

Citation: St. Soldier Journal of Law and Social Science, Vol.1:2, July 2025 pp. 83-98

BEYOND THE BENCH: JUDICIAL IMPACT ON EXPEDITIOUS EXECUTIONS OF DECREE

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1. PROLOGUE

The enactment of any legislation brings judiciary into action. The goal of legislation is either promoted or defeated as the judiciary interprets law through various pronouncements. The Supreme Court¹ has observed that getting a decree is not the end to the problem of litigants, rather the problem of litigants starts after they get a decree in enjoying the fruits of the decree. The Supreme Court² has further observed that Judgment debtors adopt all possible means to hinder the execution by all possible objections. The executing court has to follow the long procedure of already contested cases which undoubtedly prejudices the rights of decree holders. The Procedure of execution of the decree is almost a retrial of already determined rights and liabilities of the decree holder. Speedy execution of the decree in a civil suit is the most ignored area of civil jurisprudence. Lawyers and judges are much interested in deciding upon the rights of the parties rather than the implementation of those rights in the field. There is a feeling among the legal fraternity

¹NSS Narayana v. Gladstone Export, AIR 2002 SC 251

²Babulal v. Hazarilal, AIR 1982 SC 818

that their duty ends with the decisions of the case. While referring to the observation made by Privy Council in 1872, it is observed that, in India problems of litigants began on obtaining decree.

The purpose of law is to impart justice. The judiciary is an important and independent limb of our democracy and when it commented with distrust, threatens everyone. Excessive delay in the execution proceedings along with immunities granted to JD, excessive cost, failure of sanction, the workload, the callous and ignorant attitude of judges and lack of executing staff, ambiguous judgement and excessive formalism are some of the factor which are preventing DH to have satisfaction of the decree in terms of the decree itself. Execution procedure is a separate and independent procedure from the main suit, which is adopted in order to enjoy the fruits of the decree obtained in the original suit. Execution proceedings are not a continuation of the original suit. The holder of decree, who desire to execute it, has to file a separate application for the execution in the court. So, delay is the major cause that leads to a decree being infructuous. What actually is happening is that when parties get frustrated with delays and laches in disposal of petition, they resort amicable settlement resulting in compromise. After compromise they withdraw the execution petition under the pretext that decree has been fully satisfied.

2. JUDICIAL INTERVENTION IN EXPEDITIOUS DISPOSAL OF EXECUTION PETITIONS.

Our Constitutional interpreter courts have acted as guiding star for the subordinate courts across the country. The precedents set by these courts have moulded the conduct of subordinate judiciary with respect to various aspects and execution of decree and orders is one such concept. The directions of these courts by various judicial pronouncements can be summed up as follows.

The bench consisting of three judges, in 2013³, has made the observation that the Decree Holders must enjoy the fruits of the decree obtained by them in an expeditious manner. Justice Dave, speaking for the bench has observed that the unscrupulous strategies used by Judgment Debtors to avoid the process of law leads to frustration of the entire efforts of a Decree Holder in getting the decree executed. In the judgment, the entire paragraph of observations made by the Privy Council in 1872 has been reiterated as “.....the difficulties of a litigant in India begin when he has obtained a Decree.....” Bench viewed that even now, the position has not improved and decree-holder is facing the same problems which he was facing in the past. It has been opined that “Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.” Besides, referring to the observations made by the Privy Council, Apex Court also referred to the observation made by it in year 1982 in case titled as “*BabuLal vs. M/s. Hazari Lal Kishori Lal &Ors.*”⁴, wherein in Para no. 29 it is observed that “Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.” Judgment of three judge bench also finds the mention of its own decision passed in the case of “*Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr*”⁵. Wherein in para 4 it is perceived that proceedings are being dragged unnecessarily for long time on one or other ground, making the situation hyper technical and ultimately

³ Satyawati Vs. Rajinder Singh And Anr, (2013)9 SCC491.

⁴ (1982) 1 SCC 525.

