

Tripura Judicial Academy

**Study materials for the training on service of summons
and other processes relating to execution of a decree**

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Introductory Note

In every civil litigation, broadly speaking there are three parts. First part is the ‘institution of the lis’, second part is ‘adjudication of the lis’ and the third and final part is ‘execution or implementation of the lis’. After a long drawn process, such as adjudication at the stage of trial, appeal, revision in different Fora, when a party finally gets the fruit of his lis, it becomes futile unless such decree or final order is executed in shortest possible manner and time following due process of law. To cut short the delay in execution proceeding and also to avoid complications, valuable guidelines and directions have been recently issued by Hon’ble Supreme Court of India in *Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors., Civil Appeal Nos. 1659- 1660 of 2021* [2021 Legal Eagle (SC) 256/ 2021(6)SCC418]. One of such direction was for Judicial Academies to prepare manuals and to ensure continuous training through appropriate mediums to the Court personnel/staff executing warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts. In compliance with such direction, Tripura Judicial Academy has already incorporated in it’s annual academic calendar the training on service of summons and other processes relating to execution of a decree, wherein the training will be imparted to Process servers, Bailiff, Nayeb Nazir and Nazir at District level covering all 08 Judicial Districts of Tripura, who are mainly involved in execution of different processes to successfully give a fruitful end to an execution proceeding in a time bound manner. For their proper and effective training, preparation of study material has also become imperative. Accordingly, same is prepared. Any suggestion and input to further develop the same shall highly be welcomed.

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1) Service of Summons and notices

Law relating to service of summons and notices:

Similar procedures are prescribed for service of summons in any suit or proceeding and service of notices in execution proceeding. Order V CPC primarily deals with procedure of service of summons further supplemented by rules framed by different High Courts in this regards. As of now, the Civil Rules & Orders of Hon'ble Gauhati High Court is applicable in Tripura. The relevant provisions governing the principles of service of summons and notices are summarised below:

Order V, CPC

Rule 9. Delivery of summons by Court.-(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgement due), the provisions of rule 21 shall not apply.

(5) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered

or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service.-(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re- issue such summons to be served by the Court in the same manner as a summons to a defendant.]

10. Mode of service-Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints this behalf, and sealed with the seal of the Court.

11. Service on several defendants.-Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant in person when practicable, or on his agent.-Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Case Law Reference

Service of summons on the agent of the partner has been held as sufficient service on the partner of the firm; P. Sen (Engineering) Pvt. Ltd. v. Delite Builders (P) Ltd., AIR 1993 Cal 28: 1992 SCC OnLine Cal 171.

13. Service on agent by whom defendant carries on business. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Service on agents in charge in suits for immovable property.-Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where service may be on an adult member of defendant's family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation -A servant is not a member of the family within the meaning of this rule.

16. Person served to sign acknowledgment.-Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found.-Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Case Law Reference

Court should be cautious in accepting the summons by hanging. Alleged service of summons by affirmation just after 2 days of filing the suit. Return of service not proved by affidavit nor the serving officer was examined. This resulted into passing of an ex parte

order. Application for setting aside the order on ground of non- service of summons cannot be rejected; *Sushil Kumar Saha v. Juran Chandra Saha*, AIR 1993 Gau 48, 1992 SCC OnLine Gau 30.

18. Endorsement of time and manner of service.-The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.- Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. Substituted service.-(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) **Effect of substituted service** -Service substituted by order of the Court shall be as effectual as if it has been made on the defendant personally.

(3) **Where service substituted, time for appearance to be fixed** - Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

21. Service of summons where defendant resides within jurisdiction of another Court.-A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may be provided by the rules made by the High Court to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Service within presidency-towns of summons issued by Courts outside.-Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras and Bombay is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. Duty of Court to which summons is sent.-The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison.-Where the defendant is confined in a prison, the summons shall be delivered or sent or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may be provided by the rules made by the High Court to the officer in charge of the prison for service on the defendant.

25. Service where defendant resides out of India and has no agent- Where the defendant resides out of India and has no agent in India empowered to accept Service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the Court is situate:

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

26. Service in foreign territory through Political Agent or Court.-

Where-

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with

foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner herein before directed, such endorsement shall be deemed to be evidence of service.

26A. Summonses to be sent to officers of foreign countries.-Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.

27. Service on civil public officer or on servant of railway company or local authority.- Where the defendant is a public officer (not belonging to the Indian military naval or air forces, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant.

28. Service on soldiers, sailors or airmen.-Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. Duty of person to whom summons is delivered or sent for service- (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non- service.

30. Substitution of letter for summons.- (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3) shall be treated in all respect as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

**Related provisions under Civil Court Rules and Orders of
Hon'ble Gauhati High Court**

[Chapter-3, Part C]

Method and Proof of Service:

63. The signature required under Order 5, Rule 16, should in the case of illiterate person, be held to mean the thumb impression. Process-serving peons out on duty, should therefore be supplied with printer's ink, etc., for taking such impressions.

64. (1) A party shall not ordinarily be required to supply an identifier for the purpose of serving a summons or notice or any other process on a defendant, respondent, witness or other person whether issued by any sub-ordinate Court or the High Court or receive from Courts outside its jurisdiction, and the serving officer shall serve the summons, notice or process after due enquiry as to the identity of the person on whom, or the house or property, where, the same is served. The serving officer shall serve in the presence of at least two independent local residents and he shall, whenever possible, obtain the endorsement by signature or thumb impression of those persons on the original process and, where he is unable to serve the process, he shall, whenever possible, obtain the endorsement by signature or thumb impression of at least two persons of the locality.

Note 1- There being no legal obligation upon a plaintiff, decree holder or appellant to supply an identifier for service of any process, no process serving peon must return unserved any notice, process or summons merely because no identifier could be had at the place of service. He must make every possible endeavour to find out the person on whom, or the house or property where the process is to be served.

Note 2- All process serving peons may take necessary help of the Gaonburahs Chowkidars, Dafadars and Panchayat members when they go out for execution of processes generally to rural areas. Whenever possible, Gaonburahs or a Chowkidars or a Dafadar or a Panchayat members as the case may be made a witness for actual service or execution of the process.

Note 3- The Nazir should personally scrutinize all cases in which the peon reports that he could not find the person on whom or the house or property where the service was to be made, and he should bring all cases in which the peon appears to be at fault to the notice of the Judge-in-charge.

(2) If it appears to the Court that sufficient information is not given as to the identity and place of residence of the person on whom, or the house or property where a process is to be served, or if the Court is satisfied from the declaration of the serving officer or upon his examination on oath that the person to be served or the house or property could not be

identified after due diligence and enquiry, it may ask the party concerned to supply an identifier.

Case Law Reference

The guidelines for services of processes and work in the nazarat are provided under this chapter. Regarding the method and proof of service of processes several directions are contained in Rule 63 and thereafter. In *Sushil Kr. Saha-Vs- Juram Chandra Saha*, (1993) 1 GHC 161: 1992 (2) GLJ 385: (1992) 2 GLR 455, for violation of direction in Rule 64(1) exparte decree was set-aside and the case sent back for disposal in presence of the defendant.

65. If the person addressed is absent from his residence at the time of attempted service and there is no likelihood of his returning there within a reasonable time and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, service shall be effected in the manner directed in Order 5, Rule 17. The report of the serving officer should state the grounds of his belief that the person was absent from his residence at the time of attempted service and that there was no likelihood of his returning within a reasonable time and that there was no agent empowered to accept service nor any other person on whom service could be made; and in any case that on the door of the outer house or some other conspicuous part of which a copy of the process was affixed, was the ordinary residence or place of business of the person address at the time when it was so affixed.

66. If the service is made under Order 5, Rule 15, the report of the serving officer should clearly state, with grounds of his belief that the person was absent from his residence at the time of attempted service and there was no likelihood of his returning within a reasonable time, and that he had no agent empowered to accept the service, and that the person, to whom the process was delivered was an adult male member of his family, and was actually residing with him at the time of such service.

67. If the service is made under Order 5, Rule 14, the report of the serving officer should clearly state, with grounds of his belief that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service, and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject matter of the suit.

68. If the return of service is under Order 5, Rule 20, the report of the serving officer should clearly state, with grounds of his belief that the house upon the door or other conspicuous part of which a copy of the process was affixed, was the house in which the defendant or respondent is known to have last resided, or carried on business or personally worked for gain, or that the service was made in all respects in conformity with the order for substituted service, which should accompany the process. The report of the service officer should also clearly state, with grounds of his belief how long, and until what time the defendant or respondent resided in the house, and what has become of him.

69. If the person addressed has no place of residence and he cannot be found or if he dead these facts shall be stated in the report together with the names and addresses of atleast two persons from whom the facts are ascertained. If the person addressed has ceased to live at the place, his present address, if available, and the source of information should be reported.

70. If the service is made under Order 5, Rule 12 on an agent, the report should state with grounds that such agent was empowered to accept service, under Order 3, Rules 2, 5, 6; Order 27, Rule 2, or Section 85(1), Civil Procedure Code, or by virtue of appointment for that purpose in writing.

71. If the service is made under Order 29, Rule 2, the report should clearly state that the summons or notice was left at the registered office of the Company or, if there is no such office, at the place where the Company carries on business, or that it was delivered to any Director, Secretary, or other principal officer.

72. (1) In the case of Railway Administration or Companies in addition to service in the usual way, a copy of the summons should be sent by post under Order 29, Rule 2(b), provided that; if the summons is sent by registered post, service in the usual way may be dispensed with.

(2) All General Managers, Deputy General Managers of the India Government Railways having been authorized to act ex- officio for and on behalf of the Central Government in respect of all judicial proceedings in which the respective India Government Railway may be concerned, are recognized agent of the Government within the meaning of Rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908. Summons, etc., should, therefore, be sent direct to the officers concerned, for service under Rule 3, Order III of the Code instead of to the Secretary to the Government of India.

73. If the service is made under Order 30, Rule 3(b), the report of the serving officer should state with grounds of his belief that the person on whom the summons was served had at the time of service the control or management of the partnership business.

74. (1) If the process is addressed to more than one person the report shall described the manner of service on each person.

(2) Process-serving peons must invariably note the date, hour and exact place of service of each individual process and also the sequence in which processes are served on different persons to be served in the same case and on the same occasion, in their reports and declarations.

(3) Every peon must immediately after completion of any duty connected with a process write clearly with his own hand at the place of service and in the presence of witnesses (if any), his report of service or failure of service.

(4) Every report of service or non-service shall comply strictly the directions in these rules and in Form No. (P)1-A, Volume II, and the declaration in proof of service shall be recorded in legible writing in the manner laid down in Form No.11, Appendix-B, Schedule I, Civil Procedure Code, as amended by the High Court.

Note- Instruction for the guidance of process serving peons and returning officers-

- (a) If the process-serving peon is personally acquainted with the person to be served, the fact should be stated. If he is not so acquainted, it should be stated how he satisfied himself about the identity of person;
- (b) It should be seen that the name of the person who accepts service corresponds exactly with the name given in the process. Where the signature in token of acceptance differs from the name given in the process, the discrepancy should be explained;
- (c) Where the process is served on some person other than the persons named therein who accepts the process on his behalf, it should be stated whether such person is an adult, and whether he is living with and is undivided from the person on whose behalf he accepts service;
- (d) Where service is accepted by an agent, it should be stated whether such person is duly authorized to accept service;
- (e) Where a person refuses to accept the process, the grounds thereof, if any, and the names of the persons witnessing the refusal should be given;
- (f) Where a process is affixed owing to the absence of the individual named therein, it should be stated, if possible, both when he left home and when he is likely to return. The attempts made to find out the person to be served should also be stated (see Note under Rule 68);
- (g) When personal service is not possible on pardanashin women, attempts should be made to serve some responsible male member of the family.

