. Success or failure of system of civil justice depends upon success in executing decrees of Civil Courts. The term execution has not been defined in The Code of Civil Procedure, 1908. In its widest sense, the expression signifies the enforcement of decrees¹ and orders² by the process of the Court, so as to enable the decree holder³ to realize the fruits of the decree.

PROCEDURE TO EXECUTE DECREE UNDER THE CODE OF CIVIL PROCEDURE, 1908 :-

The Law relating to execution of decrees and order is found in Sections 36 to 74 (substantive law); Sections 82 and 135; and Order XXI containing 106 rules (procedural law) of The Code of Civil Procedure, 1908.

Code of Civil Procedure, 1908 provides various modes in which execution of a decree may be ordered⁴ those are as follows:

- (a) By delivery of any property specifically decreed;
- (b) By attachment and sale, or by sale without attachment of any property;
- (c) By arrest and detention of the judgment-debtor;
- (d) By appointment of a Receiver; or
- (e) In such other manner as the nature of the relief may require.

The Code of Civil Procedure, 1908 provides for different mode to execute the decree out of which arrest and detention of the judgment debtor in civil prison is one. Section 51 to 59 &

¹ Section 2 (2) of The Code of Civil Procedure, 1908.

² Section 2 (14) of The Code of Civil Procedure, 1908.

³ Section 2 (3) of The Code of Civil Procedure, 1908.

⁴ Section 51 of The Code of Civil Procedure, 1908.

rule 30 to 41 of order XXI deals with arrest and detention of the judgment debtor in civil prison. The proviso to Section 51 lays down the pre-requisites for detention of judgment-debtor in prison. There must be material making of a *prima facie* case for enquiry under Rule 40. So, even before issuing notice under sub-rule (1), the Court has to be satisfied about the maintainability of the application. This mode can be opted by the decree-holder simultaneously with execution against the property.

Where in the execution application prayer is made for arrest and detention of the judgment-debtor, the court shall, instead of issuing a warrant for arrest, issue a notice calling upon the judgment-debtor to appear and show cause why he should not be committed to civil prison for execution of the decree⁵.

Object behind the show cause notice-

The provision as to issuance of show-cause notice before ordering arrest and detention of the judgment-debtor is salutary in nature and has been enacted with a view to afford protection to honest judgment-debtors and to extend them an opportunity to comply with decree. The purpose of arrest and detention is not to punish him for any crime but to enable the decree-holder to realize the fruits of a decree passed in his favour.

Article 21 read with Articles 14 and 19, of Constitution of India, are the basis behind this provision-

The provision for issuing notice and affording opportunity to the judgment-debtor to show cause recognizes rule of natural justice that no person should be condemned unheard. An order of arrest or detention without issuing notice or affording an opportunity to show cause is bad in law. The object and spirit of Sec. 51 and O. XXI, R. 37 are intended to see that judgment-debtor, who is not possessed of sufficient means who did not commit any act of *mala fides* as envisaged in these provisions, should not be detained in prison. An order directing issue of warrant is bad because no enquiry was made by Court under Sec. 51 before passing the order. If the judgment-debtor is not possessed of any means to clear off his debts, he cannot be arrested. Before the Court can issue warrant of arrest or a notice to judgment-debtor under this rule Court has to see whether the circumstance mentioned in Sec. 51 proviso exists. Unless those circumstances exist, the judgment-debtor cannot be ordered to be arrested.

When arrest and detention may be ordered-

In execution of following decrees Court can order for arrest and detention of the judgment-debtor:

1. Where the decree is for payment of money⁶,
2. Decree for specific performance contract or for injunction⁷,
3. Where decree is against a Corporation, it can be executed with the leave of the court by

⁵ Order XXI Rule 37 of The Code of Civil Procedure, 1908.

⁶ Order XXI Rule 30 of The Code of Civil Procedure, 1908.

⁷ Order XXI Rule 32 of The Code of Civil Procedure, 1908.

detention in civil prison of its directors or other officers.

4. Where a money decree has remained unsatisfied for a period of thirty days, the court may, on the application of the decree-holder, require the judgment-debtor to make an affidavit stating the particulars of his assets. In case of disobeying the order court may order for detention of judgment-debtor up to three months.⁸

Who cannot be arrested :

The following classes of persons are exempted from arrest & detention in civil prison,

1. A woman⁹,
2. Legal representatives of deceased Judgment Debtor¹⁰,
3. Judicial officers, while going to, presiding in, or returning from their courts¹¹,
4. The parties, their pleaders, *mukhtars*, revenue agents and recognised agents and their witnesses acting in obedience to a summons, while going to, or attending or returning from the court¹²,
5. Members of legislative bodies;¹³
6. Any person or class of persons, whose arrest, according to the State Government, might be attended with danger or inconvenience to the public;¹⁴
7. A judgment-debtor, where the decretal amount does not exceed rupees two thousand not exceed.¹⁵

Consequences of appearance and non-appearance-

Where the judgment-debtor appears before the court in obedience to such notice, and if the court is satisfied that he is unable to pay the decretal amount, the court may reject the application for arrest. On the other hand, where the judgment-debtor appears but fails to show cause to the satisfaction of the court against the arrest and detention, the court may, subject to the provisions of the Code, make an order of detention.

