

CHAPTER XXII

EXECUTION OF DECREES AND ORDERS

313. Form of application for execution:- The application for execution, whether the provisions of Order XXI, Rule 22, of the Code of Civil Procedure apply or not, shall be in Form No.45 and shall be on a sheet of durable paper, foolscap size and shall, in addition to the particulars mentioned in Order XXI, rule 11(2) contain the following :-

- (1) **(Under column “F”)** – The date and nature of any writ issued before or after judgment.
- (2) **(by way of schedule)** – The description of the property and the interest of the judgment-debtor therein as required by Order XXI, rule 13 of the Code of Civil Procedure.
- (3) When land sought to be attached is not registered in the Collector’s office, an express statement to that effect shall be added after the description of the said property.

314. Certified copy of decree or order or Minutes to accompany application for execution: - In all cases the application for execution shall be accompanied by a duly certified copy of the decree or order, or by the Original, or by the Minutes of decree or order until the decree or order is drawn up.

Judge may allow execution before sealing of decree or order: - The Court or the Judge in Chambers may, however, for good cause, allow execution to issue before the sealing of the decree or order.

315. Application for execution to be made to Prothonotary and Senior Master:- All applications for the execution of decrees or orders, whether of the High Court or of any other Court (except as otherwise provided by these rules), shall be made by Advocates on record or by parties in person to the Prothonotary and Senior Master, and the transmission of decrees and the issue of all the necessary warrants and notices and all amendments thereof shall be made by him or by any one of his assistants.

316. Notice under Order XXI, Rule 22 of the Code of Civil Procedure :- When the provisions of Order XXI, Rule 22 of the Code of Civil Procedure apply, the Prothonotary and Senior Master shall issue notice on the application for execution in Form No. 49.

317. Returnable date of notice:- All notices under section 73 and 145 and Order XXI, Rules 2,16,22,34 and 37 of the Code of Civil Procedure shall be issued by the Prothonotary and Senior Master and be made returnable before the Judge in Chambers on

a day to be therein mentioned, and shall be served if the party upon whom the service is to be made is residing or carrying on business –

- (a) within Greater Bombay Four clear days.
- (b) at any other place within the State of Maharashtra Eight clear days.
- (c) at a place outside the State of Maharashtra Fourteen clear days.
- (d) at a place outside India Two months.

before such date, unless the Judge shall otherwise order, (Forms Nos. 44, 46, 48, 49, 50, 51 and 72).

318. Prothonotary and Senior Master not to issue execution simultaneously against person and property:- The Prothonotary and Senior Master shall not issue execution at the same time against the person and property of the judgment-debtor, but a judgment-creditor desiring to proceed against both at once, shall apply to the Judge in Chambers on affidavit, and in case of such application being refused, he shall not be allowed to include the costs thereof in his costs as against the debtor without the order of the said Judge, but when execution of a warrant of the one kind has failed, the Prothonotary and Senior Master may, at the request of the judgment-creditor, forthwith issue a warrant of the other kind.

319. Application for transmission of decree or order for execution:- Applications under section 39 of the Code of Civil Procedure to transmit a decree or order to another Court for execution shall be made on affidavit clearly stating the particulars mentioned in clause (a) or (b) of that section and shall be accompanied by a certified copy of the decree or order, and the Prothonotary and Senior Master shall thereupon transmit such certified copy together with the other documents mentioned in Order XXI, Rule 6 of the Code of Civil Procedure to the said Court by registered post.

320. Transmission of decree or order when provisions of Order 21, Rule 22 apply:- When a copy of a decree or order of this court is to be transmitted to another Court for execution and the provisions of Order 21, Rule 22 of the Code of Civil Procedure apply, the notice under Order 21, Rule 22 shall be issued by this Court and order obtained thereon, provided that where the judgment debtor resides or carries on business in the place to which the decree or order is to be transmitted and the provisions of Order 21, Rule 22 apply, then the copy of the decree or order may be transmitted to such Court without the notice under Order 21, Rule 22 being issued by this Court.

321. Certificate of non-satisfaction when provisions of Order 21, Rule 22 apply:- When a copy of a decree or order of this Court is transmitted to another Court for execution and the provisions of Order XXI, Rule 22 of the Code of Civil Procedure apply

and having been complied with, it shall be stated in the certificate of non- satisfaction that these provisions have been complied with.