75. When the summons or notice which has been served is the summons or notice of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should retransmit the summons or notice to the Court by which it was issued, together with (1) the Nazir's return, (2) the declaration or deposition of the serving officer and the affidavit or solemn declaration or deposition of the witnesses (if any), relative to the facts of service, (3) the record of such Court's proceedings with regard thereto (Order 5, Rule 23), and (4) in a case where any of those documents is in a language different from that of the district from which the process issues, and English translation of such document.

Service on persons in Civil and Military Employ.

81. Where service is made in accordance with the provisions of Order 5, Rule 27; Order 5, Rule 28 of Civil Procedure Code, a reasonable time should be allowed for the making of arrangements for the relief of the persons summoned and to enable them to appear themselves or to appoint a representative or make such other arrangement as may be necessary.

Service of processes in and from Kashmir and Manipur.

82. Summonses and other processes issued by any Civil Court in Kashmir and Manipur for service in Assam may be sent to the appropriate Civil Court of Assam and served as if they were processes issued by such Court.

83. Summonses and other processes issued by any Civil Court in Assam for service in Kashmir and Manipur shall be sent to the appropriate Court in these States.

Arrangement and Distribution of work in the Nazarat

84. It shall be the duty of the Nazir-

- (i) to explain to the process servers the directions in these and other rules in vernacular and to point out the manner in which various kinds of processes are to be served and returns are to be verified;
- (ii) to see that processes are promptly sent out for service and fairly distributed amongst the process servers, and that a fair average of work is attained by each process server;
- (iii) to see that as far as possible on an average not less than 20 days in a month are spent by each peon in the mufassil in the service of processes;
- (iv) carefully to scrutinize the diary of the peon and every return submitted by him each time he returns from a journey after service of process, or the reasons given for failure of service and to report to the Judge in-charge of the Nazarat all cases of unreasonable delay in service, misconduct, neglect or improper discharge of duty for such disciplinary action as the Judge in-charge may think fit and proper.

Note- Some of the common faults that require close scrutiny are-

- (a) Delay in service of processes so as not to allow sufficient time to the person served to appear prepared on the date fixed;
- (b) Delay in service necessitating an adjournment in order that the fixed number of days may intervene between service of summons or notice and hearing;
- (c) Delay in submission of Diary;
- (d) Return of processes unserved on the plea of want of time;
- (e) Return of processes unserved on the plea that no identifier could be had or that the person to be served could not be found;
- (f) Writing of service report after return from journey and not at the scene of service;
- (g) Small percentage of personal service;
- (h) False or collusive report.

85. All Nazirs will be held responsible to the presiding Judge of each Court at every station for the due and regular service of all processes entrusted to them for service by themselves and their subordinates.

Note 1- Service or execution of processes by Nazir can only be allowed under special circumstances when the court is satisfied by affidavit or otherwise that there has been previous resistance and that execution will not be effected by ordinary peons without danger to the public peace. Deposit of pay of the officer is not required in such cases.

Note 2- Processes (other than those referred to in Rule 60 ante) received for service from places outside the jurisdiction of the Nazarat concerned should be entered in the process register in red ink and it shall be particularly seen that such processes are promptly served and returned to the issuing courts in sufficient time before the hearing dates.

Note 3- The calculation of the percentage of personal service of processes should be based on the number of processes actually served, as this method is obviously a better criterion of a process-server's success than a calculation based on the number of processes to be served.

86. Every Nazir shall maintain for the jurisdiction for which he is the proper officer for service of processes-

- (i) a list of all places within a five-mile radius of his office;
- (ii) a list of all places outside such five-mile radius.

Note- A map showing the villages and thanas in the area under the jurisdiction of the courts and their distances from each other and from the headquarters should be hang in every Nazarat.

87. Processes for service at places within the five-mile radius shall ordinarily be sent out every working day (whenever necessary), and should ordinarily be returned on the next day and not later than the day following.

Note- The District Judge may, in his discretion, suspend the operation of this rule in respect of service of processes in villages which lie within the five-mile radius but out-side the town area, as and when necessary.

88. The Nazir shall divide the area outside the five-mile radius into convenient beats or circles where processes should be sent at regular intervals and shall make the best possible arrangements for the prompt service of processes of each beat. The boundaries of the circles and the fixation of the intervals may be varied from time to time as experience dictates. He should also prepare a statement showing on what days process serving peons are sent out for service in any particular beat and how long the process- serving peon is supposed to be away on that particular beat.

Illustration

Beat No. 9-Processes issue every Tuesday. Process-serving peon returns after 8 days.

Note - The distribution of processes on the beat system, will, of course, have to be departed from in cases of urgent processes or in cases where there is an accumulation of processes for a particular beat.

89. Returnable dates should not be fixed at random, but sufficient time should be allowed so that the processes for one trip may all be served and returned a reasonable time before the dates fixed in the cases concerned. In fixing dates, the distance to be travelled, the season of the year, the conditions of the locality, the number of processes made over at a time etc., should be taken into consideration.

Note- When a peon entrusted with the service of several processes finds that there is no reasonable chance of his being able to serve all the processes in the same trip and to return them in sufficient time before the due dates, he should at once send back by post the processes that cannot be served, so that the Nazir may give out such processes to other peons for service if there is sufficient time before the hearing dates. Or when a peon finds that he cannot return to headquarters before the returnable dates because he has to serve other processes, he should return the processes that he has already served by post before the returnable date so that the work of the Courts concerned may not suffer.

90. To equalise the work of process-serving peons a certain amount of short beat work as well as a certain amount of long beat work should be given to each peon and there should also be, as far as possible, equality in the number and kind of processes distributed. The Judge in-charge of Nazarat should as often as time permits and at least once a month have the processes distributed under his personal supervision.

Note- It shall be particularly seen that all peons to whom processes have been distributed for service leave their headquarters immediately on receipt of processes.

91. (1) Processes received in the offices must be made over to the Nazir if possible, on the same day on which they are filed and not later than two days after their receipt.

(2) Processes under Order 16, Rule 7-A, for service by the parties must be returned to them or their pleaders after scrutiny and entry of expenses fixed by the Court (under Order 16, Rule 2). for payment to the witness, date, etc., signature within three days of their filing. All such processes should be entered in the Register.

Note-In order that there may be no delay parties or their pleaders should in their turn also apply for and obtain the processes within the prescribed time. The signature with date of the party pleader taking delivery of the processes applied for should be taken on the application.

92. Processes are ordinarily to be issued to peon in the order in which they come back from the mufassil. Latter processes for a particular beat are not to be issued to the exclusion of processes for that beat filed earlier. The latter are only excluded, if necessary, by processes marked "Urgent" by the Court.

93. It shall not ordinarily be lawful for the Nazir to keep back processes for any period longer than may be necessary to admit of a sufficient number accumulating for a particular beat. Subject to this, the Nazir shall arrange for the distribution of processes outside the five-mile radius as often as possible in every week or at such other regular intervals as may be necessary, according to the direction of the Judge in-charge of Nazarat.

94. As far as possible, all processes other than warrants of arrest for persons residing in the same beat, shall be served by one process-serving peon and not by several, whether issued by the same or by different Courts, provided that their number is not unusually large. No process-serving peon should ordinarily be given processes for service in a locality where his home is situate or his relations reside.

95. The above rule does not apply to processes marked "Urgent". The Presiding Judge of any Court may, for any sufficient reason at any hour of the day transmit a process for emergent execution to the Nazir and it shall be his duty on receiving such process to make immediate arrangements accordingly.

96. (1) The Judge in-charge of the Nazarat shall send to every Court at the station a copy of the list of beats or circles showing the names of villages in each beat, on what days peons are sent out for service in each particular beat or circle and how long they are supposed to be away on that beat (vide, Rule 88), so that processes for service within a particular beat may be sent to the Nazarat in proper time.

(2) The beats shall be fairly distributed between the peons on the establishment and to each peon shall be allotted a number of beats according to the distance, situation and accessibility of the villages comprising each beat. To equalise the work of peons, fresh distribution of beats among them should be made at such intervals as the Judge in-charge may direct.

97. Processes made over to the Nazir for service must be returned by him to the issuing Court as soon as possible after they are received back from the peons so as to reach such Court for scrutiny in sufficient time and at least two clear days before the date fixed for hearing of the case or matter.

Note-When processes are returned unserved a considerable time before the date fixed for hearing, it shall be the duty of the Nazir to give out the process for reservice if there is sufficient time before the hearing.

98. The following processes may be executed by special peons-

- (i) warrant for arrest of a person;
- (ii) warrant for attachment of moveables;
- (iii) any other process ordered by the Court either suemotu or otherwise to be so executed.

Note-More than one peon may be deputed for the execution of any process where there is such a direction of the Court to that effect.

99. When not employed in serving processes, process-serving peons should be employed in miscellaneous work in the Courts and offices.

Note 1- No process-serving peon shall be employed in doing clerical work for the office.

Note 2- Process-serving peons when on duty in Court and out on process-serving work, must always wear and display their standard badges.

Note 3- Process-serving peons must report themselves to the Nazir and make over to him the diary and all processes with which they were entrusted for service immediately on return to headquarters from a journey. The Nazir must see that this rule is strictly obeyed by each peon and report cases of non-compliance to the Judge in-charge.

Note 4-(a) During the interval between return to headquarters and departure for service of processes, peons must attend office punctually at the hour as prescribed.

(b) When signing the Attendance Register every day, the Judge in-charge should from time to time ascertain whether all peons at headquarters have actually come to Court and taken up the duties assigned to them and also inspect the process-registers and diaries in order to see whether the peons who were to have returned from mufassil have come back within the due date.

100. (1) So far as budget allotments permit the Nazir at district headquarters shall be deputed once a month for at least three days in the interior to verify either before or after the disposal of cases a certain proportion of the returns of processes issued by the Civil Courts in the district to be fixed by the District Judge. The selection of processes should be made after calling for a report from the Courts of processes which are regarded as suspicious. He shall

go to a different locality on each occasion and also invariably verify processes when he goes to the mufassil on business for other purposes.

(2) During the Nazir's absence of such duty, the senior Assistant Nazir or an assistant shall be appointed as cashier on the conditions laid down in Note to Rule 715, but no application will be entertained for increase of staff on this account.

Case Law Reference

i) Bhabia Devi v. Permanand Pd. Yadav, (1997) 3 SCC 631- Notice returned on refusal to accept by opp. party, is a valid service.

ii) Indu Bhushan v. Munna Lal, (2007) 14 SCC 42 : 2007 SCC OnLine SC 156 - A bare perusal of Order 5 Rule 9 clearly shows that service through process of court is mandatory. This position is clear from the use of the word –may|| (*sic* –shall||) in the provision.

iii) Salem Advocate Bar Assn. (II) v. Union of India, (2005) 6 SCC 344 : 2005 SCC OnLine SC 1120 at page 366- The problem in respect of service of summons has been one of the major causes of delay in the due progress of the case. It is common knowledge that defendants have been avoiding to accept summons. There have been serious problems in process serving agencies in various courts. There can, thus, be no valid objection in giving opportunity to the plaintiff to serve the summons on the defendant or get it served through courier. There is, however, a danger of false reports of service. It is required to be adequately guarded against. The courts shall have to be very careful while dealing with a case where orders for deemed service are required to be made on the basis of endorsement of such service or refusal.

iv) Sunil Poddar v. Union Bank of India, (2008) 2 SCC 326 : (2008) 1 SCC (Civ) 558 : 2008 SCC OnLine SC 77 at page 333- Once a summons is published in a newspaper having wide circulation in the locality, it does not lie in the mouth of the person sought to be served that he was not aware of such publication as he was not reading the said newspaper.