⁵ (1999) 2 SCC 325

leading to a legal trap to unwary. Undue advantage of procedural complexities is being taken.

In **Suresh Pal v. Tek Chand**⁶, writ jurisdiction of High Court was invoked in year 2005, wherein it was observed that executions of decree are being delayed on one or other pretext. It was held that Delay in executing is resulting into denial of benefit of decree to decree holder. Hon'ble Allahabad High Court called the same as antithesis to justice. The facts of the aforesaid case are that an agreement to sell plot was executed in favour of the petitioner on 17-07-1991. Suit of petitioner for specific performance of agreement to sell was decreed on 24-04-1996. Afterwards an application for execution was moved by the petitioner in the year 2005. In the instant writ petition, petitioner has come up with grievance that the parties are represented but the execution is not being decided. He has prayed for direction for time bound decision in execution. It is observed that order sheet reveals that execution has been adjourned for one reason or another and this has led to delay in execution. Hon'ble High Court while referring to the decision of Hon'ble Supreme Court in *Hussainara Khatoon v. State of Bihar*⁷ has viewed that speedy and expeditious disposal of cases is an integral part of Fundamental Rights as envisaged in the Indian Constitution. It is further viewed that any procedure which is not capable of providing quick and timely justice cannot be regarded as just and fair, rather same is infringement of Constitution of India. Besides, Hon'ble Allahabad High Court also gave reference to *Ayodhya Sahai v. District Jaunpur and another*⁸, wherein general mandamus was issued to all subordinate courts and tribunals to decide the cases in time bound manner and to give adverse entries to officers who cause default. Showing the

⁶ 2011 (88) ALR 131

⁷ AIR 1979 SC 1360

⁸ 1997 (SUPP) All WC 525

seriousness on matter Hon'ble Allahabad High Court has given the following observations and directions:

1. Special attention should be devoted by District and Sessions Judges to the execution petitions pending in the Courts directly subordinate to them. While referring to one of circular no. 3020/ 1920, dated 4 September 1920, it was directed that besides, supervision, district judges should also ensure the strict compliance of rules with rigidity. It was also directed that cases pertaining to executions should be placed in the open court daily in same manner as civil suits and other causes as execution constitutes an important part of civil procedure.
2. It was observed that delay in giving effect to decree amounts to denial of benefits/fruits of decree to decree-holder and hence is antithesis to justice.
3. Direction has been given for presiding officers of the court to see that execution petitions should not be unnecessarily prolonged or neglected. It is directed that execution petitions should be disposed of with same care and regularity as given to the original suits.
4. It was also observed that judicial officers are not taking interest in disposal of execution. Delay in disposal of execution petitions resulting in long pendency not only causes hardship to litigants but also causes multiplicity of litigation. It was directed that effort should be made for early disposal of executions.
5. While deciding the aforesaid writ, it has also been observed that stay by appellate and revisional court is the factor that contributes substantially to delay in disposing execution.

Besides, In various other judgements like **Sahapati Yadav v. Bhawani Devi**⁹, **Ayodhya Sahai v. District Jaunpur and**

⁹ 2008 (4) BBCJ 430

another¹⁰, Buknu Ram v. Mantur Rahman¹¹, Inderjeet Singh v. Onkar Singh¹², Fakira v. Jasmer Singh¹³, Bhagwan Devi v. Sunil Kumar Rajput¹⁴etc., it has been observed that:

- 1) It has been viewed that keeping some special day for execution work would lead to early disposal of execution petitions. It is laid down that one day in a week should be kept for works related to execution to make sure that it gets adequate attention.
- 2) It was observed that provisions as to execution should be strictly construed. There must be strict compliance of constructive res-judicata in matters of execution. The legal objections like objection to jurisdiction, limitation, joinder of parties, etc. Which were available with the parties at the time of trial but were not pleaded, ought not to be allowed at the time of execution. If execution petition is filed within two years from decree, then there is no need to send notice Order XXI Rule 22 of C.P.C.
- 3) After observing that objections to the attachment of property under order 21 rule 58 CPC cause a great delay in disposal of execution, it has been laid down that investigation of such objections has to be summary in nature. So, Summary Procedure should be adopted in deciding objections.
- 4) It is laid down that every application for stay on execution to be treated as urgent.

