

# Transfer of Execution Petitions Where Limitation is Affected: Special Applicability Under Section 24 of the Civil Procedure Code, 1908

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**Abstract:** *Execution proceedings form the backbone of civil adjudication by ensuring that judicial determinations are effectively enforced. Despite the successful culmination of a civil suit, decree-holders frequently encounter procedural resistance at the execution stage, particularly in the form of limitation objections. In response, parties often seek transfer of execution petitions under Section 24 of the Code of Civil Procedure, 1908 contending that such transfer would better serve the ends of justice. This paper examines the legal permissibility and doctrinal limits of transferring execution petitions that are affected by limitation. It critically analyses the scope of Section 24 CPC, its applicability to execution proceedings, and its interaction with the Limitation Act, 1963. Through statutory interpretation and judicial precedent, the paper argues that while execution petitions qualify as “other proceedings” under Section 24 CPC and may be transferred in appropriate cases, the power of transfer is purely procedural and cannot be employed to revive, validate, or cure limitation-barred execution petitions.*

**Keywords:** Execution Petition; Limitation; Section 24 CPC; Transfer of Proceedings; Order XXI CPC; Decree Enforcement; Civil Procedure

## 1. Introduction

A decree is defined under section 2(2) of Civil procedure code as “*the formal expression of an adjudication 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*”. Section 24 of the CPC empowers the High Court or District Court to transfer or withdraw any “*suit, appeal or other proceeding*” pending before subordinate courts.<sup>1</sup> The provision is couched in wide terms and confers broad discretionary power, exercisable either on application by a party or suo motu.

Judicial interpretation has consistently held that the expression “*other proceeding*” includes execution proceedings.<sup>2</sup>

The enforcement of civil decrees is as vital as their adjudication. A decree that remains unexecuted undermines both litigant confidence and the credibility of the justice delivery system. The Code of Civil Procedure, 1908 (“CPC”), provides a detailed framework for execution under Order XXI; however, execution proceedings are often delayed or defeated due to procedural objections, most notably limitation.

Limitation objections assume particular significance in execution proceedings, as courts are bound to strictly apply statutory time bars. In recent years, litigants have increasingly invoked Section 24 CPC to seek transfer of execution petitions when limitation issues arise. This raises a crucial legal question: can transfer jurisdiction be exercised in cases where execution petitions are *prima facie* affected by limitation, and if so, to what extent?

## 2. Section 24 CPC: Nature and Scope of Transfer Jurisdiction

Section 24 of the CPC reads as On the application of any of the parties and after notice to the parties and after hearing such

of them as desired to be heard, or **of its own motion without such notice**, the High Court or the District Court may at any stage transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same and subsection 3(b) of this section says “*proceeding*” includes a proceeding for the execution of a decree or order. The provision is couched in wide terms and confers broad discretionary power, exercisable either on application by a party or suo motu.

Judicial interpretation has consistently held that the expression “*other proceeding*” includes execution proceedings. Consequently, execution petitions are not excluded from the ambit of Section 24 CPC. The purpose of this provision is administrative efficiency and the advancement of justice, not the creation of substantive rights.

## 3. Limitation and Execution Proceedings

Execution proceedings are civil proceedings and are governed by the Limitation Act, 1963. Article 136 of the Limitation Act prescribes a period of twelve years for the execution of any decree or order of a civil court.<sup>3</sup> Once this period expires, the decree becomes inexecutible unless the delay is legally condoned.

The Supreme Court has repeatedly emphasized that limitation provisions must be applied strictly and cannot be relaxed on equitable considerations alone.<sup>4</sup> Courts do not possess inherent powers to extend limitation merely because hardship may result.

## 4. Transfer of Execution Petitions Affected by Limitation

### 4.1 Legal Permissibility of Transfer

Since execution petitions fall within the scope of “*other proceedings*,” their transfer under Section 24 CPC is legally

permissible even when limitation objections are raised.<sup>5</sup> The existence of a limitation dispute does not render a transfer application non-maintainable.

Courts have recognized that transfer jurisdiction may be exercised at any stage of proceedings, including execution, provided the transfer is sought bona fide and serves the ends of justice.

#### 4.2 Limits on the Exercise of Transfer Power

Despite the wide language of Section 24 CPC, the power of transfer cannot be used to defeat substantive law. Transfer of an execution petition does not extend limitation, revive a time-barred petition, or nullify a judicial finding on limitation.

