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EXECUTION PROCEEDINGS ORDER XXI OF C.P.C.

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ABSTRACT

Broadly speaking, laws are of two types: (a) Substantive law; and (b) Procedural law. While substantive law specifies the rights and liabilities of parties, procedural law sets out the practice, procedure, and machinery for the enforcement of such rights and liabilities. The Code of Civil Procedure, 1908 ("the Code"), deals with the procedural law to be followed by civil courts. There have been several amendments to the same, the noteworthy ones being the amendments of 1976, 1999, and 2002. The Code extends to the whole of India except the State of Jammu and Kashmir, and the State of Nagaland, and the tribal areas.

KEYWORDS: *Execution Proceedings, Broadly speaking, liabilities of parties, procedural law.*



INTRODUCTION :

The Code can be divided into two parts: (a) the body of the Code, containing 158 Sections; and (b) the Schedule containing 51 Orders, and Rules therein. The Sections deal with the general principles of jurisdiction, and the Schedule lays down the method and manner in which such jurisdiction may be exercised. The Sections can be amended only by the Legislature, while the Orders and Rules can be amended by the High Courts. The Sections and the Rules must be read together and

harmoniously constructed, and in the event there is any inconsistency, the Sections will prevail.

MEANING OF EXECUTION:

The term 'execution' has not been defined in the code. In its widest sense the expression 'execution' signifies the enforcement or giving effect to a judgment or order of a court of justice. In other words, it is a process for enforcing the decree of the court. So that the decree holder can realize the

FRUITS OF DECREE.

Execution Nature & Scope :

Execution is the enforcement of a decree passed by a court. A person in whose favour a decree is passed is called the "decree-holder" or "judgment-creditor" and a person against whom a decree

has been passed is called them "judgment-debtor". Ss.36 to 74 and Order XXI of the Code set out the provisions of the Code in respect of execution. S.38 of the Code states that a decree may be executed by either the court which passed it, or by the court to which it is sent for execution. An executing court cannot go behind the decree, that is, it does not have the power to modify the terms of the decree and must take it as it stands.

Reference to Law Commissions Reports :

14th , 27th ,54 th Law Commission Reports (Amendment of 1976) and 163rd Law Commission Report (Amendment of 1999 & 2002)

The law commission had considered the difficulties realized by the decree holder after obtaining decree from a competent court of law . It is also went into the reasons for unsatisfactory state of affairs & made several recommendations & suggestions for the simplification of execution proceedings. Many of these suggestions were taken into consideration by the Legislature. A step further, they have made necessary amendments from time to time to facilitating the process of executions to meet ends of justice.

SCHEME OF EXECUTION :

For the sake of discussion topic of execution of decree is divide under following heads:

- 1.Courts which may execute decrees
- 2.Application for execution
- 3.Contents of Application
- 4.Notice before issuing process
- 5.Questions to be determined by the executing court.
- 6.Execution of Cross Decrees
- 7.Stay of execution
- 8.Garnishee proceedings
- 9.Precepts
- 10.Modes of executions 11.Adjudication of claims 12.Sale of property 13.Delivery of Possession
- 14.Distribution of Assets 15.Resistance to execution

CONCLUSION :

Order 21 of the Code of Civil Procedure deals with the solemn act of execution of the decrees passed by the Courts from grassroots to the top. Ultimately, after the judgment attains finality or where there is no stay in the execution by any Appellate or Revisional Court, it is the Court of original jurisdiction which performs this sacred act of implementation of the execution. It has been often seen that in view of less number of units prescribed for execution of the decree, the executions are not give that much time and importance as required and desired. It is only the execution, which reveals and signifies the importance of the decrees to be passed and the pedestal of the Court and sanctity of the document. As such, the decrees are required to be executed with force, so that the Decree Holder having a document containing declaration of his rights may not feel cheated or helpless having earned no fruits of the lis got settled by him from the Court even after spending decades altogether.



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