USE OF NSTEP SOFTWARE

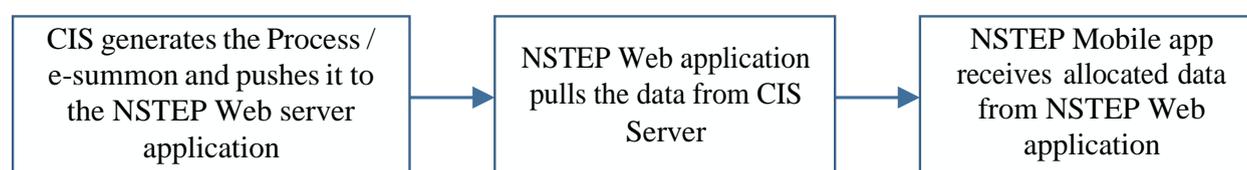
National Service and Tracking of Electronic Processes.

NSTEP is a centralized process service tracking application comprising of a web application and a mobile application designed to streamline service of summons process.

Once a process is adopted through CIS software by the respective courts, it will become available on the NSTEP web application in the electronic format. Once the processes are received in NSTEP Web application, then processes are allocated to Mobile app for process serving by the process servers / Bailiff.

Features offered by NSTEP -

- Enables serving of Notice/Summons in electronic form
- Posting and recordal of realtime updates from remote locations
- Time involved in process serving is reduced by serving it in electronic form
- Transparent tracking of service of summons by process servers / Bailiff.



This document comprises of 3 parts:

Part 1: CIS software steps for NSTEP. (This part consists of 2 main sub parts)Part

1A: CIS - Process generation for NSTEP.

Part 1B: CIS - Publish Process for NSTEP.

Part 2: NSTEP Web application (This part consists of 2 main sub parts)Part

2A: Data Pulling

Part 2B: Process/e-summon allocation to process servers / Bailiff

Part 3: NSTEP Mobile App (This part consists of 2 main sub parts)Part

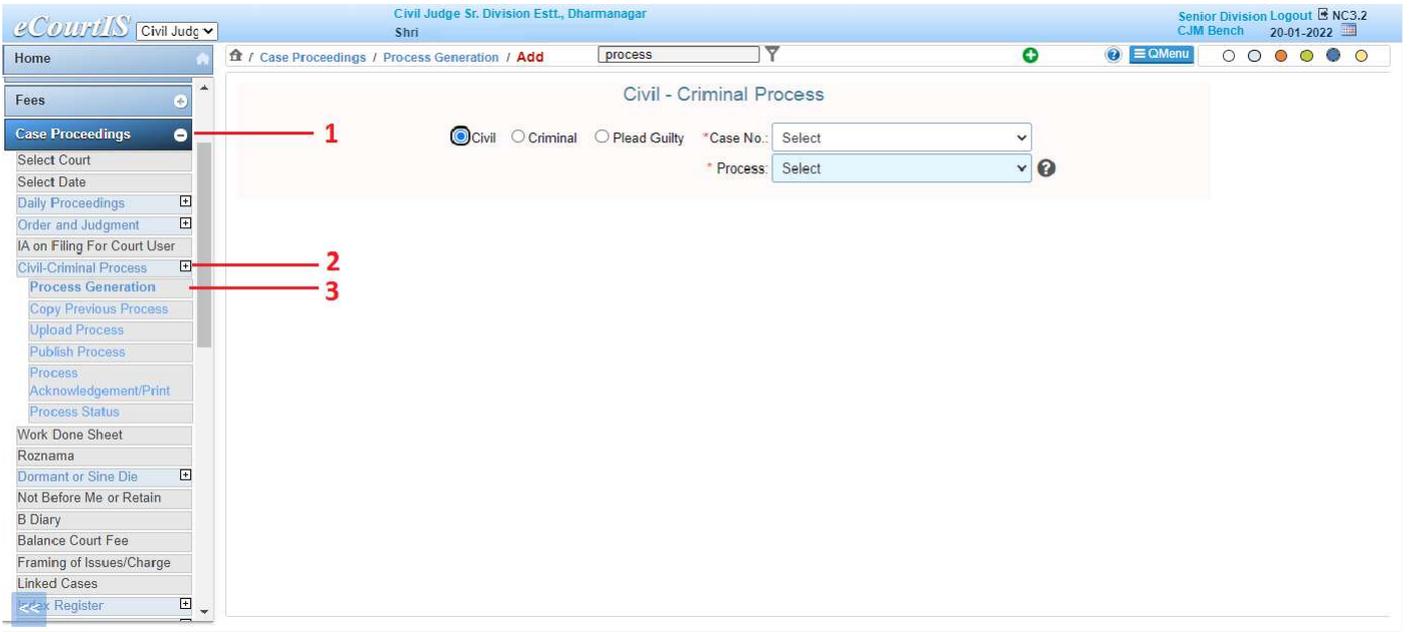
3A: Downloading & Installing the app

Part 3B: Using the NSTEP Mobile App

Part 1 CIS software steps for NSTEP

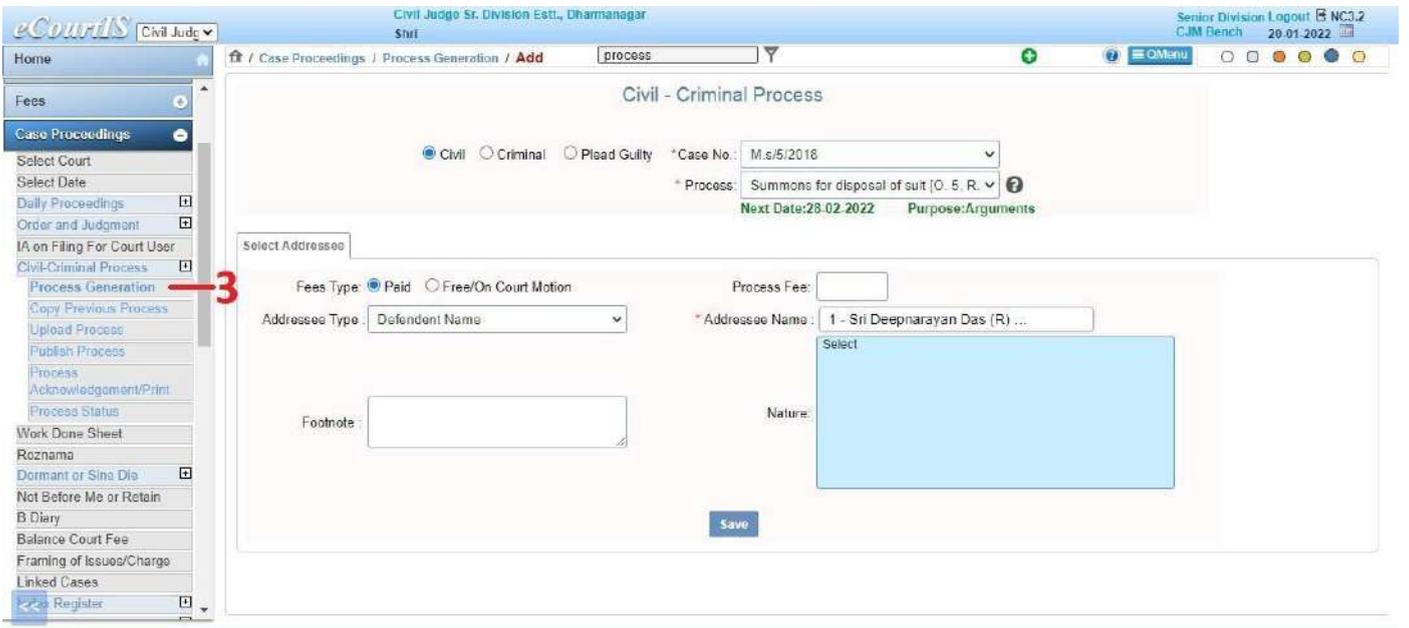
Part 1A: CIS – Process generation for NSTEP.

This part generates the digital e-summon in pdf format to be served.



Log into CIS then go to

1. Case proceedings
2. Civil-Criminal Process
3. Process Generation



Process Generation Screen as mentioned in step 3 as shown above.

Fill the parameters as shown in the screen

1. Case No
2. Process
3. Addressee Type
4. Addressee Name
5. Save (Number of clicks on save button depends on number of defendants involved).

**Click on save (Number of clicks on save button depends on number of defendants involved) i.e if there are 3 defendants in the case then 3 times save needs to be executed.



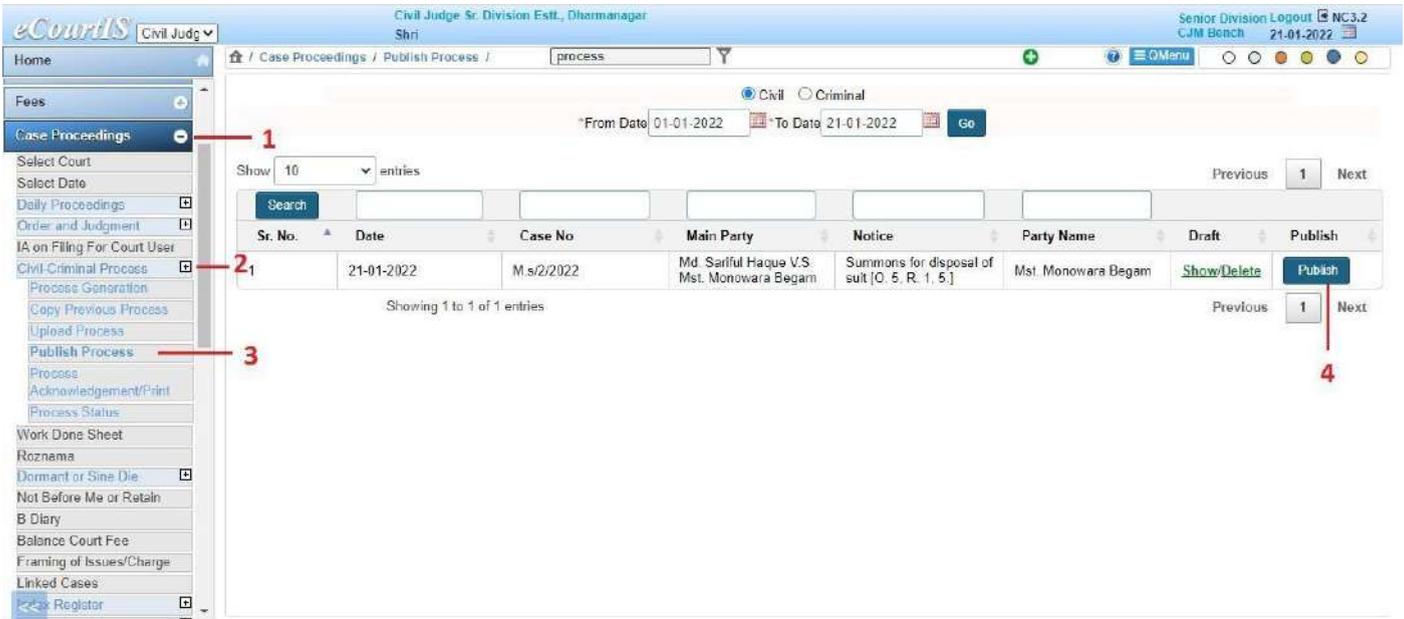
After the data is saved, we get the option to Generate Draft.



After clicking the Generate Draft button, the draft of the process / summon in pdf format is created and saved.

