

EXECUTION PROCEEDINGS

FEW POINTS ON LIMITATION TO REMEMBER

For delivery of possession by Court Auction Purchase under Order 21 rule 95 CPC	One year from the date of confirmation of Sale
For enforcement of a decree granting Mandatory Injunction under Or 21 R 32r/w 35CPC	3 years from the date of decree or date fixed for performance. (Article 135 Limitation Act)
For execution of any decree other than maintenance decree, mandatory and perpetual injunction.	12 years from the date of decree Or Order becoming enforceable (Article 136 Limitation Act)
To record an adjustment or satisfaction of a decree under Or 21 R 2 CPC	30 days from the date of payment or adjustment. (Article 125 Limitation Act)
For the payment of the amount due under decree by installments under Or 21 R 11(2) CPC	30 days from the date of decree
To set aside sale in execution of decree including E.A. By JD. Or 21 R 89, 90 and Sec 47 CPC Note: For an EA under Or 21 R 89 CPC the time for deposit is 30 days from the date of sale.	60 days from the date of sale. Supreme Court decision in 1990 (1) M.L.J. 36 to 40
To set aside sale in cases relating to debts due on Mortgage Deed.	Any time before confirmation Of sale as per Or 34 R 5 CPC.
For redelivery of possession under Or 21 R 99 CPC	30 days from the date of dispossession (Article 128 Limitation Act)
For removal of resistance or obstruction to delivery to delivery under Or 21 R 97 CPC	30 days from the date of resistance or obstruction. (Article 129 Limitation Act)
For execution of decree granting perpetual injunction	No time limit prescribed.
Time limit for detention of an arrested JD in court premises under custody of officer of court.	Not exceeding 15 days. 1 st proviso to Or 21 R 40 CPC. Form No. 14 A
Time limit for deposit of 1/4th sale proceeds	Immediately after declaration of sale. If DH is the purchaser may be dispensed with.
Time limit for deposit of 3/4th sale proceeds and S.C. Charges (rule 94) or amount required for stamps	15 days from the date of sale Or 21 R 85 CPC.

Time limit for payment (deposit) of any batta in execution except sale warrant batta.	Within 2 days or period if so fixed by the judge. (Rule 144 C.R.P.)
Time for payment of sale proclamation batta along with S.P. Copies and Tom Tom charges. (Movables)	within 2 days from the date of order. Mandatory provision. Rule 187 CRP.
Time for payment of sale warrant batta.	A week before date fixed for sale. Mandatory provision Rule 187 CRP.
Return of decree of other courts entered in CR 15 if execution is not levied in execution court.	Within 3 days after expiry of 1 year Time from the date of receipt of other court decree. (Date of transmission is not the criteria. Rule 138 CRP)
Time for sale (Or 21 R 68 CPC)	For immovables after expiry of 15 days from the date on which the copy of proclamation is affixed on the court notice board. For movables it is 7 days.

These are some of the important points of limitation in execution proceedings.

TOP FIVE STRATEGIES FOR TIMELY JUSTICE IN EXECUTION PETITIONS

I. Filing / Limitation:

Limitation must be strictly followed. Specific period for different petitions.
(Vide separate sheet)
Section 5 limitation Act is not applicable in EP.

(2005) 4 MLJ 163 (SC)

Damodaran Pillai and others Vs South Indian Bank Limited

"An application under Sec. 5 of the Limitation Act is not maintainable in a proceeding arising under O. 21, of the Code." "A fortiori for the said purpose, inherent power of the Court cannot be invoked."

(2003) 3 MLJ 590 (Mad)

M.Ponnupandian Petitioner in both Vs Selvakkiyam and others Respondents in both

Civil Procedure Code (V of 1908), O. 21, Rule 106 and Sec.151 — Limitation Act (36 of 1963), Sec.5 — Application to set aside ex parte order under O. 21, Rule 106 — Application to condone delay in filing said application — Delay cannot be condoned as Sec.5, Limitation Act not applicable.

II. NOTICE:

If below 2 years from decree no notice under Or 21 r 22 CPC be sent. Straight away orders may be passed. i.e., “Notice and Attach by... “

In cases where the last orders in previous EP were passed within 2 years of fresh EP same rule applicable. See Or 21 R22 Proviso.

Also see Or 21 r 22(2): “ notice not necessary if court feels that unreasonable delay will be caused”

In cases of Salary attachment no notice to pay disbursing officer is necessary. It is sufficient if attachment warrant alone is sent to him. He need not be added as respondent (as is done in some places.)

If respondent fails to appear or does not file counter. Next order would be “Attachment made absolute. EP allowed.”