Whether the judgment-debtor does not appear in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Enquiry into Means-

After issuing show cause notice, upon appearance of judgment-debtor, court shall clear the decree-holder and take all such evidence from him in support of application for arrest in execution of a decree and shall give the judgment-debtor an opportunity of showing cause why

⁸ Order XXI Rule 41 of The Code of Civil Procedure, 1908.

⁹ Section 56 of The Code of Civil Procedure, 1908.

¹⁰ Section 50 and 52 of The Code of Civil Procedure, 1908.

¹¹ Section 135(1) of The Code of Civil Procedure, 1908.

¹² Section 135(2) of The Code of Civil Procedure, 1908.

¹³ Section 135-A of The Code of Civil Procedure, 1908.

¹⁴ Section 55(2) of The Code of Civil Procedure, 1908.

¹⁵ Section 58 (1-A) of The Code of Civil Procedure, 1908.

he should not be committed to civil prisons. As per case decided by “Hon'ble CourtJogendraMissir vs. Ramnandan Singh¹⁶. Onus of proof under this rule lies on the decree-holder. During enquiry court should see whether the judgment-debtor is in a feet state of health to undergo the sentence of detention in civil prison.

Recording of reasons-

The court is required to record reasons for detention of the judgment-debtor for its satisfaction. Recording of reasons is mandatory. Omission to record reasons by the court for its satisfaction amounts to ignoring a material and mandatory requirement of law. Such reasons should be recorded every time and in every proceeding in which the judgment-debtor is ordered to be detained.

The provision relating to arrest and detention of the judgment-debtor protects and safeguard the interests of the decree-holder. If the judgment-debtor has means to pay and still he refuses or neglects to honor his obligations, he can be sent to civil prison. Mere omission to pay, however, cannot result in arrest or detention of the judgment-debtor. Before ordering detention, the court must be satisfied that there was an element of *mala fide* or bad faith, “not mere omission to pay but an attitude of refusal on demand verging on disowning of the obligation under the decree”¹⁷.

Subsistence allowance-

The Decree-holder is under obligation to deposit subsistence allowance and other expenses in court before seeking relief to detain judgment-debtor in civil prison¹⁸.

Committal judgment-debtor to civil prison-

A judgment-debtor may be arrested at any time and on any day in execution of a decree. After his arrest, he must be brought before the court as soon as practicable. For the purpose of making arrest, no dwelling house may be entered after sunset or before sunrise. Further, no outer door of a dwelling house may be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or prevents access thereto. Again, where the room is in the actual occupancy of a *pardanashin*woman who is not the judgment-debtor, reasonable time and facility should be given to her to withdraw there from. No order of detention of the judgment-debtor shall be made where the decretal amount does not exceed rupees two thousand. No judgment-debtor may be arrested unless and until the decree-holder pays into court the subsistence allowance as fixed by the court. Whether the judgment-debtor pays the decretal amount and costs of arrest to the officer, he should be released at once.

In an application for the arrest and detention of the judgment-debtor in prison, the decree-holder must state or must file an affidavit stating the ground on which arrest is sought. The burden is very heavy on the decree-holder to prove that the circumstances specified in the proviso to section 51 exist. The court must record reasons for the committal of the judgment-

¹⁶ AIR 1968 Pat 218

¹⁷ Krishna Iyer, J. in *Jolly George Verghese v. Bank of Cochin* (1980) 2 SCC 360, AIR 1980 SC 470

¹⁸ Section 57 and Order XXI Rule 40 of The Code of Civil Procedure, 1908.

debtor to civil prison. In absence of reasons, the order is liable to be set aside.

Period of detention¹⁹ :

The period of detention of the judgment-debtor in civil prison shall be (a) up to three months, where the decretal amount exceeds rupees five thousand; and (b) up to six weeks, where the decretal amount exceeds rupees two thousand but does not exceed rupees five thousand. Where the decretal amount does not exceed rupees two thousand, no detention can be ordered.

Release of judgment-debtor

A judgment-debtor may be released in the following cases :

- (i) On the amount mentioned in the warrant being paid; or
- (ii) On the decree against him being otherwise fully satisfied; or
- (iii) On the request of the decree-holder or
- (iv) On the omission by the decree-holder to pay subsistence allowance (such release, however, does not discharge the judgment-debtor from his debt, but he cannot be rearrested on the same ground);
- (v) On the ground of illness²⁰

Conclusion

In the present day context, where one expects instant results, the executing court would do well in satisfying the litigant public, more so a successful litigant who is awaiting to taste the fruits of the decree and getting the judgments/decree executed without any unreasonable delay is one of the most important criteria in this regard. The process of execution of decree should be expedited in order to fulfill the court's verdict. Simultaneous execution against person and property by way of arrest and detention may result in the quick disposal of cases resulting in satisfaction of decree.

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5. Law Commission of India 44th Report1973.

¹⁹ Section 58 of The code of Civil Procedure, 1908.

²⁰ Section 59 of The code of Civil Procedure, 1908.