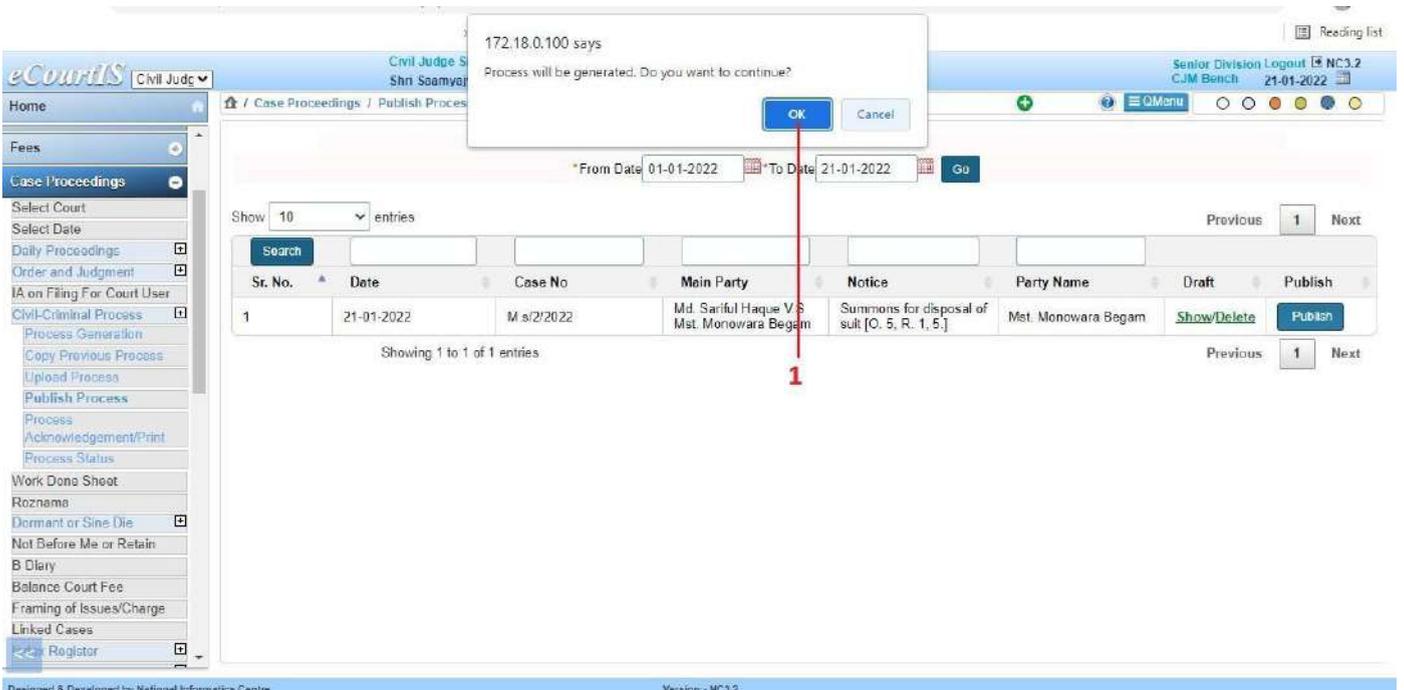
Part 1B: CIS – Publish Process for NSTEP.

This part publishes the process / e-summon and pushes the digital pdf generated in the earlier step (Part 1A) to NSTEP web application server.



Log into CIS then go to

1. Case proceedings
2. Civil-Criminal Process
3. Publish Process Generation (all the number of processes in the list)



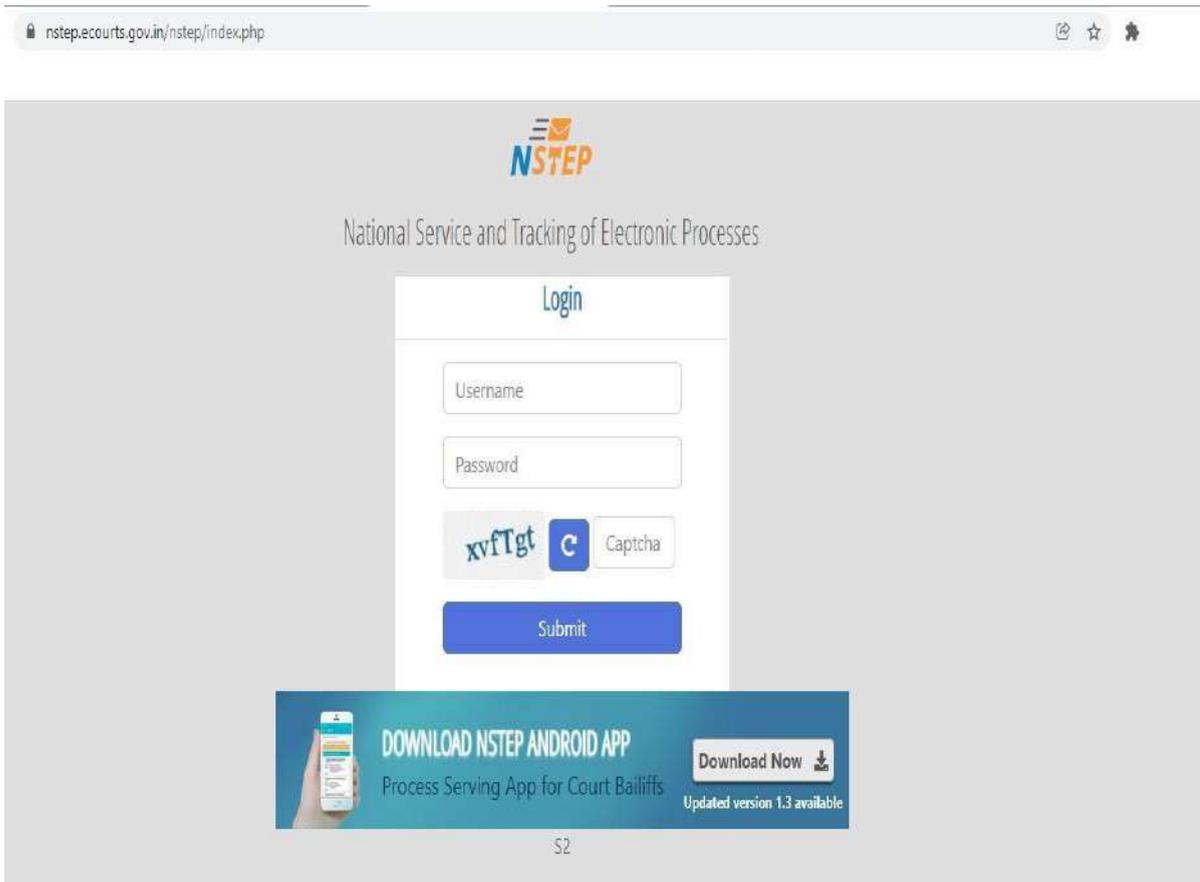
Re-Confirmation pop up for pushing the e-summon / process to NSTEP web application Server.

Part 2 - NSTEP Web application

Part 2A: Data Pulling

This part pulls data that was being pushed by the CIS Software from different courts into NSTEP web server. It helps in allocation of the e-summons to different process servers / Bailiffs for serving in field.

Login to NSTEP web portal via the below link <https://nstep.ecourts.gov.in/nstep/index.php>

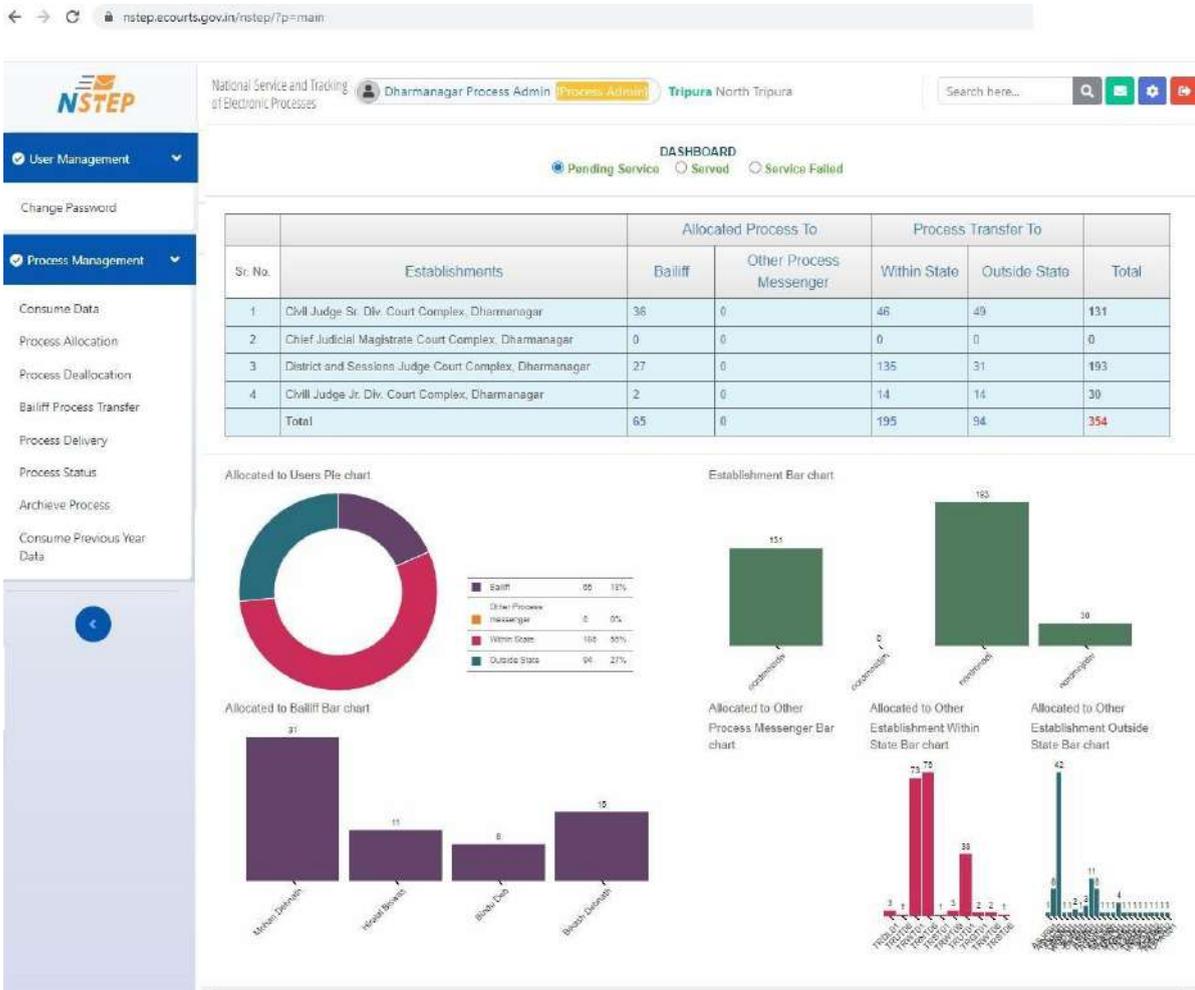


The screenshot displays the NSTEP web portal login interface. At the top, the NSTEP logo is visible, followed by the text "National Service and Tracking of Electronic Processes". The main content is a "Login" form with the following elements:

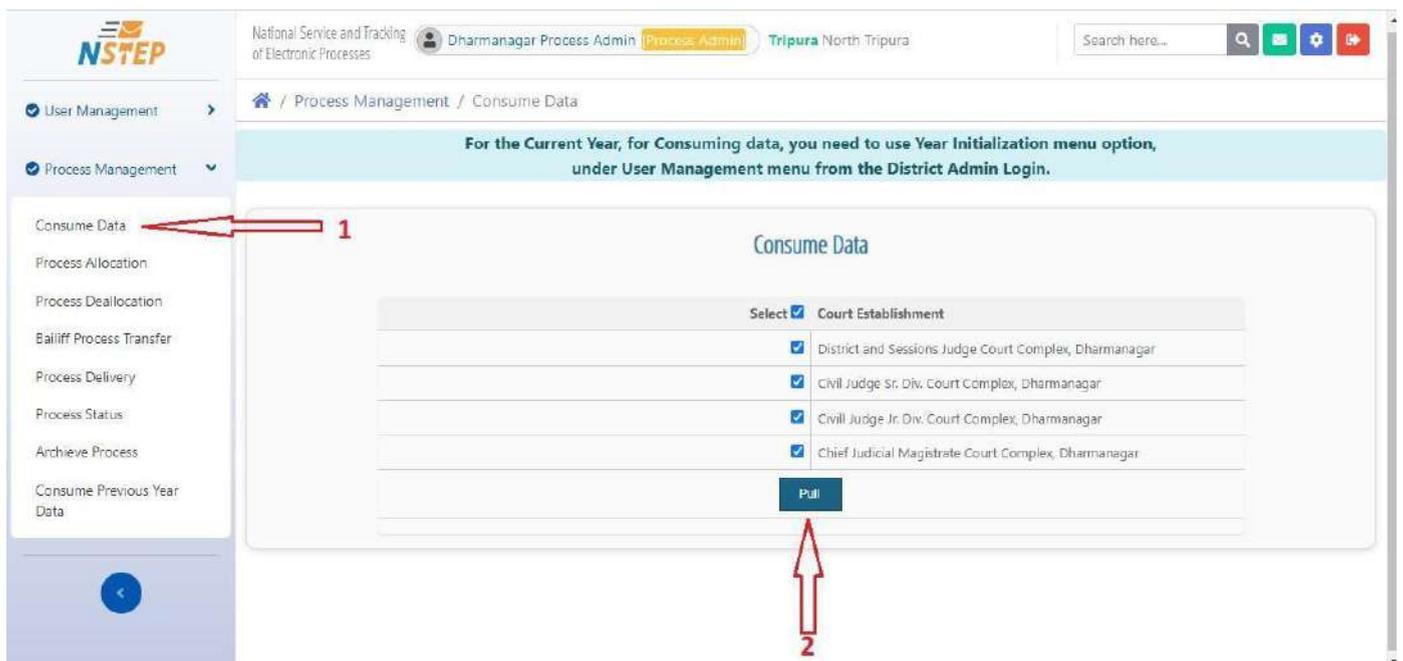
- A "Username" input field.
- A "Password" input field.
- A Captcha verification area showing the characters "xvfTgt" and a "Captcha" label.
- A blue "Submit" button.

Below the login form is a promotional banner for the "NSTEP ANDROID APP". The banner includes the text "DOWNLOAD NSTEP ANDROID APP", "Process Serving App for Court Bailiffs", and a "Download Now" button with a download icon. It also notes "Updated version 1.3 available".

Enter Username
Enter Password
Enter Captcha
Click Submit.



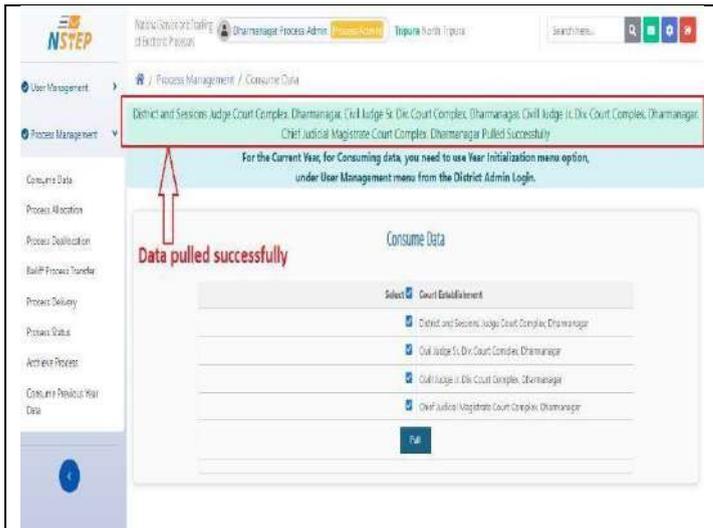
After successful login we get the main dashboard as shown above.



For pulling CIS data in NSTEP that is being pushed by the CIS from different courts we follow the below steps.

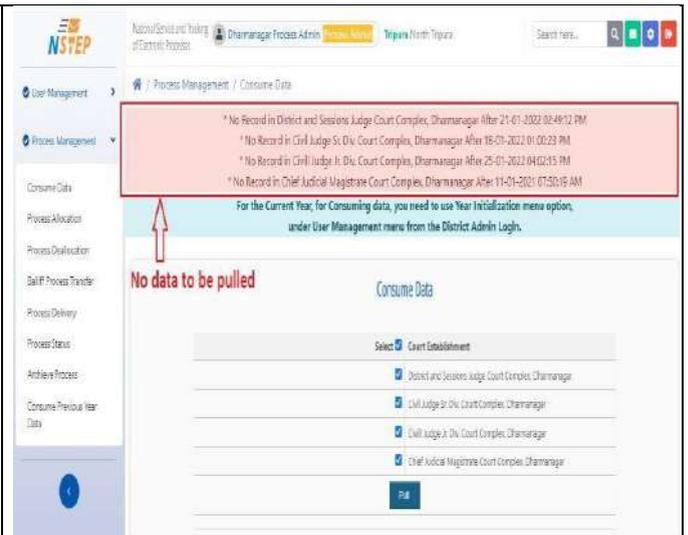
1. Click consume data and select the checkbox for various Court Establishments
2. Click Pull.

Now the data from the CIS are pulled in the NSTEP web application server.



If data is pulled successfully, we get a notification stating data pulled successfully.

Here the respective courts that had pushed the e-summons data from CIS are now being imported to the NSTEP web application server.



If data is not pulled successfully, we get a notification stating no record found in concerned court with date and time.

Part 2B: Process /e-summon allocation to process servers / Bailiff

After data is pulled, we now go to Process Allocation tab. Here processes that are imported are displayed in tabular form. Now the e-summons are allocated to concerned Process Servers / Bailiffs for serving in field. This allocation is generally being done by the Nazarat Section / Process Admin.

Sr No	Process ID / Process Title	Case No.	Designation Name	Addressee Name	Addressee Address	Email	Mobile	View Process	Edit	Tag
1	PTRN/100002022_1_1 Notice to show cause (general form) (General Form (No Provision of Law as such))	T/S MAC/1/2022	Addl District and Sessions Judge	Madan Debnath	S/O L. Mahendra Dasgupta of South Padsabill, Ward No. 4, Near Mahadab Bui, P.O Panagar, P.S. Panisagal, North Tripura, Pin 760200 (Owner of the offending vehicle Motor No. TR05-D-6498)			View	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2	PTRUT/1000102021_1_3 Summons to appear in person (O.S. R. 3)	T/S (MAC)/10/2021	District and Sessions Judge	The Branch Manager	National Insurance Company Ltd. Dharmagarh, Panisagal, P.S. Dharmagarh, North Tripura			View	<input checked="" type="checkbox"/>	<input type="checkbox"/>

For process allocation we follow the following steps:

1. Go to Process Allocation Tab.
2. Select the number of process entries to be viewed per screen.
3. Select Process server name who will be serving the process in field.
4. This displays the allocated processes to the Process Servers.
5. View the e-summon in the pdf form
6. Click Tag to allocate the process to the concerned Process Server / Bailiff
7. Submit

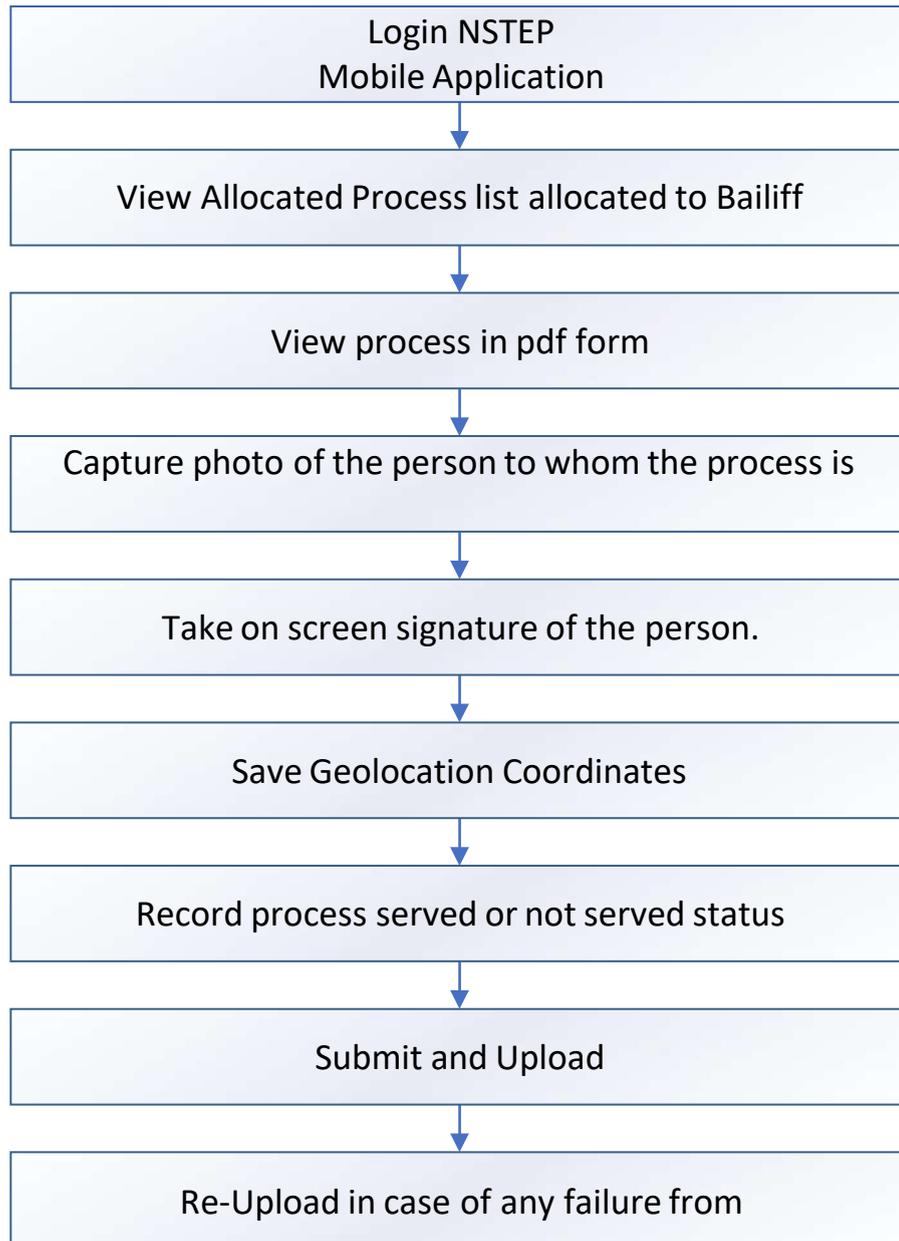
After submitting, the process is forwarded to the Process Server / Bailiff NSTEP mobile app

**There are other features provided by the NSTEP web application like Process Deallocation (where one process that was allocated to a process server can be deallocated), Bailiff Process Transfer (where previously allocated processes can be transferred between Bailiffs), Process Delivery (enables delivery marking for the process from the web portal), Process status, Archive Processes, Consume Previous Year Data are there.

Part 3 - NSTEP Mobile App

After allocation of the processes to the Bailiffs / Process servers from NSTEP web application portal for serving of processes in field, these processes can be viewed in the NSTEP mobile app.

