

SIKKIM



GOVERNMENT

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HIGH COURT OF SIKKIM
GANGTOK

No. 61/JUDL./HCS

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NOTIFICATION

Sikkim Civil Court Practice Rules relating to reduction of delay in disposal of Execution Cases, 2023

In exercise of the powers conferred by Article 227 of the Constitution, Section 122 of the Code of Civil Procedure, 1908 and all other enabling powers, the High Court of Sikkim hereby makes the following Rules for reduction of delay in disposal of execution cases. These rules shall be complied with both at the stage of suits and execution proceedings.

PART I

GENERAL

1. Short title, commencement and application.

- (a) These Rules may be called the Sikkim Civil Court Practice Rules relating to reduction of delay in disposal of Execution Cases, 2023.
- (b) They shall come into force on the date of the publication in the official Gazette.
- (c) They shall apply to all the Civil Courts within the jurisdiction of the High Court of Sikkim.

2. Definitions.

- (1) In these Rules, unless there is anything repugnant in the subject or context –
 - (a) “advocate” means a person whose name is entered on the roll of advocates prepared and maintained by a State Bar Council under the Advocates Act, 1961 (25 of 1961);
 - (b) “appointed day” means the date on which these rules shall come into force;

- (c) "Chief Justice" means the Chief Justice of the High Court of Sikkim, and includes a Judge appointed under Article 223 of the Constitution to perform the duties of the Chief Justice;
 - (d) "Code" means the "Code of Civil Procedure, 1908" as amended from time to time;
 - (e) "Collector" means the District Collector of a district in the State of Sikkim;
 - (f) "Constitution" means the Constitution of India;
 - (g) "Court" means the District Court and every Civil Court of a grade inferior to that of a District Court;
 - (h) "Government" means, wherever the context so requires, the State Government;
 - (i) "High Court" means the High Court of Sikkim;
 - (j) "prescribed" means prescribed by or under these rules;
- (2) Words and expressions used herein and not defined in sub-rule (1) shall have the same meaning assigned to them in the Code or any other law for the time being in force.

PART II

DECREE

3. In cases where the plaintiff/decree holder is a firm, it will be required to disclose the names of the partners to the defendant/judgment debtor by filing an affidavit, containing the list of the names of such partners, and shall supply a copy of the said affidavit to the defendant/judgment debtor. Every decree in such suits shall contain the names of the partners so disclosed.
4. 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.
5. In a money suit, the Court must invariably resort to Order XXI rule 11 of the Code, ensuring immediate execution of decree for payment of money on oral application.
6. **Payment to be ordered to be made to parties only.**— Unless otherwise directed, every decree or order for the payment of money shall be drawn up for payment to the party or parties, who shall be entitled to receive the same, and not to their Advocates appearing in the matter.
7. In other cases, every decree or order for payment of money or delivery of securities into the Court to the credit of any suit, appeal or other proceedings, shall direct such money to be paid into the designated Scheduled bank and shall be subject to such further orders as the Court may deem fit to pass in the facts and circumstances of the case.
8. **Provisions in the decree where leave to bid is obtained.**—In such circumstance, the Court shall look into the provisions under Order XXI, Rule 72 (2) & 72A of the Code.

9. The Court shall ensure that the property only to the extent required to satisfy the decretal amount and incidental and ancillary charges shall be sold in execution of a decree.

**PART III
EXECUTION APPLICATION**

10. Filing, checking and admission of execution petition.—

- 1) The Courts shall follow the provisions of Order XXI, Rule 11(1) & 11(2) of the Code and shall ensure compliance thereof.
 - 2) In the absence of a decree, a copy of the operative part of the judgment may be sufficient.
 - 3) Applications for execution can also be filed online through e-filing, in accordance with the Rules for On-line Electronic Filing (e-Filing), 2020 framed by the High Court.
 - 4) Mere dismissal of the first application for execution, on the ground of default or non-appearance of decree holder/applicant shall not result in the decree holder/applicant, being precluded from filing a fresh execution application provided it is within time.
11. The executing court shall 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.
12. **Applications under Order XXI rules 10,11(2) of the Code to be supported by affidavit—** Applications under Order XXI rules 10 & 11(2) of the Code shall be in the prescribed forms and supported by an affidavit.
13. **Procedure in execution application under Order XXI rule 15 of the Code.—** When an application for execution is made by one or more of several joint decree holders, unless a written authority signed by the other decree holders for the applicant to execute the decree and to receive the money or property recovered is filed in Court, the Court shall give notice of the order, if any, passed for the execution of the decree to all the decree holders who have not joined in the application and may also give notice of any application for payment or delivery to the applicant of any money or property recovered in execution.
14. **Application for appointment of Receiver in execution of decree.—** Where an application for the execution of a decree by the appointment of a Receiver under Section 51(d) of the Code is made by the decree holder to realize or otherwise deal with property under attachment, and the same is allowed by the Court, such receiver shall be bound by Order XLI of the Code. 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.
15. Under Order XL Rule 1 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.

16. The Court exercising jurisdiction under Section 47 or under Order XXI of the Code may issue notice on an application of third-party claiming rights on proper verification and after due application of mind. 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.
17. 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.
18. 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 of the Code.
19. Under Section 60 of the Code 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.
20. The Executing Court may, wherever the case may be, 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.

PART IV

APPLICATION BY ENCUMBRANCER, ATTACHMENT FOR SALE AND SALE IN EXECUTION OF DECREE, RESTORATION OF ATTACHED PROPERTY

21. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest, and further exercise the power under Order 11 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.
22. After examination of parties under Order 10 or production of documents under Order 11 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.