3. LEGAL IMPLICATIONS OF ISSUANCE OF NOTICE

As per statutory law it is a rule of law that court must issue notice to opposite party, where execution is filed after two years

¹⁰ 1997 (SUPP) All WC 525

¹¹ 2005 (20) RCR (Civil) 296

¹² 2002 (1) CLJ (H.P.) 22

¹³ 2005 (1) R.C.R (Civil) 825

¹⁴ 2012 (14) SCC 420

from date of decree or execution is filed against legal representative of Judgment Debtor, where Judgment Debtor has been adjudged insolvent. In all other cases it is not mandatory to issue notice on filing of execution petitions but courts are sending notices in routine in almost in every executions petition. To this Hon'ble Higher Courts have viewed that such notices are not mandatory except as provided under Order 21 Rule 22 CPC and are resulting in delay in disposal of execution petitions.

In **Karumuri Sambasiva Rao v. Vysyalasa Suryanarayana Raju**¹⁵ the petitioner was in occupation of property owned by the respondent. The suit was regarding the ejectment from the property which was given on lease to the petitioner. After that a compromise award was passed by Lok Adalat on 29-10-2007. Both the parties agreed for continuance of lease till February 2010 and the Petitioner agreed to vacate the premises without prior notice and further litigation and that he shall handover the vacant possession on expiry of the lease period. But petitioner failed to handover the possession to the respondent, then on 17.3.2010, execution petition was filed and the court issued warrant for execution of decree. Petitioner contending that issuance of warrant without issue of notice and hearing is bad and against the natural justice of fair trial. It was held that issuance of notice will cause unreasonable delay in delivery of possession and defeat the ends of justice. In, **Asiruddin Mondol v. Latifannessa Bibi**¹⁶, it was held that order XXI Rule 22 CPC are discretionary and are not mandatory and in **Ramayana v. Kadir Bacha**¹⁷ it was held that failure by the court to record reason in dispensing with the notice, is mere irregularity and cannot affect the jurisdiction of the court. Besides, High court in exercise of its power to amend orders and rules have made State amendment has added at the end of the rule that failure to record

¹⁵ 2011 (8) RCR (Civil) 938.

¹⁶ AIR 1933 Cal 560

¹⁷ I.L.R 31 Mad. 68

reason for non-issuance of notice shall be considered as an irregularity not amounting to defect in jurisdiction. Thus from aforesaid discussion, it could be deduced that notice is not mandatory and do not result in defect of jurisdiction. It is also concluded that unnecessary issuance of notice is cause of delay in disposal of execution of petitions.

4. FRIVOLOUS OBJECTIONS RESULTING IN DELAYED EXECUTION

It has been observed that often in order to cause delay in implementation of decrees, Judgment debtors prefer to file objections without any reason and rhyme just in order to waste time and harass the Decree Holder in whose favour decree has attained finality. Besides, objection by Judgment-debtor, objections are also being raised by the third persons who mostly act at the instance of the judgment-debtor. They generally are either relatives or known to Judgment debtor, whose purpose is just to delay execution as much as possible. In **Hari Dass v. Amar Pal**¹⁸, **M/S K.N. Trading Company v. Masonic Fraternity of Shimla**¹⁹ and **Surinder Singh v. Shri Kehar**²⁰, It was held that objections as to issues like jurisdiction, misjoinder and non-joinder of parties etc. which have already been decided in original suit are taken just as delaying tactics and are frivolous in nature and such objections should be avoided and efforts are needed to curb these kinds of objections.

