

CHAPTER 12
PART E —PROCEDURE ON APPLICATION FOR EXECUTION.

1. **Form and content:-** An application for execution must be in writing except when an oral application is made under Order XXI, Rule 11 (i). Upon an application for execution being filed, the Court shall scrutinize it to see that all the requirements of Order XXI, Rules/11(2), 12, 13 and 14 of the Code of Civil Procedure, 1908, have been duly complied with. The application should state distinctly the mode in which the assistance of the Court is sought and the proceedings should be confined to that mode, unless any amendment has been allowed. When an application is for the attachment of immovable property, special care shall be taken that the specification and verification required by Order XXI, Rule 13, of the Code have been furnished. The Court may also require the applicant to produce the authenticated extract mentioned in Order XXI, Rule 14, when the property is land registered in the Collector's office. {In the case of money suit, the Court must for reasons to be recorded, invariably resort to Order XXI Rule 11 of C.P.C. ensuring immediate execution of decree for payment of money on oral application.}
{Rule 1 amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

2. **Limitation:-** The law of limitation as regards applications for execution will be found in Article 182 of the First Schedule of the Indian Limitation Act, 1908, and section 48 of the Code of Civil Procedure and needs careful attention. An application for execution must be filed within three years of the date of the final decree, and in the case of subsequent applications, within three years of the date of the final order passed on a previous application made in accordance with law to the proper Court for execution.
According to section 48 of the Code, no order for execution can be passed on an application presented after twelve years from the date of the decree sought to be executed except in the cases mentioned in that section.
By section 11 of the Punjab Debtors Protection Act the period of limitation has been reduced to six years in certain cases specified therein and the attention of the Courts is directed to that Section.

3. **Restriction placed by Punjab Relief of indebtedness Act:-** The restrictions imposed by section 21(b) of the Punjab Relief of Indebtedness Act, 1934, on the power of a civil court to execute its decrees in certain circumstances should be carefully noted.

4. **Admission and further proceeding:-** When the application for execution is in order, or has been amended under Order XXI, Rule 17, of the Code of Civil Procedure, 1908, and is within time, the Court shall proceed as directed in Order XXI, Rule 17(4) and shall cause the application to be entered in the proper register. A copy of the decree need not be filed when execution is taken out in the Court by which the decree was passed. If in any case it is not possible to verify the correctness of the application from the Court register, the original decree should be sent for and examined by the court.

5. **Amendment:-** It should be noted that according to Order XXI, Rule 17(1) Civil Procedure Code, the Court can either reject the application if it is not in order or allow the defect to be remedied. The Punjab High Court has amended this rule so as to make it compulsory for the Court to fix a time within which the defect shall be remedied.

6. **Duty of Court to ascertain the amount due:-** Whenever, on an application for the execution of a decree, or whenever, in the course of execution proceedings, it is necessary to ascertain the amount of money which is or which remains due under the decree, the judicial officer should form his own

conclusion on the matter therefrom. He should not rely on mere *kaifyats* or office notes made by ministerial officers.

7. **Several decree-holders:-** When an application is made to judicial officer, under Order XXI, Rule 15, of the Code of Civil Procedure, for the execution of the whole decree by one or more persons, not being all the persons in whose favour the decree appears to be, he should cause notice thereof to be given to the remaining decree-holders or their representatives, and he ought not to grant the application unless, after all these parties have had an opportunity of being heard, he is satisfied that there is good reason for the application.
8. **Several decree-holder:-** Where the decree is severally in favour of more persons than one, specifying what each is entitled to there may be applications for partial execution. But where the decree is jointly in favour of more persons than one, the application must be for the execution of the entire decree, so far as it remains unexecuted or unsatisfied; and if the application is for execution of a fraction or a proportionate part of the decree only, it should be refused.
9. **Transferee:-** When an application for the execution of a decree is made, under the provisions of Order XXI, Rule 16, of the Code of Civil Procedure, by a person claiming to be entitled to the benefit of the decree in consequence of a transfer of the same to him from the original decree-holder by an assignment in writing, the Court must cause notice of the application to be given to the transferor, and it cannot grant the application unless it is satisfied after the transferor has had an opportunity of being heard that the transfer has in fact been effected.
 In cases in which the Court grants the application, it should record its reasons for so doing and make an order that thenceforward the name of the applicant shall stand on the record as decree-holder instead of that of the original decree-holder.
10. **Notice to Judgment-debtor:-** When an application is made more than two years after the date of decree or against the legal representatives of a party to the decree, the Court must first issue a notice to the person against whom execution is applied for requiring him to show cause why the decree should not be executed against him, unless the case falls within the proviso to sub-rule 1 of Rule 22 of Order XXI, or the Court dispenses with the notice under sub-rule (2) of the same Rule in which latter case the failure to record any reasons is now deemed to be only an irregularity not amounting to a defect in jurisdiction (vide the rule as amended by the Punjab High Court).
11. **Attention to service of process:-** Attention is invited to the provisions of Order XXI, Rules 24 and 25, regarding processes for execution. Rule 24 requires that in every case a day shall be specified on or before which the process is to be executed. Rule 25 makes it incumbent on the Court to examine the officer entrusted with the execution, when the process is not duly executed, to satisfy itself as regards the reasons for its non-execution and to record the result of its inquiry. If the Courts make careful inquiry in such cases and do not blindly accept the reports on the processes, the percentage of infructuous applications will appreciably diminish.
12. **Address for service:-** It should be noted that according to order XXI, Rule 104, Civil Procedure Code, as framed by the Lahore High Court, service on any party shall be deemed to be sufficient in execution proceedings if it is effected at the address for service referred to in Order VIII, Rule 11, Civil Procedure Code,

subject to the provisions of Order VII, Rule 24, Civil Procedure Code. This rule, however, does not apply to notices prescribed by Order XXI, Rule 22, Civil Procedure Code, to show cause against execution in certain cases.

- 13. Period of pendency:-** Execution Proceedings will, for statistical purposes, be considered as only pending for the period during which something is being done towards execution. If the decree-holder has realized his installment, or obtained the satisfaction asked for in the application for execution, the case should be struck off, even though a portion of the decree still remains unexecuted. Similarly, the case should be dismissed if the applicant for execution does not take necessary steps to prosecute his application. The Court should record its reasons for the action taken in such cases.
- 14. Attachment of monies due to Judgment-debtors:-** A case in which the judgment-creditor prays for a prohibitory order for the attachment of monies due to the judgment-debtor (whether as his salary or otherwise) should be dismissed as soon as the prohibitory order has been duly served and the file should be sent to the Civil Nazir.

The subsequent realisation of the monies concerned forms part of the ministerial duties of the Civil Nazir. If, for any reason, such realisation is not promptly and satisfactorily effected, judgment-creditor can ask the Court to take necessary action.

*Note.—*When the decree has been fully satisfied, the Nazir should return the file to the Ahlmad for making the necessary entries in Registers Nos. I & X.
