

Civil Litigation – A Tedious Proceeding

The famous American short storyteller Ambrose Bierce has said – “Death is not the end. There remains the litigation over the estate.” This phrase applies equally well to civil litigation in India especially where Property rights are involved. Sometimes, a person spends his whole life in the course of litigation and his heirs harvest the fruits of that litigation which was sown by the decedent. Employment of Dilly-dallying tactics by the party committing the wrong, a long and arduous legal process, lack of specialized knowledge among legal professionals, limited number of judicial officers, proliferation of frivolous litigation etc. are some of the causes of delay in civil litigation. Due to delay and the complexities, the very purpose of the litigation i.e. the obstruction free enjoyment of rights gets lost and it fails to serve its objective. Hence, it has been rightly said that “Justice delayed is justice denied”. But, there is another principle which courts have to consider which is “Justice hurried is Justice buried”. In criminal litigation, it has been seen that the Courts try to strike a balance between the both principles but in civil litigations, this balance somehow gets lost and rarely results in speedy decisions.

In Civil Litigation, getting a Decree (Judgment) in one’s favor is just the half way as the execution of that order contains the same repetitive exercise of the process through which one obtained that Decree. Recently, the Supreme Court has provided the guidelines to address the issue of delay in execution proceedings.

What are Decree and its Execution?

As per Section 2(2) of the Civil Procedure Code, A decree means the formal expression of an adjudication (decision of the court) which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include –

- a) Any adjudication from which an appeal lies as an appeal from an order, or
- b) Any order of dismissal for default.

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

For an instance, In **Renu Devi vs. Mahendra Singh & Ors., AIR 2003, SC 1608**, the Supreme Court held that *“A preliminary decree declares the rights or shares of parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of divided property then such inquiry shall be held and pursuant to the result of further inquiry a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree the rights of the parties are finally*

determined and a decree is passed in accordance with such determination, which is, the final decree.

The distinction between preliminary and final decree is this: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.”

In case of adjudication in the matter of Applications like Application for Succession Certificate under Indian Succession Act, Application for maintenance under Hindu Marriage Act, Application for compensation under Land Acquisition Act, etc. which are not suits, the adjudications are also termed as “Statutory Decrees”.

A decree only declares the relief but the relief is actually achieved through execution. Execution has not been defined in Civil Procedure Code or any statute but it means the actual implementation of the relief granted within the Decree through the Court. The expression “Execution” signifies the enforcement or giving effect to the Decree of a Court of Justice. Stated simply, “execution” means the process for enforcing or giving effect to the judgment of the Court. For example, in case of an Arbitration proceeding where the court passes a Arbitral Award (Statutory decree) that one party (i.e. Judgment-Debtor) has to pay the sum of Rs. 2,00,000 to the other party (called Decree-Holder). Now in this case if, neither the party against whom the Award has been passed pays the amount of Rs. 2,00,000 to the Decree-

holder after the Decree, nor both the parties i.e. Judgment-Debtor and Decree-holder go for the Appeal within the prescribed time period against the Decree, then in such cases, the Decree Holder has to file the application for execution of Decree to get the amount of Rs. 2,00,000 from judgment-debtor or his estate.

The application for execution can be filed once the finality is attached to the Decree i.e. the decree is the Final Decree. Whether the Final decree is executable or not is another question which has to be or has been answered by the court time to time based on the facts and circumstances of the cases.

A final Decree can be said to achieve finality in two ways:

- a) When the time for Appeal has expired without appeal being filed against the Preliminary Decree as Section 97 C.P.C bars the Appeal from Final Decree where no Appeal has been filed from Preliminary Decree or the matter has been decided by the Highest Court.
- b) When, as regards to the Court passing the Decree, the same stands completely disposed-off.

