

***PAPER SUBMITTED BY***  
***Smt.V.SATYALAKSHMI***  
***PRASANNA,***  
***JUNIOR CIVIL JUDGE,***  
***NAKREKAL***  
***NALGONDA DISTRICT.***

## **ATTACHMENTS IN EXECUTION OF DECREE**

### **EXECUTION:-**

The term Execution means enforcement or giving effect to a judgment or order of court of justice.

Order 21 and sections from 36 to 74 deal with execution of decrees. The above said provisions prescribed several modes for execution of decrees, out of which attachment and sale of movable and immovable properties of the JDR is one of such mode to get the fruits of decree by the DHR.

### **ATTACHMENTS**

1. The attachment of property, both movable and immovable, of the judgment debtor is the step in aid to enforce the decree. By attaching the property, the DHR will get a pre-emptive right to realize the amount under the decree or enforce the JDR to obey the directions under the decree, prohibiting the JDR from creating interest in the property in any other person. All the saleable property whether movable or immovable belonging to the judgment debtor or over which or the portion of which he has disposing power which he may exercise for his own benefit may be attached and sold in execution of decree against him.

2. Order 21 rules 41 to 57 and sections from 60 to 64 of code of civil procedure deal with attachment of properties both of movable and immovable, debts, instruments, salary etc., section 60 of the code of civil procedure, prescribe the list of properties which are liable for attachment

**::2::**

and also set out some limitations. The benefit provided under section 60 is for the JDR and he cannot waive the benefit of any exemption under section 60 by way of any agreement etc., and such an agreement, if any shall be void.

**ATTACHMENT OF MOVABLE PROPERTY:-**

3. Rule 43 of order 21 of the code of Civil procedure deals with the attachment of movable property. If the property to be attached is movable in nature but other than agricultural produce and if it is in the custody of JDR, it can be attached by actual seizure, and the same may be kept either in the possession of attaching officer or his subordinate, unless the property is subject to speedy and natural decay or the cost of preserving it, is likely to exceed its value. In such a situation the attaching officer can dispose of the said property by way of sale. As per rule 252 of civil rules of practice, whenever any movable property was attached in execution a list of such properties with description to identify them shall be given to the person from whose the possession of property has been attached. As per rule 255 sub rule 2 every person applying for attachment of movable property shall be in addition to the process fee , deposits some reasonable sum as the court may direct towards the cost of its movement to the court house and of its custody and if such property is live stock, for its maintenance in accordance with the prescribed rates. If such deposits when ordered be not made, the attachment shall not be issued. In aid to the provisions prescribed under code of Civil Procedure, the civil rule of practice also contains the procedure to be followed if the property to be attached is cash, jewels etc., as per rule 253 of said rules of the property attached consists of Government or other securities, jewels or other valuable articles of small

**Contd...3/**

**::3::**

**bulk, the Nazir shall keep the same together with a descriptive list in a box with the lock and seal and the same shall be preserved in the custody of nearest Government treasurer under the orders of the presiding officer. If the property attached is fire arms or explosive substance as per rule 254 of civil rules of practice the same may be kept in the custody of officer in-charge of nearest police station which is subject to further orders by the court concerned.**

**4. Rule 43-A of Order 21 contemplates the contingencies to fix the liability of the person in whose possession the property attached for kept for safe custody. As per the said rule if the custodian fails to produce the property in spite of receipt of notice before the officer deputed for the purpose or to restore it to the person in whose favour the restoration is ordered by the court and though property was produced the same is not in the same condition as it was when it was entrusted to him, he is liable to pay the compensation to the decree holder, JDR, or any other person for any loss or damage caused by his default.**

**ATTACHMENT OF AGRICULTURAL PRODUCE:**

**5. If the property to be attached is agricultural produce it shall be affected by affixing a copy of the warrant of attachment on the land if the property is growing crop, in other cases the same can be affixed on the floor or place where the property was gathered. A part from that a copy of such warrant shall be affixed on the outer door or on some other conspicuous place of the house in which the Judgment Deter ordinarily resides.**

**Contd...4/**

**6. Rule 45 prescribes that the petition for attachment of growing crop shall specify the time at which it is likely to be cut or gathered. If the costs incurred to cut, gather and store the produce or to do other acts necessary for preserving it, the same can be done by the DHR with the permission of the court and costs incurred therefore by him shall be recoverable from the JDR as if they were included or formed part of the decree, the applicant shall deposit the amount in the court within a time to be fixed by the court which may be sufficient in the opinion of the court to defray the cost of watching or tending the crop till such time.**