The Supreme Court has clarified that the guiding principle under Section 24 CPC is whether the transfer is necessary to serve the ends of justice- not whether it enables a party to avoid adverse legal consequences.<sup>6</sup> A transferee court remains bound to adjudicate limitation strictly in accordance with law.

### 5. Jurisdictional and Procedural Constraints

Section 24 CPC presupposes the existence of a validly instituted proceeding before a competent court. It cannot be invoked to cure inherent jurisdictional defects or validate proceedings instituted before a court lacking jurisdiction.<sup>7</sup> *Chithraru Jathavedan Nambooripad v. Gopala Pillai Chandrasekharan Nair*, (1964) 2 KER 648 / 1964 VCJ 690 (Ker.), the Kerala High Court dealt with territorial jurisdiction in the context of execution of a **mortgage decree**. The court reaffirmed the **general rule** under CPC that “no court can execute a decree in which the subject-matter is immovable property entirely outside the local limits of its jurisdiction.” It then recognized a **well-established exception** where the decree is a **mortgage decree** (a decree charging immovable property). In such cases: *The court which passed a mortgage decree has the power in execution of its decree to order the sale of the charged property even if that property is situate beyond the local limits of its jurisdiction.*

Additionally, courts have consistently discouraged repeated or successive transfer applications filed on identical grounds, particularly where limitation objections have already been adjudicated, treating such attempts as an abuse of the process of law.<sup>8</sup>

### 6. Analytical Perspective: Procedural Discretion versus Substantive Limitation

Section 24 CPC must be understood as a procedural tool intended to ensure fairness and efficiency in the administration of justice. Its invocation in limitation-affected execution petitions must satisfy three cumulative conditions:

- 1) The execution petition must be pending adjudication;
- 2) The transferee court must be competent to execute the decree; and
- 3) The transfer must demonstrably further the ends of justice.

Where limitation has extinguished enforceability, procedural transfer cannot resurrect substantive rights. Any contrary

approach would undermine the certainty and finality that limitation law seeks to achieve.

Hon’ble High Court of Kerala in *Hubert Peyoli v. Sainudheen* .9 considered application of S.24 to transfer execution petition from one court to another court and categorically held that this provision cannot be used to transfer execution petition to one court to another court. It was held as follows; “The grounds for transfer under S.24 of CPC and under S.39 or S.42 CPC are entirely different. Here is a case where the decree holder wants to get the decree transferred to Attingal as the properties belonging to respondents 2 to 5 are situate within the jurisdiction of that court. If that be the position, the remedy of the petitioner decree holder is to move the execution court under S.39 CPC or he could move even the transferee court for a further transfer under S.42 CPC. The ground mentioned in this application that the decree is going to be barred is not a ground for a transfer under S.24, for, it is well settled that it is only on certain other grounds that an application can be entertained by a superior court under S.24. Moreover, when there is a specific provision in the CPC regarding the transfer of a decree, for being executed by another court, it is not proper for this court to exercise its general power of transfer under S.24. In that view of the matter, I am not inclined to order transfer of the E.P. as prayed for by the petitioner. Accordingly, I dismiss this application without prejudice to the petitioner moving either the court which passed the decree or the transferee court where at present the E.P. is said to be pending, either under S.39 or under S.42 CPC, if he is otherwise entitled to.

### 7. Conclusion

The transfer of execution petitions affected by limitation under Section 24 CPC is legally permissible but doctrinally restricted. While execution proceedings fall squarely within the expression “other proceedings,” the power of transfer remains procedural and discretionary. It cannot be exercised to revive time-barred execution petitions or circumvent statutory limitation.

Courts must therefore exercise transfer jurisdiction with restraint, ensuring that procedural flexibility does not erode substantive limitation law. Maintaining this balance is essential for preserving the integrity and finality of the execution process.

### References

- [1] Code of Civil Procedure, No. 5 of 1908, § 24 (India).
- [2] *Kapildeo Prasad Sah v. State of Bihar*, (1999) 7 SCC 569 (India)
- [3] Limitation Act, No. 36 of 1963, art. 136 (India).
- [4] *Damodaran Pillai v. South Indian Bank Ltd.*, (2005) 7 SCC 300 (India).
- [5] *Pannalal v. State of Bombay*, AIR 1963 SC 1516 (India).
- [6] *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 SCC 167 (India).
- [7] *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791 (India).
- [8] *Kulwinder Kaur v. Kandi Friends Educ. Trust*, (2008) 3 SCC 659 (India).