III. Lrs in EP.

If EP filed against Lrs of JD, no separate application to implead them be filed along with EP. Notice will be sent to Lrs and counter filed, Enquiry made and orders passed and then again EP will be taken on file. Not necessary- Waste of time -It is sufficient if EP is filed u/o 21 r 11 r/w sec 50 CPC.

If JD died pending EP, then application need be filed u/s 50 CPC. Order 22 rule 12 CPC to be taken note of. Or 22 rules 3,4,8 not applicable to Execution proceedings. No abatement in EP. Hence reasonable time be given to implead Lrs and if not EP may be dismissed for default. Since no abatement is there fresh EP may be filed.

AIR 1932 Mad 73 FB MH
(Venkatachalam Vs Ramaswami)

“Rule 12 of Order 22 of CPC is envisaged to be of benefit to a decree holder. When execution proceedings are pending, on account of death of party to proceedings, it does not abate. The parties are entitled to be impleaded when execution proceedings are pending. There is also no bar to file fresh application for execution also.”

1998 (1) CTC 509 MH
(UTHIRAPATHY -Vs- ASHRAB ALI & OTHERS)

“ This rule is intended to apply to the 'Proceedings under the Act : Execution petition by virtue of fiction attached to it under sec.18 of the Act, is one under the code of civil procedure. When Order of eviction is passed under secs. 10, 14, 15, 16 and 17 it ceased to be order under the Act. It has reached a stage of execution. So, rule 25 of the Act is not applicable to proceedings of eviction. According to Rule 12 CPC also, the abatement of petition in execution does not arise under Order 22 of CPC”.

Legal representatives are entitled to come on record in execution petition at any time.

However, when execution petition is pending and, if the death of party is informed to Court, the Court may fix a (date) time to implead the L R's. If petition is not filed, the Court can dismiss the petition for default. Fresh application of execution is a continuation of execution petition.”

IV. STAY OF PROCEEDINGS:

This is where the proceedings get stuck without any progress. If we strictly follow the provisions and the decisions of the HC and SC the delay would be considerably cut down and the justice will be done in time.

1. Court cannot stay execution of its own decree: Only under Or 41 rule 5 CPC stay can be granted by trial court, but for fixed time only
2. Or 21 rule 26 CPC can be invoked only by transferee court.
3. Or 21 rule 29 CPC for specific purpose when another suit is pending against the DH filed by JD or other person interested in the same subject matter.

AIR 1978 MAD 269 (after amendment transferee court can also pass stay orders).

4. Stay by appellate courts Or 41 rule 5,6 CPC.
No stay can be granted if appeal is filed with delay condonation petition – Or 41 rule 3A. In the absence of stay, EP must be proceeded with. Normally the parties would approach the Executing court for stay u/s 151. But inherent powers cannot be invoked as per ***(2005)4 MLJ 163(SC) (Damodaran Pillai and others Vs South Indian Bank Ltd).***
5. If court is satisfied that appeal is pending then no purpose in keeping the EP pending. EP can be dismissed with liberty to file fresh EP after disposal of appeal. The limitation will be saved since the decree will merge with the appellate court decree and the time will run afresh after the disposal of the appeal.
6. In cases of Insolvency petitions pending in other courts.
Pendency of I.P. Proceedings is not a ground to stay the E.P. Executing court cannot stay the proceedings since I.P. Is pending. The J.D. must obtain interim protection order from the Insolvency Court.

2008 (4) LW 1068 Saravanan Vs Raju (Madurai Bench)

“CPC 51, 55, 58 Order 21 Rule 37, 40 CPC -Merely because the J.D. Presented an I.P. Before the Insolvency Court, the executing court need not stay in proceedings in the absence of any adjudication by the Insolvency court. The J.D. Must obtain interim protection order from the court.”

7. **Sec. 47, Order 21 Rule 58, 59 Order 21 Rule 97 to 100, Order 21 Rule 105, 106 CPC.**
Petitions will be filed under these provisions making various claim in the E.P. Early disposal of these petitions will consequently reduce the delay in disposal of E.P.

(i) Section 47 :

The court cannot go behind the decree. Court can interfere only if the decree is null and void without jurisdiction.

2007(4) MLJ 361 SC Dharsasingh Vs State of Punjab

2008(1) MLJ 1012 MHC District Collector, Thiruvannamalai Vs Jeayseelan

(In this case Injunction decree obtained for granting of patta – No jurisdiction as it is bared u/s 14 Tamil Nadu Patta Pass Book Act)

(ii) Section 47 Vs Order 21 Rule 2 CPC :

Any settlement or adjustment or discharge of decree has to be certified by the court under Order 21 Rule 2 CPC. Time limit for invoking Order 21 Rule 2 CPC is 30 days from the date of payment, adjustment or satisfaction (Article 125 Limitation Act).