23. 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. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
24. **Receipt of attached movable property to be given** ——— The Court shall ensure adherence to Order XXI Rule 66,CPC with regard to list of properties to be auctioned with a copy to Judgment Debtor.
25. **Deposit of cost for removal or maintenance of property.**—— Before making any order for the attachment of any movable property, or at any time after any such order has been passed, the Court may require the person, at whose instance the order of attachment is sought or has been made, to deposit in Court such sum of money as the Court may consider necessary for:
- (a) the removal of the property to the Court premises or other appointed place and its maintenance, security and custody till arrival there at;
 - (b) the maintenance, security and custody of the property at the Court premises or other appointed place till it is sold or otherwise disposed of; and
 - (c) for the maintenance, security and custody of the property at the place at which it was attached or elsewhere.
 - (d) In case of failure to deposit such sum within the time prescribed by the Court, it may either refuse to issue or may cancel the order of attachment, as the case may be.
26. **Account to be rendered on demand.**—— An account of the expenses actually incurred for carrying out the measures under Rule 25 shall, on demand being made on or before the date of the sale, be furnished to the attaching decree holder or creditor and to the person whose property was attached. After hearing objections, if any, to the account rendered, made within such reasonable time of its receipt by a party, the amount that the Court finds to be properly due shall be deducted as first charge from the proceeds of the sale of the property and paid to the attaching decree holder or creditor along with any balance of the deposit made by him.
27. **Restoration of attached property on order of cancellation.**——
- (a) If in consequence of the cancellation of the order of attachment or for any other reason, the judgment debtor or the person whose property has been attached, becomes entitled to receive back the same, he shall be given a notice by the Court that he should take delivery of it within the time specified by the Court, on payment by him of the charges, if any, found by the Court to have been properly incurred and which have not been defrayed or for the defrayal of which, no money has been deposited by the attaching decree holder or creditor.
 - (b) If the judgment debtor or such person commits default in taking delivery of the property, by failure to pay the requisite charges or otherwise, the Court may order recovery of such charges as arrears of land revenue.

PART V

PROCLAMATION OF SALE AND SALE OF ATTACHED PROPERTY

28. For the purpose of fixing a reserved price by the Court, where a sale is ordered at the instance of a subsequent encumbrancer or of a mortgagor, the Court may, on notice to the parties, direct a valuation or a survey to be made of the property to be sold. The same shall be made by a surveyor or other competent person, to be appointed by the Court, who shall certify the result under his signature, and shall deliver or transmit such certificate of the valuation to the Court under a sealed cover. The Court may, where it shall think fit, require the certificate to be verified by an affidavit or affirmation of the valuer.
29. **Contents of sale proclamation**— In addition to the particulars specified in Order XXI sub-rule(2) of rule 66 of the Code, the title, deeds or an abstract of the judgment-debtor's title, if available, will be open for inspection in the Court or such other place as the Court may direct.
30. The proclamation shall, whenever such information is available, also state in whose possession and occupation the property is and the tenancy or terms on which any person is in occupation or possession.
31. In cases in which the Court considers that the decree holder should not be allowed to bid for less than a sum to be fixed, it shall be competent for it to give leave to bid at the sale only on condition that the decree holder's bid shall not be less than the amount so fixed, which amount shall as far as practicable, be determined with reference to the market value of the property or of the lot or lots into which the property is divided for sale.
32. **Bidding paper.**— The name of each bidder at the sale of property shall be noted on a paper to be called "the bidding paper", each bid shall be signed by the bidder and the amount of the bid shall be entered opposite his name. If there be no bid, the words "no bid" shall be written in the bidding paper opposite the property or, as the case may be the number of the lot. If the highest bid is less than the reserved price, the word "not sold" shall be written opposite the property or the number of the lot. If the property be sold, the highest bid shall be inserted opposite the property or the number of the lot, wherein the full name and address of the bidder be taken and his signature obtained and the purchaser shall write his full name opposite such entry and shall add his address and occupation. All notices thereafter served at the address so given shall be deemed to have been duly served on the purchaser.
33. **Agent to produce authority.**— A person purchasing for another as his duly authorized agent, shall produce his authority in writing at the time of bidding, and sign the bidding paper as such, giving full name, address, occupation both of himself and his principal. All notices thereafter served at either of the addresses given shall be deemed to have been duly served.
34. **Report of sale.**— Upon the completion of the sale, the officer conducting the sale shall file in Court his report of the sale.

35. **Judgment Debtor or his duly appointed representative to be present at sale.**— The judgment debtor or his duly appointed representative which may include his advocate shall be present at the sale. In case of wilful absence despite due notice, the sale shall proceed further.
36. The name of each bidder and the bid offered by him shall be duly recorded by the officer/ bailiff conducting the sale by public auction.
37. **Property to be again immediately put up for sale if deposit or purchase-money not paid.**— Where, in the case of movable property, the purchase-money or so much as may be payable at the time of the sale, or where, in the case of immovable property, the amount to be deposited, is not at once paid to, or deposited with the Court or such officer as may have been designated by it in that behalf, the bid of the person who would otherwise have been declared the purchaser shall be rejected, and the property shall again be immediately put up for sale, after the issue of a fresh proclamation in the manner and for the period as prescribed in the Code in that regard.

PART VI

ATTACHMENT OF DEBT AND NOTICE TO GARNISHEE

38. The Court shall provide specific opportunity to the garnishee to show-cause why he should not pay the amount into Court. If he raises an objection, the Court has a duty to consider the objection and pass appropriate orders.

PART VII

MISCELLANEOUS

39. **Residual Provisions.**—Matters with respect to which no express provision has been made in these rules, shall be decided by the Court consistent with the provisions of the Code and such directions and guidelines as may be issued from time to time.

By Order,

**REGISTRAR
HIGH COURT OF SIKKIM**