322. Stay of execution on transmission: - When a decree or order is sent to another Court for execution, a stay of execution shall be entered in the proceeding in this Court, unless the Judge in Chambers shall on such terms as he thinks fit otherwise direct.

323. Transmission of decree on two or more districts simultaneously:- When a person against whom execution is sought has property in two or more districts, the Prothonotary and Senior Master may, on being satisfied of the necessity, cause a copy of the decree or order obtained against such person to be transmitted for execution of some or all of such districts contemporaneously. In the certificate of non-satisfaction to be sent therewith to the Court of each such district it shall be stated to what other Courts a copy of the decree or order has been sent for execution. At the same time a letter shall be sent to the Judge of one of such Courts requesting him to attach and sell the property in his district (hereinafter mentioned as district "A"), or a sufficient portion thereof, and certify the result to this Court, and with such letter shall be sent a copy of the letter sent to the Judge of each of the other Courts. A letter shall also be sent to the Judge of each of the other Courts, requesting him to attach the property in his district but not to sell the same until furnished by this Court with information as to the result of the sale of the property in district "A".

324. Procedure when insufficient amount realized in first district:- If the amount realized in district "A" shall not be sufficient to satisfy the decree or order, a certificate stating the result of the sale shall be sent to the Judge of another of such Courts with a letter requesting him to sell the property under attachment in his district (hereinafter mentioned as district "B"), or a sufficient portion thereof, and certify the result to this Court.

325. Procedure when insufficient amount realized in second or succeeding districts:- If the amount realized in execution in district "B" shall not be sufficient to satisfy the balance payable under the decree or order, the procedure indicated in the last preceding rule shall be followed and so on as to each of the other districts successively.

326. Procedure when sufficient amount realized in execution:- If the amount realized "in execution in district "A" or district "B" or any other district except the last, shall be sufficient to satisfy the decree or order, a certificate that such is the case shall be sent to the Court of each district in which property shall at the time be under attachment in execution of the decree or order.

327. Return of decree or order if provisions of Order 21, Rule 22 or Order 21, Rule 6 are not complied with:- When a copy of a decree or order of another Court is transmitted to this Court for execution after the lapse of two years from the date thereof or of the last order made against the party against whom execution as applied on any application for execution, or after the death of the judgment-debtor, and there is nothing to show that notice has been given under order XXI, rule 22 of the Code of Civil

Procedure, the Prothonotary and Senior Master may return the copy of the decree or order to the Court from which it was received, with a request that it may be certified whether notices has been given under that rule. The Prothonotary and Senior Master shall also return the copy of the decree or order, if the requirements of order XXI, rule 6 of the Code shall not have been fully complied with.

328. Return of decree or order for non-prosecution:- When a copy of a decree or order of another Court is transmitted to this Court for execution and the judgment creditor does not take any steps in this Court for a period of one year after the receipt of the decree or order, the Prothonotary and Senior Master shall return the copy of the decree or order to the Court from which it was received.

329. Non-prosecution of application for execution:- When a party does not proceed with the application for execution for a period of twelve months from the date of the filing of application, the Prothonotary and Senior Master shall place the application before the Judge in Chambers for dismissal for want of prosecution. The Judge may pass such orders thereon as he may think fit.

330. Reference to Judge on refusal by Prothonotary and Senior Master:- When the Prothonotary and Senior Master shall refuse an application for execution, the matter shall, at the request of the applicant, be referred to the Judge in Chambers, and, in all such cases, the Prothonotary and Senior Master shall certify the grounds of his refusal, and they shall be brought to the notice of the Judge.

331. Application for receiver in execution of decree or order:- An application for the execution of a decree or order by the appointment of a receiver under order XL, Rule 1 of the Code of Civil Procedure to realize or otherwise deal with property under attachment shall be made to the Judge in Chambers, and such receiver shall, unless otherwise ordered, be subject to the rules of this Court applicable to persons appointed receivers of property which is the subject matter of a suit.

332. Costs of execution to be specified on warrant of arrest:- Every warrant for the arrest of any person in execution of decree or order shall, in addition to the amount due and payable under the decree or order for principal, interest and costs, specify a sum for the costs of execution, unless so directed by the Judge in Chambers or the Prothonotary and Senior Master (Form No.52).