It has been observed that at the stage of objections like Misjoinder and non-joinder of necessary parties are often taken at the stage of execution in order to delay execution. These kind of objections are not to be taken at the stage of execution as these are well tackled at the time of deciding original suit.

¹⁸ 2005 (2) Shim. LC 280

¹⁹ 1995 (2) Shim. LC 342

²⁰ 2013 (1) Shim. LC 471

In Vijay Pal and Another v. Biasan Devi & another²¹ wherein suit was originally filed a Suit for possession in the year 1994 which was decreed by District Judge on 1.1.2005 holding that the respondent/Plaintiff is entitled for possession of land measuring two Kanals bearing Khasra No. 548/9. Thereafter when decree attained the finality, execution petition was filed. During pendency of execution petition, multiple objections were raised by Judgment debtor and pleaded that the decree cannot be executed for want of proper identification of land and also that in view regarding existence of the structure valuing for more than Rs 5,00,000/-. It is objected that the petitioner is not legally entitled to seek the execution of the decree. Ground of non-joinder of necessary parties was also taken at the time of filing of objections to execution petitions. It was pleaded that original plaintiff, had two sons, who are necessary parties and the present petitioner is not entitled to seek execution. It was held by Hon'ble High Court of Himachal Pradesh held that objection as jurisdiction of court is absolutely frivolous and is raised just to delay the execution proceedings. It was also held that Question of identification of land in question cannot also be allowed and cannot to be raised in the execution petition for the reason that same had already gone into during the course of trial and the decree was passed thereafter. Regarding Question as to non-joinder of necessary parties, it was held that same was also gone into at the time of deciding the suit, therefore, same Court cannot be allowed to raise in execution proceedings. It was therefore held that the objections, being frivolous and raised merely for rejection and for causing delay have rightly been dismissed by the executing Court as the Court is under no obligation to frame issue with respect to such objections nor to record any evidence thereon.

Any objection as to jurisdiction is to be taken as early as possible in original suit itself. It is viewed that this objection

²¹ 2014 AIR SCC 1937

cannot be taken at the stage of execution. Thus, it can be said that objection regarding the jurisdiction of any kind is not tenable until and unless grave injustice has taken place. It is taken as mere irregularity and such objection without decree being set aside by the court passing the decree cannot be looked into by the court executing the decree.

In *Sneh Lata Goel v. Pushpalata and ors*²², in the instant case, execution was objected on the ground that the Court passing the decree has no jurisdiction to deal with the matter and to pronounce decree. It was pleaded that original court was lacking in the territorial jurisdiction to deal with the matter. On this, it was held that executing court has no jurisdiction to decide whether the court which decreed the suit had territorial jurisdiction or not. It was opined behind “Order XXI Rule 99 of Code of Civil Procedure” is that when a case has been tried by a court on the merits and judgement pronounced then it should not be reversed purely on technical grounds until and unless it has resulted in failure of justice and has caused irreparable injury to the judgment-debtor/claimant. It was held that objection as to territorial or pecuniary jurisdiction should be made before the court of first instance at the earliest possible opportunity.

During the course of study, researcher found that courts are framing issues and then deciding the objections by taking evidence as a general parlance and this often leads to delay in disposal of execution petitions. The framing of issues in execution proceedings is not technically necessary, it can be deduced that issues are not necessary to be framed for the purpose of deciding the objections, but courts are doing the same in every possible case. This gives an opportunity to the judgment-debtor to frustrate the purpose of decree and sometimes it result in frustration of the decree itself.

²² AIR 2019 SC 223

Resultantly, whole concept of speedy and expeditious justice goes in vain.

5. OBSTACLES IN THE DISCOVERY OF ASSETS OF JUDGMENT DEBTOR

Enforcement proceedings need special attention as delay in disposal of execution petition ends the confidence of common man in the system and leads to prevalence of anarchy in the state. The judgment-debtor against whom a decree has been passed is required to be fair to himself and to decree-holder before a Court. He should not be allowed to take the benefit of his wrong and to delay the execution. The judgment-debtor cannot be allowed by the Court to claim a entrusted right to delay the execution of proceedings by withholding disclosure of his assets in pursuance of notice issued to him under Order XXI Rule 41.