**7. If the nature of growing crop by its nature, does not admit of being store shall not be attached under this rule at any time less than 20 days before the time at which it is likely to be fit to be cut or gather.**

**8. The mode of attachment of movable property is by actual seizure as per Rule 43 of Order 21 as such any petition under Rule 58 of same Order is not maintainable if it is filed after passing an order for attachment. The same analogy was laid down by the Hon'ble High court of A.P, in B.Venkat Reddy v/s P.A. Vanajakshi reported in 2005 (1) ALD 729.**

**ATTACHMENT OF DEBT, SHARE AND OTHER PROPERTY NOT IN POSSESSION OF JUDGMENT DEBTOR:-**

**9. Rule 46 of order 21 of the code deals with the mode of attachment of debt, share and other property not in the possession of judgment debtor. If a debt is not secured by any negotiable instrument or a share in the capital of the corporation or other movable property not in the**

**::5::**

**possession of JDR, the same can be attached by a written order prohibiting the creditor from recovering the debt and the debtor from making the payment until further orders in the case of debt. If the property is a share, prohibiting the person in whose name the share may be standing from transferring the same or receiving any dividend thereon. In case of other movable property the person in possession of the same shall be prohibited from giving it over to the judgment debtor. In all the above cases the copy of such order shall be sent to the debtor, to the proper officer of the corporation, to the person in possession of the movable property respectively, apart from that a copy of such order shall be affixed on some conspicuous part of the court house. Rules from 250 to 252 deal with the procedure for realization of attached debts and seized property. As per Rule 252 of said rules if the property attached by way of actual seizure and if within one month from the date of such attachment, the property has not been sold or the attachment has not been removed, then on its own motion it shall advance direct the property to be sold by the officer of the court, and the proceeds of the sale, after the payment of expenses of the sale, shall be credited to the Suit or matter in which the attachment was made. In *Syndicate Bank, Ongole v/s Nalluri Krishna Mohan Rao* reported in 2000 (2) CCC 474 the Hon'ble court observed that the procedure laid down Under Rule 46 of Order 21 for attachment of movable in execution the decree can also be equally applied for attachment of movables Under Rule 5 of Order 38 of the said Order with all necessary changes.**

**10. If the debt was attached under Sub-Rule 1-A of Rule 46 of Order 21 a notice of such attachment has to be issued to the Garnishee who is liable to pay such debt, calling upon him either to pay the debt due from**

**Contd...6/**

**::6::**

him to the JDR into court, or such amount as may be sufficient, to satisfy the decree and costs of execution, or to appear and show cause why he should not to do so. The application under 46 Rule A shall be supported by affidavit verifying the facts stating in his belief, garnishee is indebted to the JDR. If the Garnishee accordingly paid the amount the same shall be paid to the DHR towards the satisfaction of the decree. In the case of failure on the part of the Garnishee to do any of the above the court may order him to comply the same and such an order can be executable against him as a decree passed against him. Any questions in connection with the liability of the Garnishee can be decided on his application as per the procedure prescribed Under Sub-Rule 46-C of Order 21, the payment if any made by the Garnishee into the court is a valid discharge to him as against JDR. The same provisions applicable for realization of debts is also applicable in case of negotiable instruments attached in execution of a decree.

**ATTACHMENT OF SHARE IN MOVABLE:-**

11. As per Rule 47 of Order 21 if the property sought to be attached consists of the share or interest of the JDR in movable property belonging to him and others as co-owners, the attachment shall be made by notices to the JDR prohibiting him from transferring the share or interest or charging it any way. But in a such process the court cannot divide the movables attached between Garnishee having lien and the JDR.