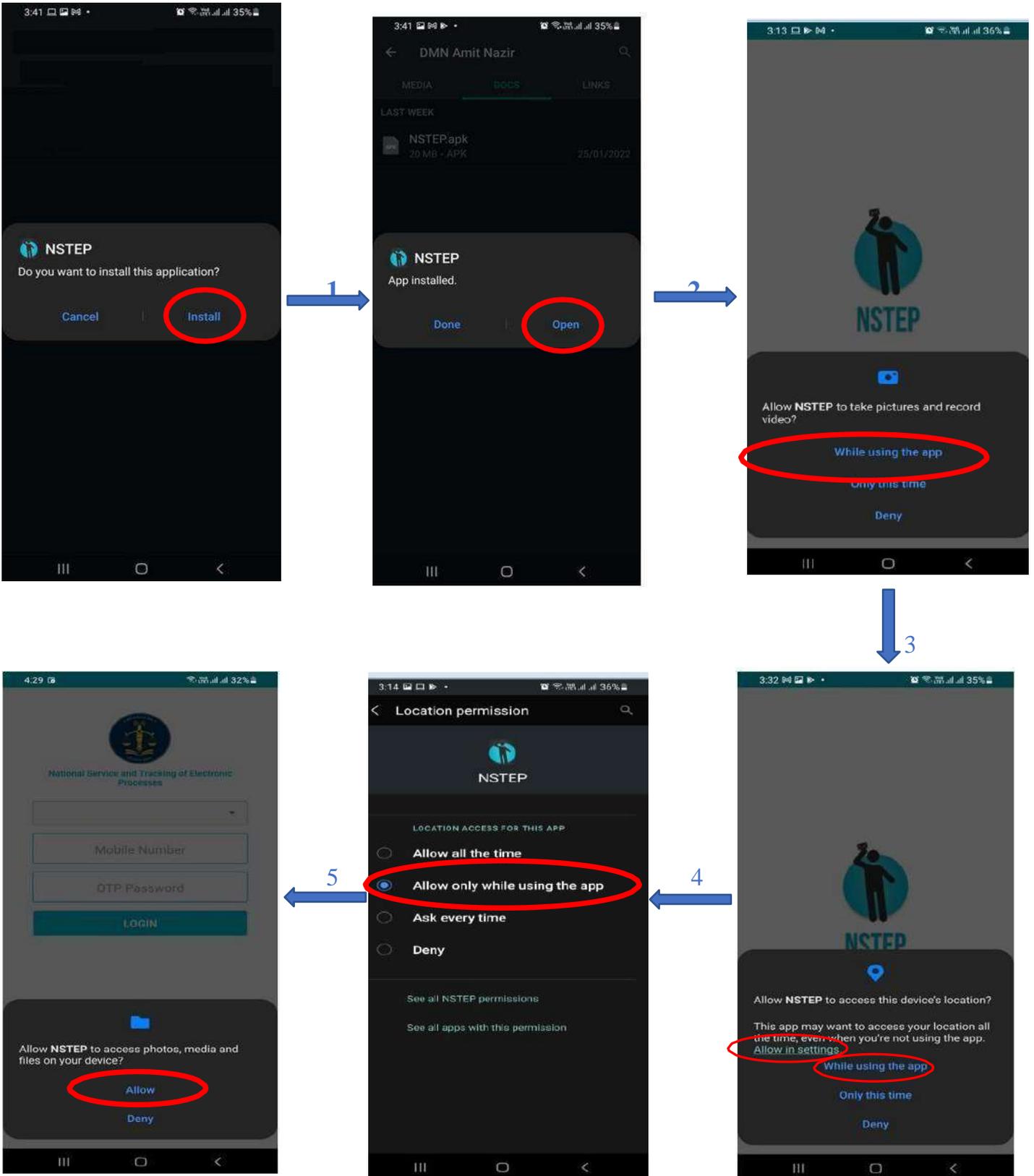
Work Flow Diagram of the NSTEP Mobile App



Part 3A: Downloading & Installing the app

NSTEP App can be downloaded from the following link
<https://nstep.ecourts.gov.in/nstep/index.php>

For installation, open the downloaded file and follow the steps as shown in screenshot



Part 3B: Using the NSTEP Mobile App

Once installation is completed, open the NSTEP app and we get the following login screen. The various screens of the application are explained below:

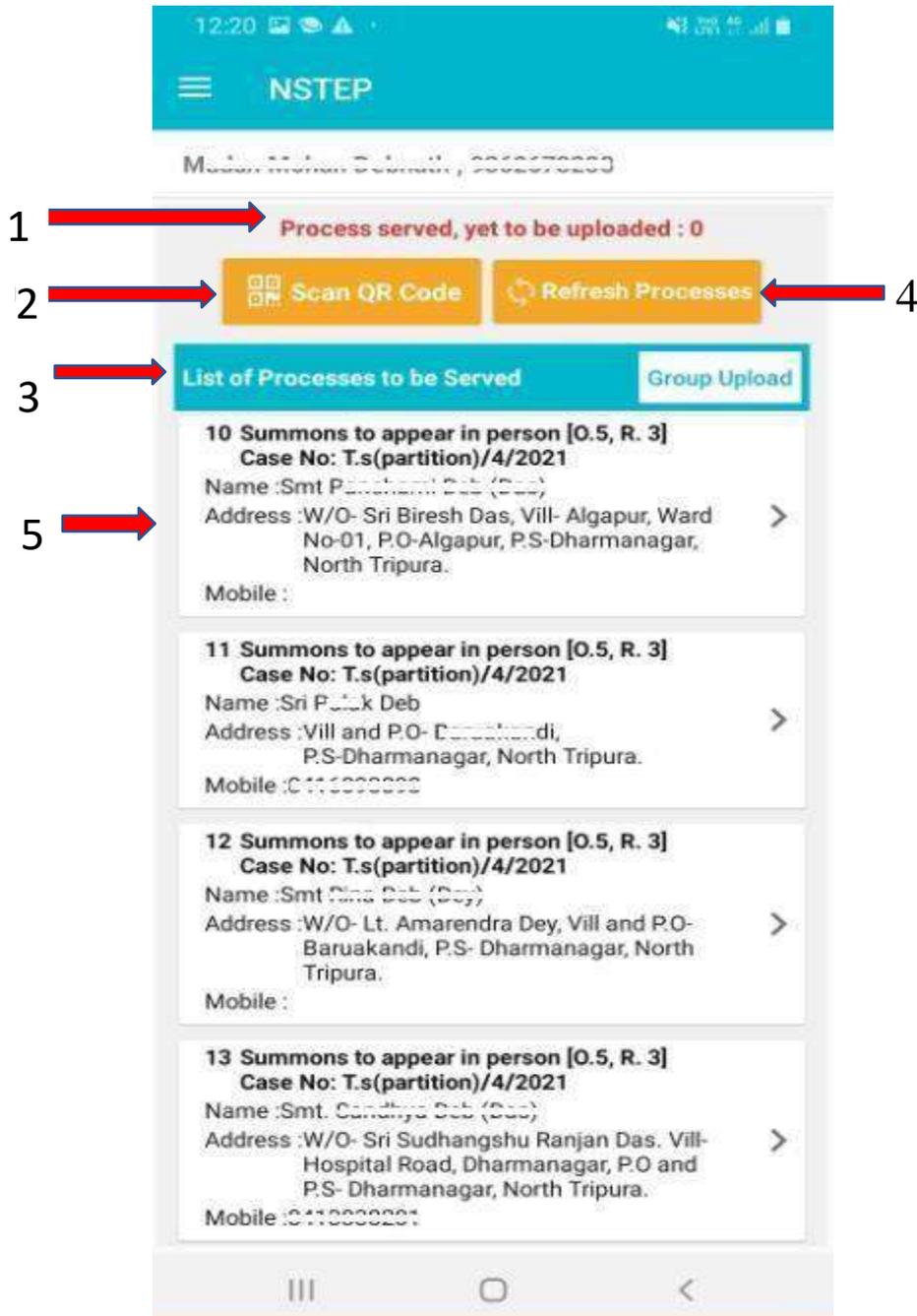
LOGIN

The screenshot shows the login interface of the NSTEP Mobile App. At the top, the status bar displays the time 3:14, signal strength, Wi-Fi, and 36% battery. The app's logo, featuring a scale of justice, is centered above the text "National Service and Tracking of Electronic Processes". Below this, there are four main components: a state selection dropdown menu currently showing "Tripura", a text input field for the "Mobile Number", another text input field for the "OTP Password", and a prominent blue "LOGIN" button. Red arrows point from numbered instructions to each of these elements. At the bottom of the screen, a standard numeric keypad is displayed, with a "Done" button in blue.

1. Select State
2. Enter Registered Mobile number.
3. Enter OTP Password that is provided by the admin to be used with the registered mobile number.
4. Click Login

****Login into the app via entering the parameters as stated above in the Login Screen.**

VIEW ALLOCATED PROCESS LIST



Once logged in, we get to see the main screen which contains the following elements.

1. On the Top, App will display count of processes for which status needs to be uploaded on the server.
2. ‘Scan QR Code’ button is used to Scan QR Code of the case and displays list of processes belonging to that case.
3. List of processes to be served is displayed.
4. ‘Refresh Processes’ button is used to receive newly allocated process to the Bailiff.
5. Click on any of the process to view the process / e-summon in pdf format to get displayed.

**In this screen mostly used is the list of the processes allotted to Bailiff / Process Server as shown above.

VIEW PROCESS IN PDF FORMAT



After the Bailiff reaches the address of the party to whom process is to be served, he needs to tap on the process from the list which will display the process in PDF format.

After that he will hand over the physical copy of the process to the concerned party.

CAPTURE PHOTO



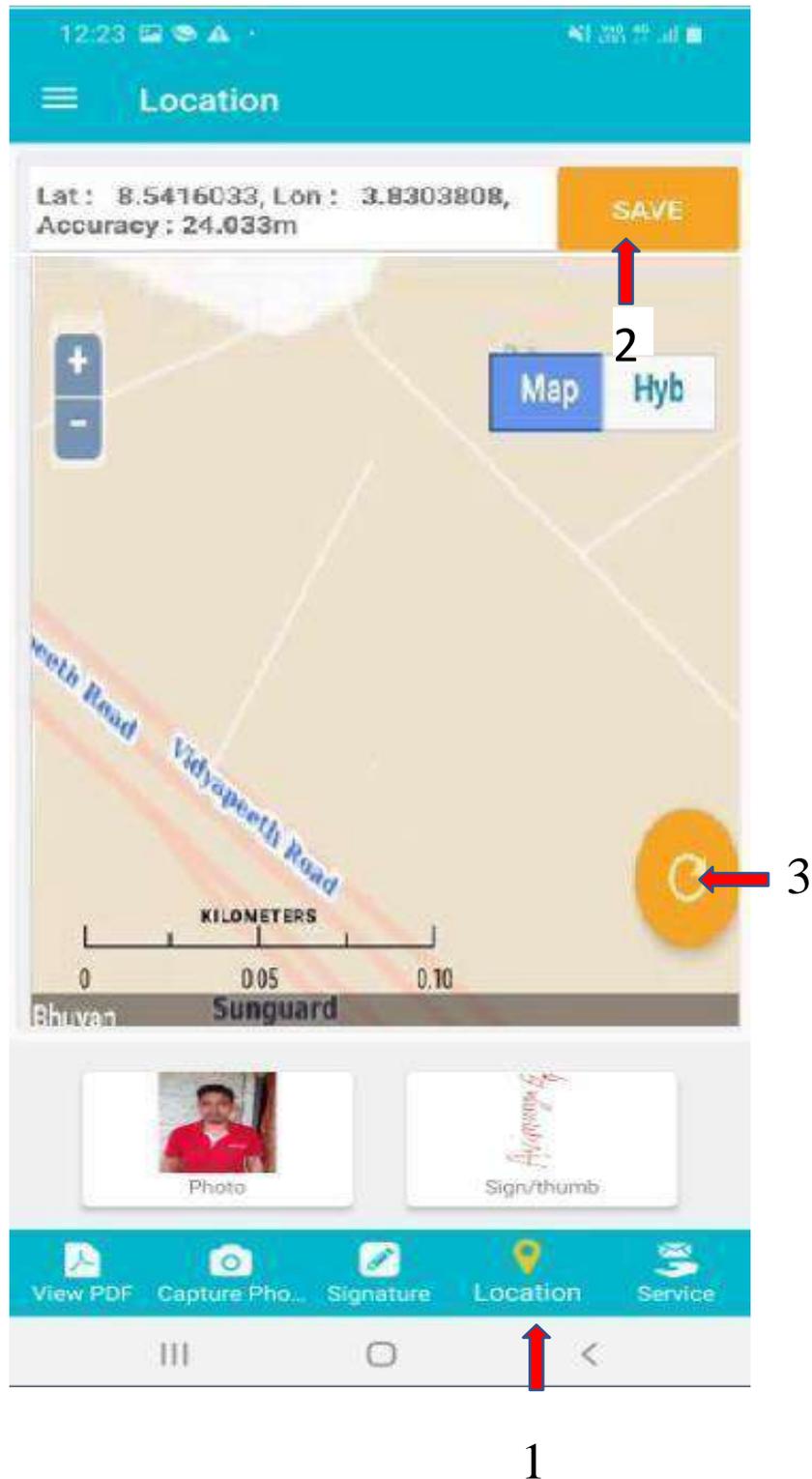
Select the Capture Picture option and the camera opens up to click photo. Click the photo of the person to whom the process is being served.