Reasons for delay in Execution Proceedings

1. Stay on execution proceedings.

Usually, an application for execution is filed after the limited time provided in the statutes to file an appeal gets lapsed. However, in cases where the Court condones the delay for filing an appeal, the court can pass the Order to stay the execution proceedings. Mere filing of an Appeal does not operate as a stay of execution proceeding unless the Appellate Court may for sufficient reason order stay of execution of such Decree as per Order 41 Rule

5(1) of C.P.C. But, Section 26 of CPC provides, *“the court to which a Decree has been sent upon sufficient cause being shown, shall stay the execution of Decree for a reasonable time, to enable the judgment-debtor to apply to the court by which Decree was passed, or to any Court having appellate jurisdiction in respect of the Decree or execution thereof, for an order to stay execution, or for any other order relating to the Decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution made had been made thereto.”*Hence, the judgment–debtor can get the execution stayed for a limited time even before the Order of the Appellate Court. During the stay, the Court can also order the discharge of person or Restitution of such property where the person was arrested or property was seized during execution. However, before making aforesaid orders, a safeguard has also been provided for the interest of Decree-holder which provides that the court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

2. Delay in drawing up of Final Decrees by the Court.

It has been pointed out by the Supreme Court in **Shub Karan Bubna Vs. Sita Saran Bubna and Ors., (2009) 9 SCC 689**, that in Partition suits the pause develops between Preliminary Decree and Final Decree *“sometimes due to pendency of an appeal or other circumstances, the court passes the Preliminary Decree and the matter goes into storage to be revived only when an application is made by any of the parties, drawing its attention to the pending issue and the need for referring the matter either to the Collector or a Commisioner for actual division of the Property be that as it may.”* In many

courts, after passing of the preliminary Decree no dates are fixed and a party thereafter has to file an application for seeking a final Decree. In the aforesaid case, the Supreme Court also held that there is no limitation period for drawing up of a Final Decree after passing of a preliminary Decree.

The Bombay High Court in **Annasaheb Rajaram Nagane Vs. Rajaram Maruti Nagane Vs. Rajaram Maruti Nagane**, AIR 2001 BOM. 303, for the early disposal of the execution proceedings in partition suits held that *“By way of general directions, all the civil Courts are directed to remit, to the Collector, within four months from the date of signing the decree under Section 54 of CPC, all the relevant papers for partition of property or a separate possession of undivided estate assessed to the payment of revenue to the Government, without there being any application or request or prayer for the same; so as to follow the mandate of Section 54 of CPC.*

Any application seeking direction to send necessary papers to the Collector, should be disposed of within 30 days from the receipt thereof, treating it as an application filed in the disposed of suit, without opening any independent proceeding in this behalf. Such application should be treated as a request to a Judge or Court to send necessary papers to the Collector for effecting partition under Section 54 of CPC. Such application is really nothing but a request to the Judge or Court to discharge his ministerial duty. In view of this, even no notice to any of the parties to the application is necessary as it is not a petition seeking any adjudication of any of the rights of the parties.”

3. Employment of wrongful tactics by the Judgment Debtor.

Few Judgment Debtors employ the dilly-dallying or wrongful tactics to harass the Decree-holder or to render the legal proceedings fruitless. They can be seen misusing the safeguards which are provided in the Civil Procedure Code to protect the interest of the parties like Section 69 under which the Judgment Debtor can make an application to the court for Adjournment or stoppage of sale of his property to allow him a chance to mortgage, lease or sale the property privately and use the proceeds from these activities for the payment of the Decretal amount to satisfy the Decree. If the court allows the postponement of the sale for a period more than 30 days, a fresh proclamation under Section 67 needs to be issued, unless Judgment-Debtor consents to waive it. Section 56 provides for the prohibition of arrest or detention of women in execution of Decree for money, hence women can evade payment on the pretext of unavailability of funds as they cannot be arrested or detained for not making the payment. Section 59 also provides for release from civil arrest and detention on ground of the illness. Order 21, Rule 58 of CPC which provides for Adjudication of claims to, or objections to attachment of property is also a major cause for delay in disposal of execution proceedings as the Judgment Debtor himself or with the help of third parties prefers frivolous claims. Section 47 CPC provides that all questions arising between the parties to the suit in which the Decree is made, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit. This section is generally misused by the Judgment Debtors to re-open the trial again which leads to great delay

though the CPC and the Superior Courts have provided many directions regarding the extent to which the questions can be determined.

