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Unit-I Concepts

Topic : Execution

Subject: The Code of Civil Procedure

Date : 30/03/2020

Execution :

Execution is given in Part II of the Code of Civil Procedure and covers from Section 36 to Section 74. Rules are given in Order 21 of the Code of Civil Procedure.

In this part Sub topics are as follows:

- ❖ General
- ❖ Courts by which decrees may be executed
- ❖ Questions to be determined by Court executing decree
- ❖ Limit of time for execution
- ❖ Transferees and legal representatives
- ❖ Procedure in execution
- ❖ Arrest and detention
- ❖ Attachment
- ❖ Sale

Delegation to Collector of power to execute decrees against immovable property:

- ❖ Distribution of assets
- ❖ Resistance to execution
- ❖ General

Section 36. Application to orders.- The Provisions of this Code relating to the execution of decree (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

Section 36 provides that the provisions of the Code relating to 'execution of decrees' including provisions relating to payment under a decree are also applicable to the execution of orders including payment under an order. The principle underlying this section is that every court has an inherent power to have its decrees and orders carried out, failing which the orders would be a mere fact. An order of the High Court in contempt proceeding is an order within the meaning of Section 2 Clause 14 of the Code and can be executed under this section.

Execution: Meaning

"Execution" in the popular sense of the term means enforcement of the decree or order of a court. In its widest sense execution means enforcement or giving effect to decrees or orders through the process of court. It is the medium through which decree holder compels the judgment debtor to carry out the mandate of the decree or order as the case may be. It enables the decree holder to recover the fruits of the judgment.

Modes of Execution

Proceedings of execution are generally carried out in following ways:

- (i) Execution against the person of the judgment debtor
- (ii) Execution against the property of the judgment debtor
- (iii) Appointment of Receiver

(iv) In any other manner depending on the nature of relief.

Which decree may be executed

It is the decree of the court of first instance

If no appeal has been preferred against it that will be executed

If the appeal has been preferred against the decree of the court of first instance then the decree of the court of the last instance will be executed, because the decree of the court of first instance is merged into the decree of the Superior court.

Compromise decree like any other decree may be executed. This was held so by Kerala High Court in

V.N Shreedharan v/s Bhaskaran and it is not necessary that compromise decree should state that in the event of non satisfaction of the decree or nonfulfilment of any condition therein, execution proceedings may be initiated.

Who may execute a decree

The decree holder is the proper person who may apply for execution of a decree. However, if the decree is transferred, the transferee may apply for execution where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, may apply for execution. Where the decree holder is dead, his legal representative may apply for execution.

Against whom decree may be executed

In case the judgment debtor is alive execution would lie against him. If he is dead execution would lie against his legal representative. However, if the decree is sought to be executed against legal representative it may not be executed against his person. It can be executed only against his property and that too to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.