TAKE ON SCREEN SIGNATURE



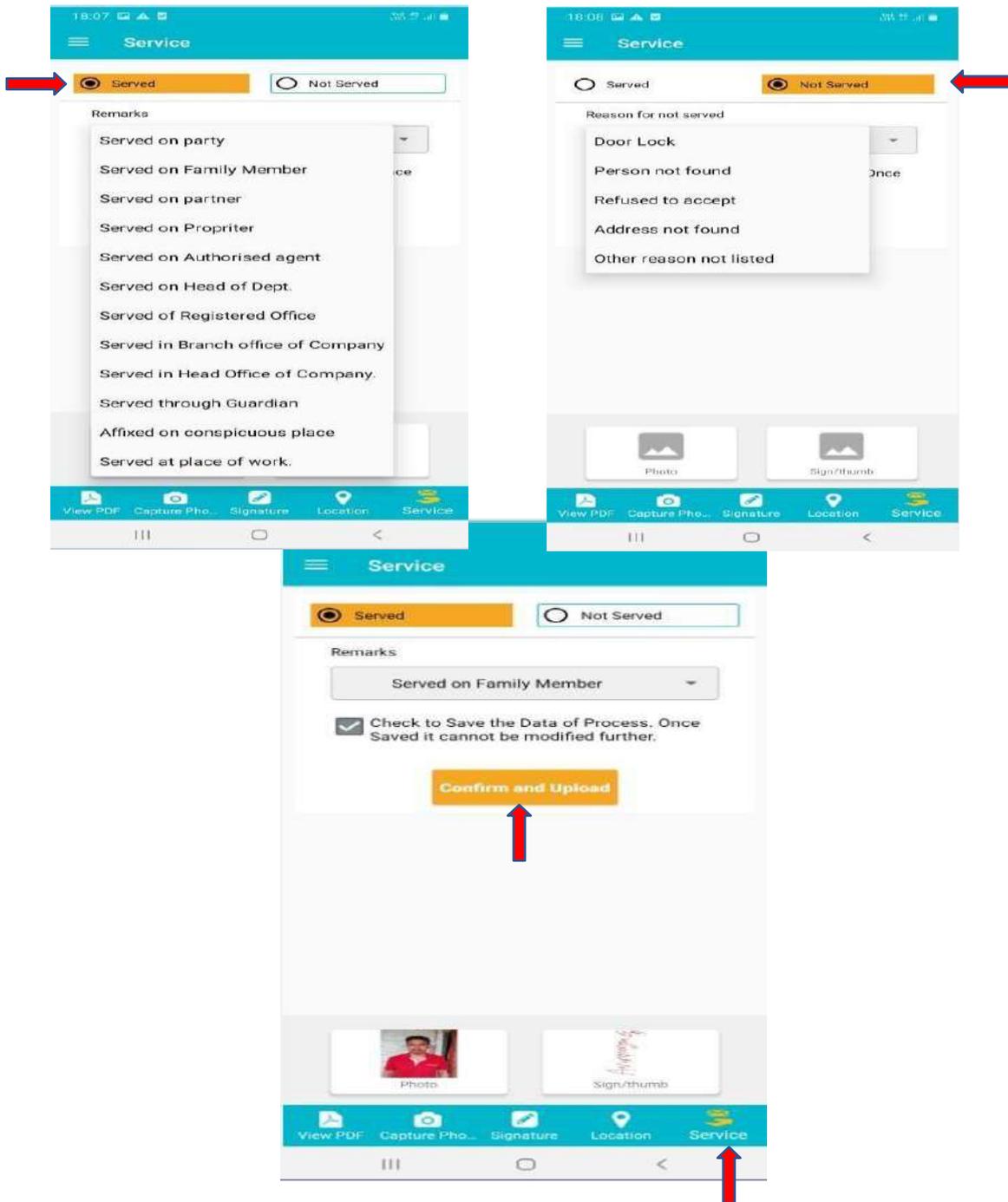
1. Then go to the Signature tab.
2. The person puts on screen signature.
3. Click on the tick button to save the signature

SAVE LOCATION



- 1 Then go to the Location tab. App displays the map for capturing mobile device location.
2. Bailiff needs to tap on 'Save' button to store the geo coordinates available.
- 3 -Reload/Refresh - floating button is provided to refresh the map.

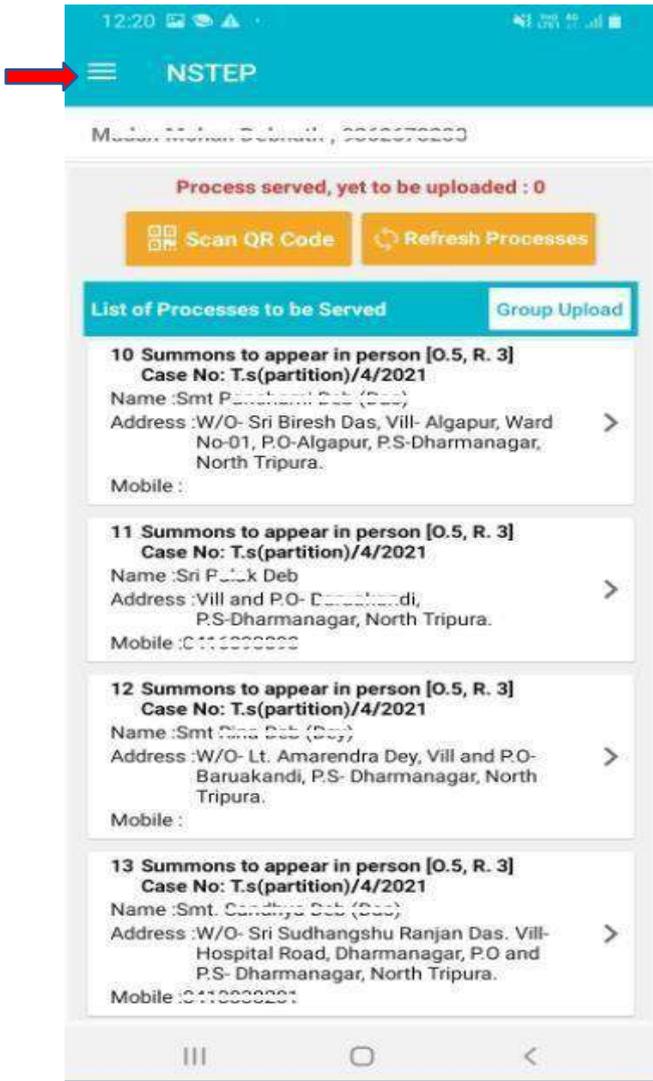
SERVICE SERVED / NOT SERVED STATUS



Then go to the Service field – Here Bailiff needs to mark the status of process as –Served or –Not Served with respective remarks or reason for serving or non serving. Bailiff needs to tick on ‘_Confirm and Upload’ to upload status of process to the server. This is the final step where we have to confirm and upload. After completion of all the above steps the process that was selected at first is deleted from the NSTEP Mobile app list. This brings to the completion of the serving of a process via NSTEP.

While uploading the status of processes to the server if any communication problem arises or device has network issues, then status gets uploaded locally on the mobile device of the bailiff. Bailiff can upload status of processes using ‘_UPLOAD’ menu available in Side Menu.

SIDE MENU



The Side Menu is found in all the screens of the application.

The Side Menu of App is used for various options like Upload, Delete and Logout.

All the above options are described below:

UPLOAD

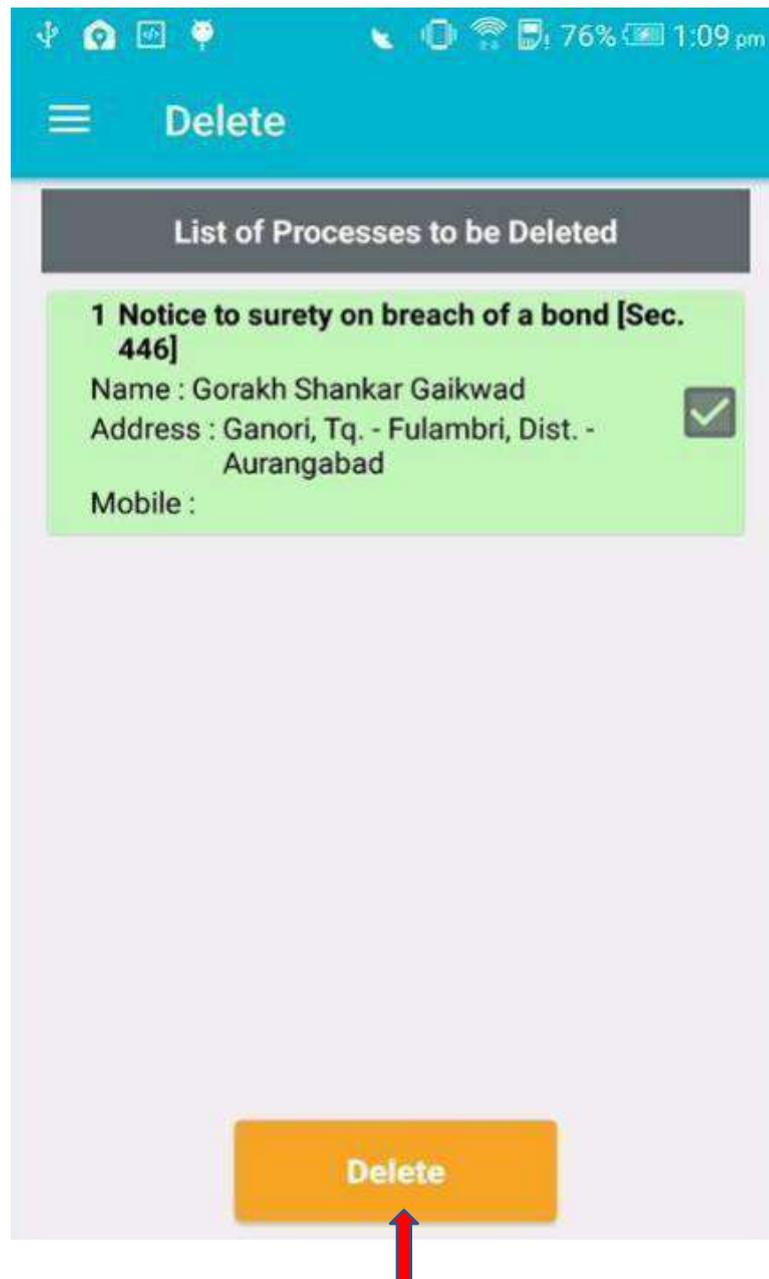
The screenshot shows a mobile application interface with a teal header containing a menu icon and the title "Upload". Below the header is a dark grey bar with the text "List of Processes Served". The main content area contains two entries, each with a title, name, address, and mobile number field, and a checkbox. The first entry is titled "1 Notice to minor defendant. [O. 32, R. 3]" and has a name field with "2" entered, an address field with "Warud Kazi, Tq. Dist. Aurangabad.", and a mobile field. The second entry is titled "2 Notice to respondent of the day fixed for the hearing of the appeal. [O. 41, R. 14]" and has a name field with "Firozkhan Ahmedkhan", an address field with "Quadriya Colony, Near No.5, Misarwadi,", and a mobile field. At the bottom of the screen is an orange button labeled "Upload". A red arrow points to the "Upload" button.

