

## **Execution of Decree**

### **Notes**

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.

Execution is the enforcement of decrees and orders by the process of the Court, so as to enable the decree holder to realise the fruits of the decree.

In *Satyawati v. Rajinder Singh & Anr.*, (2013), The Hon’ble Supreme Court held that there should not be unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed in due time, the entire effort of successful litigant would be in vain.

### **Courts which may execute decree**

According to Section 38, a decree may be executed either by

1. the court which passed it, or
2. the court to which it is sent for execution. (This implies that decree can be transferred to another court for executing decree)

### **Court which passed a decree**

According to Section 37 following courts fall under the expression “court which passed a decree” :

- a) The court of first instance which actually passed the decree,
- b) The court of first instance in case of appellate decrees,
- c) Where the court of first instance has ceased to exist, the court which would have jurisdiction to try the suit at the time of execution,
- d) Where the court of first instance has ceased to have jurisdiction to execute the decree, the court which at the time of execution would have had jurisdiction to try the

The Explanation added to Section 37 by the Amendment Act of 1976 makes it clear that the court which passed the decree does not lose its jurisdiction to execute it, by reason of the subject matter being transferred subsequently to the jurisdiction of another court. In such circumstances both the courts would be competent to entertain an application for execution of a decree.

## **Transfer of decrees for Execution:**

As a general rule, the Court which passed the decree is primarily the court to execute it but the court passing the decree has no power to execute such decree against a person or property outside the local limits of its territorial jurisdiction.

In such circumstances court which passed the decree court may send the decree for execution to another court either suo moto or on the application of the decree-holder if any of the following grounds exist:

1. The judgment-debtor actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such court; or
2. The judgment-debtor does not have any property sufficient to satisfy the decree within the local limits of the jurisdiction of the court which passed the decree but has property within the local limits of the jurisdiction of such other court; or
3. The decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of such other court; or
4. The Court which passed the decree considers for any other reason to be recorded in writing, that the decree should be executed by such other court.

In *Mahadeo Prasad Singh v Ram Lochan*, the Court held that the decree holder has no vested or substantive right to get the decree transferred to another court. The right of the decree holder is to make an application for transfer which is merely a procedural right. The court has discretion in the matter which will be judicially exercised by it.

## **Powers of Executing Court**

Power and duty of the executing court to ensure that the defendant gives the plaintiff the very thing the decree directs and nothing more or nothing less.

Powers of executing court includes :

- Power to order attachment of a decree,
- Power to order arrest of a judgment debtor,
- Power to execute the decree against deceased judgment-debtor U/s 50,
- Power to send the decree for execution to another Court U/s 39.
- Power to Issue Temporary Injunctions,
- Power to order Sale of Attached Property.

## **Powers of Transferee Court**

Once a decree is transferred for execution to another court, the transferee court shall have all powers to execute the decree as if it had been passed by the transferee court itself. After the transfer of a decree, it is the transferee court which will decide all questions arising in execution proceedings. Its jurisdiction remains till it certifies to the transferor court of the execution of the decree.

## **Application for Execution**

All proceedings in execution commence with the filing of an application for execution. Such application should be made to the court which passed the decree or, where the decree has been transferred to another court, to that court.

The following persons may file an application for execution:

- a) Decree holder
- b) Legal representative of the decree holder, if the decree-holder is dead.
- c) Representative of the decree-holder.
- d) Any person claiming under the decree-holder.
- e) Transferee of the decree holder.

However, the decree must have been transferred by an assignment in writing or by operation of law.

- f) One or more of the joint decree-holders.

The application must have been made for the execution of the whole decree and for the benefit of all the decree holders.

- g) Any person having special interest.

Against whom execution may be taken out

Execution may be taken out against the following persons:

- a) Judgment-debtor.
- b) Legal representatives of the judgment-debtor.
- c) Representative of or the person claiming under the judgment debtor.
- d) Surety of the judgment debtor.

## **Limitation period for filing application for execution**

The period of limitation for the execution of a decree is twelve years from the date of the decree, except in decrees granting mandatory injunction. The period of limitation for the execution of a decree for mandatory injunction is three years from the date of the decree.

## **Applicability of Res Judicata on execution proceedings**

Explanation VII to Section 11 as added by the Amendment Act of 1976 specifically provides that the provisions of res judicata will apply to execution proceedings also.

Before an earlier decision can operate as res judicata, the execution application must have been heard and finally decided by the Court on merits. Hence, if an execution application is dismissed for default appearance, the order will not operate as res judicata and a fresh execution application on the same ground is not barred.