The court cannot recognize any such adjustment or satisfaction if it is not certified under Order 21 Rule 2. This prohibition is made under Order 21 Rule 3 “A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any court executing the decree”

Petitions will be filed u/s 47 claiming adjustment or satisfaction or record the said adjustment or satisfaction u/s 47 CPC. Since specific provision under Order 21 Rule 2 and Rule 3 CPC is there the general provision of Sec. 47 not applicable.

2006(3) MLJ Page 57 (SC)

Padma Ben Banushali and another Vs Yogendra Rathore and Others

“Uncertified adjustment out of court cannot be considered u/s 47 CPC.”

(iii) Order 21 Rule 58, 59:

These petitions have to be dealt with immediately and with strict consideration of limitation. Only if stay is granted under Order 21 Rule 59 E.P. must be stayed. These petitions will be filed on the eve of sale confirmation. To be strictly scrutinized. They would wantonly file incomplete petitions so as take advantage of the returns. We can call the advocates and get them rectified immediately.

(iv) Order 21 Rule 97 to 100:

Removal of obstruction in cases of delivery.

Short adjournments shall be given and the proceedings shall be expedited.

8. Setting aside the sale: Order 21 Rule 72 Order 21 Rule 90 CPC.

(i). Order 21 Rule 72 :

The decree holder or his binami shall not bid or buy property in court auction sale without permission from court. If the decree holder or his binami is found to have purchased the property in court auction without permission or when permission is rejected, the sale has to be necessarily set aside under Order 21 Rule 72(3). No substantial injury has to be proved by the J.D. or any interested person, to set aside the sale as required under Order 21 Rule 90. If it is found that Decree holder/Purchaser has not obtained necessary permission, the sale must be set aside.

1981 (1) MLJ Page 1 M H (F B)

(Suresh Babu Vs Balasubramaniam)

“Sale is invalid even if no substantial injury is caused”.

(ii). Order 21 Rule 90:

Under this provision sale can be set aside only when substantial injury is pleaded and proved. If the petitioner does not plead or prove that substantial injury is caused due to the material irregularity in the conduct of sale, the sale need not be set aside. Mere irregularity is not a ground to set aside the sale under Order 21 Rule 90 CPC.

AIR 2000 SC 3402

AIR 1986 SC 2099

V. General Delay:

1. Delay in paying Batta:

If batta is not paid within reasonable time E.P. may be dismissed. If already attachment is made an order making attachment to continue for 3 months shall be made. This will reduce the formality the second application. The second petition can be filed straight away for sale within the period of 3 months.

2. P.S. In Installments:

The petition for payment of amount by installments must be made within 30 days from the date of decree Order 21 Rule

The courts shall direct substantial payment as way of part satisfaction on regular hearings. The courts shall be strict in enforcing payment since if small amounts are allowed to be paid it will take more time and E.P. will pending.

3. Arrest Order 21 Rule 40:

Normally the court Amin will record and return the arrest warrant as “J.D. Absent”. Strict instructions must be given to the bailiff as well the plaintiff to effect arrest and produce the J.D. within reasonable time. Instances are there that the decree holder also colludes with the J.D. to recover money from him instead of sending him to jail by paying batta. In such cases E.P. must be dismissed.

On the event of arrest of J.D. And when he is produced before the court, the court has only two options either to sentence him to civil prison on payment of Jail batta or to dismiss the E.P. for non payment of batta. Eg. The D.H. Will be interested to record part satisfaction and directing the J.D. to pay balance amount on the next hearing so as to avoid paying J.D. Batta. If such practice is encouraged, the court will be blamed for pendency of E.Ps. If any amount is paid on the event of arrest and if there is any balance amount the court cannot release the J.D. on Muchalika, if the arrest order is passed after satisfaction of the requirements under Order 21 Rule

4. Sale Adjournment petitions Order 21 Rule 69 CPC.:

Long adjournment of sale should not be allowed. The petitioner must fore go fresh proclamation when seeks sale adjournment under Order 21 rule 69 CPC it should be mentioned in the affidavit and petition. Short adjournment like two weeks or three weeks alone shall be granted for sale. If substantial amount is paid as part satisfaction.

These are some of the strategies that I follow to achieve speedy disposal and timely justice while disposing Execution Petitions. When I took charge of the DM/JM court, Bodi on 5.5.2008 there were 137 Execution Petitions pending. After that 57 Execution Petitions were instituted and 97 were disposed during the last one year. At present there are 97 Execution Petitions pending for disposal.

Presented in the workshop on “Planning and Management for Timely Justice for Civil Judges (Junior Division) functioning in the Districts of Madurai, Sivaganga, Ramanathapuram, Theni, Dindigul, and Virudhunagar conducted on 11.07.2009. by A.K. Mehbub Alikhan, DM/JM, Bodinaickanur, Theni District.