333. Costs of execution to be specified on warrant of attachment:- Every warrant for attachment of property shall specify a sum for costs of execution unless so directed by the Judge in Chambers or the Prothonotary and Senior Master. (Forms Nos. 54, 55, 56, 57, 60 and 61)

334. When fresh application necessary:- When a warrant for sale is not got issued within a year from the date of the warrant of attachment, or when a warrant in execution of a decree or order has not been fully executed within a year from the date thereof, a fresh application shall be made for such further execution as may be necessary, but at the cost of the party seeking execution unless the Prothonotary and Senior Master otherwise directs:

Provided that if no such fresh application is made, the Prothonotary and Senior Master may after giving notice to the judgment-creditor and after hearing his objections, if any, on the application of any party interested in the property subject to attachment make an order that the attachment has ceased and on such order being made, the attachment shall be deemed to have been raised.

335. Payment into Court when to be made:- Payment of money into Court in satisfaction of a decree or order shall be made to the Prothonotary and Senior Master, if warrants in execution have not been issued or if they have been issued but have not been lodged with the Sheriff, and the Prothonotary and Senior Master shall enter satisfaction *protanto* upon the decree or order, The Prothonotary and Senior Master shall then, at the request of the judgment-creditor, pay the money to him.

336. Payment out of Court to be notified:- Whenever money payable under a decree or order is paid out of Court to the decree-holder as provided by Order XXI, Rule 2 of the Code of Civil Procedure or to an Advocate on record out of Court on behalf of his client, the decree-holder or his Advocate on record, as the case may be, shall forthwith notify in writing such payment to the Prothonotary and Senior Master and request entry of satisfaction in whole or in part, as the case may be, on the said decree or order, stating whether the satisfaction was obtained with or without execution.

337. Procedure on realization by Sheriff:- When the Sheriff has certified to the Court that he has realized assets by sale or otherwise from the property of the judgment-debtor, the Prothonotary and Senior Master shall file the certificate, and shall, at the request of the judgment-creditor at whose instance the realization was made, certify what persons have within twelve months prior to the realization applied to the Court for execution of decrees for money against the same judgment-debtor or have been declared entitled to share in such assets together with the amount appearing to be payable under such decrees.

338. Notice to all person claiming to share to attend Judge in Chambers:- The Prothonotary and Senior Master shall also issue a notice calling upon all persons who claim to share in such assets to attend before the Judge in Chambers on the day therein named in support of their claims. Such notice shall be served upon the persons named in the certificate and a copy thereof shall be posted up in a conspicuous place in the Court House.

339. Procedure on such notice: - Upon the day so named the Judge, upon proof of the due service of the said notice, will proceed to deal with such claims and make such orders as he deems fit.

340. On realization of monthly pay frequent certificates not to issue:- When any portion of the pay or salary of a judgment-debtor is paid monthly to the Sheriff in execution of a decree, it shall not be necessary for the Prothonotary and Senior Master to issue a certificate and notice on each realization, but at such periods only as he may think fit.

341. Procedure when judgment creditor neglects to apply for certificate:- Should the judgment-creditor, at whose instance the realization was made, neglect or refuse to apply for the certificate or to serve the notice hereinbefore mentioned any other person entitled to share in the assets shall be at liberty to apply for such certificate and serve such notice.

342. When such judgment-creditor alone entitled to payment:- If the Prothonotary and Senior Master shall certify that no person has, within twelve months prior to the realization, applied to the Court for execution of a decree for money against the judgment-debtor, the judgment-creditor may at once apply to the Prothonotary and Senior Master for an order directing the Sheriff to pay to him the amount realized or so much thereof as may be sufficient to satisfy his decree. (Form No. 73)

343. Acts under Order XXI Rule 34(5) and 80 of the Code of Civil Procedure to be done by the Prothonotary and Senior Master:- The acts directed to be done by the Court under Order XXI, rule 34(5) and 80 of the Code of Civil Procedure shall, unless otherwise ordered by the Court, be done by the Prothonotary and Senior Master shall be in the following form:-

“A B by the hand of C.D. Prothonotary and Senior Master, High Court, Bombay, pursuant to the order of the Honourable Mr. Justicedated the.....day of19.....made in suit No.....of 19.....”

344. Procedure in case of doubt or difficulty:- In case of doubt or difficulty under this Chapter, the Prothonotary and Senior Master may refer the matter to the Judge in Chambers.