Also, the other strategies of Judgment Debtors are absconding or fleeing from justice, deliberate concealment of assets and properties, obstructing the right of the Decree Holder by creating third-party interests or removing the properties from his name, declaring himself insolvent, offering part-payment while requesting the court to allow some time for making the full-payment on the pretext of arrangement of funds, etc. The CPC has also provided certain safeguards to tackle the aforesaid issues as well like:

- A. Section 55 read with Section 58 which provides for arrest and detention in Civil Prison for a maximum period of 3 months where the decree is for payment of money exceeding five thousand rupees or for a period of not exceeding six weeks where the decree is for the payment of sum of money ranging between two thousand to five thousand rupees;
- B. Section 64 provides prohibition on private alienation of property after attachment for execution. However, the private transfers made or interests created therein, after issuance of final decree and before attachment of property are not involved in the above prohibition;
- C. Section 74 provides that where the Court is satisfied that the holder of Decree for possession of immovable property or that the purchaser of immovable property sold in execution of a decree has resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and such resistance or obstruction was without just cause, the Court may, at instance of

Decree-holder or purchaser, order the judgment-debtor or such other person to be arrested and detained in civil prison for maximum period of 30 days and the decree-holder or purchaser be put into possession of the property.

But, due to huge pendency of cases, heavy work pressure on courts and limited judicial staff, even obtaining the reliefs provided in the aforesaid safeguards is in often fraught with long delays and glitches..

4. Death of Judgment-Debtor or Enforcement of Decree against Legal representative.

Section 50 postulates that – *“where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree has to apply to the court which passed it to execute the same against legal representative of the deceased. In this case, the legal representative is only liable to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.”* In these cases, if the legal representative has already disposed of the properties, the execution proceedings become infructuous and process of applying to the court is also time-consuming.

Suggestions

The Apex Court has provided suggestions for avoiding the delay in execution proceedings from time to time. The Apex Court in *Shub Karan Bubna Vs. Sita Saran Bubna and Ors.*, (2009) 9 SCC 689, provided the following principles to avoid the delay between preliminary decree and final decree in partition suits:

“9.1 In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the

rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with section 54 of Code. Such entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

9.2) In regard to immovable properties (other than agricultural lands paying land revenue), that is buildings, plots etc. or movable properties:

(i) where the court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) Where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be

required to effect the division. In such cases, normally a Commissioner is appointed (usually an Engineer, Draughtsman, Architect, or Lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report, and passes a final decree for division by metes and bounds.”

In another instance, the Supreme Court in matter of **Rahul S Shah vs. Jinendra Kumar Gandhi**, on **22.04.21**, provided the below-mentioned guidelines regarding the execution of various Decrees:

- 1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.*
- 2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.*
- 3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*
- 4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*
- 5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not*

only contain clear description of the property but also having regard to the status of the property.

- 6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*
- 7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit.*
- 8. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151CPC, demand security to ensure satisfaction of any decree.*
- 9. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*
- 10. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*
- 11. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule*

98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

- 12. Under section 60 of CPC the term “...in name of the judgment- debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*
- 13. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.*
- 14. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.*
- 15. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”*

Conclusion:

The procedure of declaration of right and liabilities, their quantification and ascertainment and execution to provide actual relief should be continuous and the opportunity to make the oral application for execution should be available to

the Decree-holder in case of money suits. In case of death of Judgment-debtor, the need of making the application to the court which passed the Decree to make the legal representatives as parties of the Decree is time-consuming and hence, the executing Court should be permitted to entertain these applications. There should be time limits for the administrative officers to fulfill their duties while assisting the court during execution so that the execution proceedings can be concluded in time-bound manner and in case of delay without any just cause, there should be clear penalties on those responsible.

Opportune and genuine mutation of properties as well as a uniform electronic record of all the immovable properties like National register of properties can crystallize and accelerate the process of execution in civil litigation. Accessibility of the aforesaid record to the public officers for the purpose of performance of their public duty can assist the court to reduce the need of professionals for Assessment of the details like status, ownership, description etc. during the execution which will save time and will also avoid the possibility of concealment of any information. This is the high time to redress the issue of extreme burden over the administration and judicial system as lack of active work-style and due to limited number of officers, the productivity of both the systems is sub-optimal and during the pandemic, both the systems have also suffered a heavy blow resulting in enormous pendency of work.