It is revealed that a lot of time is wasted waiting the list of property.. To avoid such situations, it is suggested that it is mandatory that the JD on his first appearance must furnish an affidavit in writing giving a comprehensive statement of his assets and liabilities as on the ending of the last preceding financial years. Justice Midha in Delhi High Court has issued certain guidelines for expeditious disposal of execution in '**M/S Bhandari Engineers and Builders Pvt. Ltd. V. M/S Maharia Raj Joint Venture**'. The court recorded the findings that there is an urgent need for formulation of detailed form as to the assets, income and expenditure of the JD at the very inception of the execution proceedings in order to tackle the delay. It was made mandatory by Delhi High court to file the affidavit of assets and expenditures in execution cases. After filing of the affidavit, onus is shifted upon the decree-holder to verify the assets either himself or by the investigator appointed in this regard. In case on investigation, it is found that judgment – debtor has not disclosed his assets correctly then decree-holder has an option to seek interrogatories from judgment-debtor. In

such situation, duty is also casted upon the executing court to do personal examination of the judgment debtor on oath in order to elicit the truth. Directions were issued to the district judges with the immediate effect to follow the aforesaid guidelines. It was directed that judgment-debtor must file affidavit as to his assets and income on the day of the accrual of cause of action, date of decree and date of filing of the affidavit. While giving the directions, report was also sought from the district judges as to the existing status of pendency of the execution petitions.

This judgment provided an insight to the situation i.e. discovery of assets of the judgment-debtor against which decree could be enforced. Difficulty in discovery of assets is the major hindrance in way of the expeditious disposal of the enforcement proceedings. This judgment has provided a way out to deal with the same and courts must follow it.

6. STAY ON THE EXECUTION PROCEEDING

Stay by appellate or revisional court is the factor which contribute substantially in delay in disposing execution. It has been observed that generally cases pending before the lower courts are stayed by high courts when any revision or appeal is made as to interim order. This results in delay in trial. Sometimes it happens that this stay extends for years without reason. It is observed that often appeal is filed after filing of execution just in order to defeat the rights of decree holder with the purpose to delay execution and frustrate the execution proceedings. Judgment-debtor keeps on sleeping over his right but the moment execution is filed, he approaches the appellate court immediately with the sole motive to delay execution proceedings.

It is provided under Rule 5 to order 41 that filing of an appeal of decree will not stay the enforcement proceedings. Appellate court must specifically stay the proceeding. This means that mere filing of an appeal does not automatically result in stay of execution of the original decree. The rule regarding the

conditions to be fulfilled before grant of stay, apply to stay by appellate court as well²³

Thus, it can be said that judicial precedents reflects only one thing that any appeal which is filed after the limitation period and that too after filing of the enforcement proceedings in order to defeat the enforcement proceedings should be discouraged as the ultimate goal of such applications is only to delay the execution.

7. AMBIGUOUS DECREE

Ambiguity in judgement and decree to be executed is on of the reason due to which decree could not be implemented properly. Sometimes decree itself consists of many defects as it does not disclose the description of property. There are several instances of ambiguous decrees and judgments, when it is not clear that what executing court must execute. In that case the question which comes before the executing court that whether the application of amendment can be allowed or not. The answer to this query can be found in following judgments.