**Contd...7/**

**ATTACHMENT OF SALARY:-**

**12. As per Rule 48 Order 21, if the decree is for recovery of money, on the application made by the DHR the court can attach the salary of JDR who is the public servant, subject to the limitations specified U/Sec.60 of Code of Civil Procedure. In such a case, the place of employment or where the DDO of JDR is having his office are immaterial and the court can attach the salary of public servant irrespective of local limits of court. In case of private servants even though the court can attach his salary but the condition is that his DDO must have his office within the jurisdiction of the court. On receipt of said warrant from the court the DDO of JDR is under obligation to remit the amount that can be attached after availing all kind of benefits provided U/Sec.60 by the JDR. Sec.39 (4) which prohibits a court from passing any order for attachment of any property or arrest of any person situated or residing outside of its jurisdiction, has no application for attachment order issued under Rule 48 of Order 21 as held by Hon'ble Apex court in Salem Advocates Bar Association v/s Union of India 2005 (5) ALD-1 (sc).**

**ATTACHMENT OF PARTNERSHIP PROPERTY:-**

**13. Rule 49 of Order 21 prescribed the procedure for execution of a decree passed against the firm or against the partners of such firm by attaching the property of partnership firm. If such an application was filed by DHR, the court may make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree and either by the same order or by subsequent one, the court may also appoint receiver of the share of such partner in the profits and any of other money which may be coming to**

**::8::**

him in respect of the partnership and direct accounts and inquiries and may can order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner. Any of remaining partners are at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same, a copy of such application whenever made shall be served in the DHR. Whereas an application for attachment of property of partnership firm made, a copy of it shall be served on all the partners of such firm. Rule-50 of Order-21 prescribes the procedure for execution of a decree against firm. It may be executed against property of the partnership or against any person who has appeared in his own name under Rule 6 or 7 of Order-30 are who has admitted on the pleading that he is or, who has been adjudged as a partner or, against any person who has been individually served as a partner with a summons and has failed to appear. However, the above said Rules 49 and 50 of order-21 has no application in case, the decree is against Hindu undivided family by virtue of Order-30 Rule-10 of C.P.C. If the property of partnership firm attached in execution of a decree is sold out is contrary to the provisions of the court, the DHR is liable to bare the poundage loss etc.

**ATTACHMENT OF NEGOTIABLE INSTRUMENTS, PROPERTY IN CUSTODY OF PUBLIC OFFICER OR COURT AND OF DECREES:-**

14. Rules from 51 to 53 of court prescribes detailed procedure for attachment of above said three categories of properties. In the case of negotiable instruments not deposited in a court or in the custody of the public officer, the attachment of it shall be made by actual seizure and

Contd...9/

**::9::**

**the instrument shall be brought into court and held subject to further orders of the court. If the property is in the custody of court or in the public officer, the attachment shall be made by issuing a notice to such officer or court, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to further orders of the court from which the notice is issued. Where the property to be attached is a decree either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made by issuing such order of attachment to the court which passed the decree requesting such court to stay the execution of its decree unless and until the court which issued the said notice cancels the same or, on the request of holder of decree sought to be executed or on such request by the judgment debtor with the previous Consent in writing of such decree holder or with the permission of the attachment court.**

**ATTACHMENT OF IMMOVABLE PROPERTY:**

**15. Rule 54 of Order 21 prescribed the procedure to attach the movable property in execution of a decree, the attachment shall be made by an Order prohibiting judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge. Such an order shall be proclaimed at some place on or adjacent to the said property by beat of drum (Tom Tom) or other customary mode, and a copy of the order shall be affixed on conspicuous part of the property, also of the court house. If the property subject to payment of Revenue, the Government a copy of such order shall be affixed in the office of Collector of the District in which the land is**

**Contd...10/**

**::10::**

situated and where the property is land situated in a village, also in the office of the Grampanchayath, if any having jurisdiction over that village.

**REMOVAL OF ATTACHMENT AFTER SATISFACTION OF DECREE:-**

16. Where the amount due under the decree along with costs and all charges and expenses resulting from the attachment of any property are paid into court, or the satisfaction decree is otherwise made through the court or certified to the court, or the decree is set aside or reversed, the attachment shall be deemed to be withdrawn and in the case of immovable property such withdrawal shall, with judgment as so desires, be proclaimed at his expense.

**EFFECT OF DISMISSAL OF EXECUTION PETITION:-**

17. Where the court for any reason, passes any order dismissing the application for execution of a decree, the court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease. The attachment automatically ceases where the court for any reason has dismissed the application for the execution of the decree, but has omitted to give any direction to that effect.

18. Any person having interest in the property attached either of movable or immovable can make an application to raise the attachment after actual seizure of movable property and in case of immovable property at any time from the date of attachment but prior to confirmation of the sale by the court executing decree. If the claim made

**Contd...11/**

**::11::**

**is proved the attachment of property shall be withdrawn and suitable orders can also be passed in execution proceedings.**