In a judgment reported in **Chloride India Ltd. v. District of Judge, Puri**²⁴ amendment by virtue of which party incorporated the detailed the description of the property was allowed. By amendment opposite party No. 3. Inserted only that description which was given in the House Rent control (H.R.C) petition and in respect of which, House Rent Controller passed the order of eviction. It appears that original execution petition did not contain any detailed description of the premises in question. The decree-holder-opposite party No. 3 did not change or alter or substitute any description, but merely supplied the description to rectify an omission. If the decree holder had sought to introduce a description different from the description

²³Rakesh Kumar Singh, Stay on Execution: when and How. retrieved from <http://www.latestlaws.com/visited on 11 february,2024 ar1:00>

²⁴AIR 1997 Orissa 135

given in the H.R.C. petition the judgment-debtor-petitioner might have a legitimate grievance. In the present case, the description introduced by amendment is in conformity with the description given in H.R.C. petition. Thus, the Executing Court did not commit any error in allowing the amendment and the District Judge rightly rejected the petitioner's application under section 115 of C.P.C.

8. CONCLUSION

After going to detailed discussion, it can be said in nutshell that delay in execution of decrees is taken as a great concern by higher judiciary. Higher judiciary have taken timely steps to curb the delay caused in disposal of execution petition. At administration level the High Court under Article 214 of Constitution of India have framed rules time to time and even made certain amendments in Orders and Rules in CPC. Not only this Hon'ble High Courts are devising different technique such as making execution as part of execution action plan, disposal of oldest cases as earliest possible. Besides, Supreme Court and High Court also given timely directions to the subordinate courts for disposal of execution by way of various judicial decisions

Hon'ble P&H High Court in exercise of its administrative power has framed rules by which norms are laid down for judicial officers dealing with execution. It has been laid down execution work must be divided equally by district judges amongst judges, so that equal attention can be paid to the execution petitions; Then it provides for giving equal importance to execution as to original suits. High Court has also laid down for giving attention to process of summons and adopting summary procedure in deciding objections, but unfortunately, these guidelines are not being followed and strictly implemented. Their strict implementation will curb the delay in execution proceedings to greater extent.

Different countries are adopting different systems for implementation of decrees and orders of the court. In India Court-Oriented Execution system and procedure, in such system in India varies from decree to decree and involves the role of multiple court actors, private actors and some other departments and officials which are not the part of the court. Besides, presiding officer Bailiff and court –auctioneer are the persons who play pivotal role in execution process. All warrants in execution proceedings like warrant of possession, warrant of attachment etc. are executed by the Bailiff and he report about the ground situation to the court. Besides, the last and important stage of execution is to have sale of attached property and same is to be carried out by the court-auctioneer. Thus, the process and agents involved in the enforcement system have varied roles at various steps to complete the execution process. Efficiency of these agents and expeditious disposal of every stage ensures the effective and expeditious disposal of the implementation proceedings.

It has been observed that adoption of coercive means by court executing the decree will curtail the delay in disposal of the execution. Judgment-debtors tend to take undue advantage of the liberal procedure and take as much as liberty they can take by delaying the execution on one or other pretext.

In Vigneshwar v. Gangakai Kom Narayan Bhat Prasad and others²⁵ Hon'ble Karnataka High Court has taken the strict view as to the delays being caused in enforcement proceedings. It has been held that the manner in which execution proceedings are elongated, intricate and delayed, it is necessary for the court to be slow in entertaining any Challenge to the execution of decrees. All frivolous objections must be nipped in the bud only as the decrees are nothing but the final orders passed by the competent court. In cases where all sorts a playful and deceitful strategies are resorted to in order to delay or default the

²⁵ 1997 AIR (Kar) 149

execution, the executing courts must be absolutely firm and ruthless in stopping such corrupt practices. This is completely crucial because otherwise the rule of law suffer and it would virtually nullify and neutralise the orders of competent courts. The executing courts are not toothless as order XXI provides several coercive steps and has teethed the executing courts with various means to curb such delaying practises parties

Therefore, it can be deduced that courts are not tooth less against the unhealthy practises being adopted just in order to defeat the execution proceedings. Court can resort to coercive means in order to satisfy the decree. Like in case judgment-debtor intentionally avoid the appearance before the court, then court can coerce his presence by ordering his arrest. Adoption of coercive means will not only lead to expeditious disposal of execution petitions but it will also help in meeting the ends of justice.