This option displays list of all served processes.

Bailiff can upload status of served processes to the server.

Re-uploading of process status can also be done from this option.

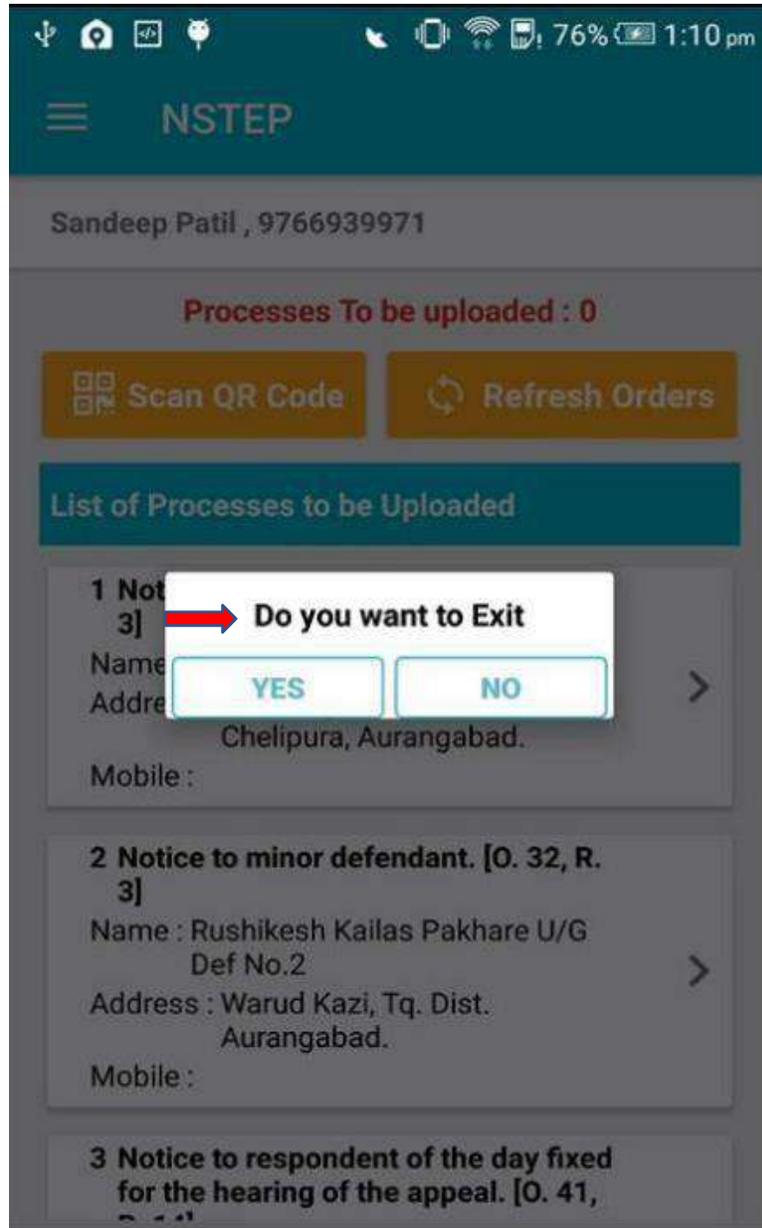
DELETE



This option displays list of processes whose status is already uploaded by Bailiff to the server.

Delete option is provided to the Bailiff to delete the processes from this list.

LOGOUT



This option is used to logout from the App.

2) Mode of manner of execution of warrant of arrest in execution of decree

Section 55, CPC - Arrest and detention

(1) A judgment-debtor may be arrested in execution of a decree at, any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within

one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Section 56, CPC- Prohibition of arrest or detention of women in execution of decree for money- Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Section 135 A. Exemption of members of legislative bodies from arrest and detention under civil process.-(1) No person shall be liable to arrest or detention in prison under civil process-

(a) If he is a member of-

- (i) either House of parliament, or
- (ii) the Legislative Assembly or Legislative Council of a State, or
- (iii) a legislative Assembly of a Union territory,
during the continuance of any meeting of such house of Parliament or,
as the case may be, of the legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of-

- (i) either House of Parliament, or
- (ii) the Legislative Assembly of a State or Union territory, or
- (iii) the legislative Council of a State,
during the continuance of any meeting of such committee;

(c) if he is a member of-

- (i) either House of Parliament, or
- (ii) a Legislative Assembly or Legislative Council of a State having both such Houses,
during the continuance of a joint sitting, meeting, conference or joint committee of the house of Parliament or houses of the State Legislature, as the case may be,
and during the forty days before and after such meeting, sitting or conference.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).

[Order 21, C.P.C]

Rule 38. Warrant for arrest to direct judgment-debtor to be brought up.-Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Civil Court Rules and Orders of Hon'ble Gauhati High Court [Chapter 10, Rule 200- 202]

200. Whenever a person who has been arrested under a civil warrant appears to be too ill to be removed from his residence or other place where he may be found after his arrest and before he is brought to Court, the officer who has arrested such a person shall forthwith report the matter to the Court and shall remain with the prisoner and retain him in his custody until the order of the Court is obtained under section 59(2), Civil Procedure Code.

201. All Civil Courts when committing judgment-debtors to prison, shall, for the information of the Jail authorities, enter the amount due on the date of the decree and the interest and costs of execution subsequent to the decree, separately in the warrant.

202. Warrant for release should not be despatched by a Court after sunset, or, if so despatched, should be endorsed with instructions for release as early as possible next morning.

3) Procedure of execution of warrant of attachment of movable properties, immovable properties and agricultural produce

Provisions under Code of Civil Procedure

Section 60- The following properties are liable to attachment and sale in execution of decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefits, whether the same be held in the name of judgment debtor or by another person in trust for him or on his behalf. However above said provision is subject to certain exceptions as enumerated in Code of Civil Procedure.

Section 61- Partial exemption of agricultural produce- The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgmentdebtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Section 62- Seizure of property in dwelling-house-

(1) No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Provisions Under Order XXI of C.P.C

43. Attachment of movable property other than agricultural produce in possession of judgment-debtor.-Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

43A. Custody of movable property.- (1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,-

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced-

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.

44. Attachment of agricultural produce.-Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,-

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last

resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45. Provisions as to agricultural produce under attachment.-(1) Where agricultural produce is attached, the Court shall make such arrangement for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. Attachment of debt, share and other property not in possession of judgment-debtor.-(1) In the case of-

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court the attachment shall be made by a written order prohibiting,-

(i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the Court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Attachment of share in movables.-Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

49. Attachment of partnership property. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, 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 may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership and direct accounts and inquiries and make an 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, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (3) shall be served on the judgment-debtor and on his partners or such of them as are within India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within [India].

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

50. Execution of decree against firm.-(1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 30 of the Indian Partnership Act, 1932 (9 of 1932).

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2) the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provisions of rule 10 of Order XXX.

51. Attachment of negotiable instruments- Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Attachment of property in custody of Court or public officer.-Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

54. Attachment of immovable property.-(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

Case Law Reference

i) When the decretal amount is deposited by the judgment-debtor in the Court then the Court has the jurisdiction to decide the rateable distribution; *Lanka Suryaprakash Rao v Gadigatla Venkaramna Chowdary, AIR 1994 AP 53.*

ii) Attachment in execution of decree shall not supersede the provisions of Order 38, rule 11. Question of reattachment in subsequent execution proceedings does not arise. *S. Janakazadas v. C.M. Raj Mohan, AIR 1994 NOC 168 (Mad).*

Provisions of Civil Court Rules and Orders of Hon'ble Gauhati High Court

[Chapter 10]

A. Attachment of immovable property

163. Every application for attachment and sale of immovable property shall in addition to other particulars required by law or any rule, contain a description of the property sufficient to identify it, its area and annual rent and shall also state clearly and specifically the nature and extent of interest of the judgment debtor, the character of the tenancy and the nature of the land, e.g. whether it is a tenure or under tenure (permanent or otherwise) or taluk, or estate, or an occupancy holding, or non-occupancy holding, or a holding at fixed rates, or under raiyati holding, or homestead land, etc., etc. Where the lands are situated within an area for which a record of rights has been finally published, it shall further contain a statement of the serial number or numbers or borne by the tenancy in the record of rights and of the area and rental according to such record.

164. Every application for an order for sale of immovable property shall, in addition to the verification and the particulars required by Order 21, rule 66(3) state everything known or believed by the persons verifying the same to exist which relates to the nature, or affects the value of the property to be sold, and shall further state that he is not possessed of any further information regarding it.

165. (1) When an application is for the attachment of any revenue paying or revenue free lands, or of any share in such lands, than in addition to the particulars required by Order 21, Rule 13, the area of the whole revenue paying or revenue free tenure shall be stated in the application in every case in which this information has been recorded in the Collector's register.

(2) When an application is made to a Civil Court for the attachment of an estate, or share of an estate, borne on the revenue roll of a district, the annual

amount of revenue for which the whole estate is liable shall be stated in addition to the particulars required by Order 21, Rule 14 to be specified in the authenticated extract from the register of the Collector's office.

166. All orders made by Civil Courts under Order 21, Rule 54 for the attachment of estates and shares of estates paying revenue to Government shall be immediately notified to the Collector of the district within which such estates or shares of estates are situated.

B. Attachment of movable property and livestock

168. (1) When property is made over to a custodian under Order 21-A, Rules 3(a) and 5, the Schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by-

- (a) the custodian and his sureties;
- (b) the attaching officer;
- (c) if willing, the person whose property is attached and made over;
- (d) two respectable witnesses.

(2) One copy will be made over to the person whose property is attached, one copy will be made over to the custodian and one copy will be retained by the attaching officer to be filed with the record.

169. Whenever attached property is kept in the village or place where it is attached under sub-clause (b) or Order 21-A, Rule 3, a schedule of the property shall be drawn by the attaching officer in duplicate and dated and signed by the attaching officer, two respectable witnesses and the person whose property is attached. A copy of the list shall forthwith be sent to the Court and the other copy shall be made over to the person whose property is attached.

170. When any property is taken back from a custodian, he shall be given receipt for the same.

171. The officer deputed to attach movable property shall be furnished with a certificate endorsed on the writ stating the period for which the fees and charges required under Article 3 of Rule 549 post have been paid.

172. When the property seized under Order, 21, Rules 43 to 45 is in the opinion of the attaching officer of a value not exceeding twenty rupees, he shall inform the judgment-debtor or in his absence any adult male member of his family that it will be sold at once without the issue of any proclamation under Order 21, Rule 66. If however, the decree-holder or the Judgment-debtor or any other person

acting on behalf of either of them in their absence, objects to such a course, the attaching officer shall refer the matter to not less than three respectable adult persons of the locality of whom a member of the local Gaon Sabha or Anchalik panchayat if then available, should be one and if the decision of the majority be that the value does not exceed twenty rupees, it shall be final and the attaching officer shall forthwith sell the property by auction after giving to intending purchasers such reasonable notice as is possible under the circumstances of the case. If the value determined exceeds twenty rupees the attaching officer shall deal with it as prescribed under Order 21-A, Civil Procedure Code, and supplemented by the rules of this Chapter.

Note-When property is sold under the provisions of this rule, no percentage or poundage as prescribed in Article 7, Rule 580, shall be levied.

173. Whenever attached property is kept in the village or place where it is attached and the judgment-debtor gives his consent in writing to the sale of the property without awaiting the term prescribed in Order 21, Rule 68, the attaching officer shall receive the same and forthwith forward it to the Court for orders with an accurate list of the attached property.

174. When attached property is made over to a custodian under Order 21-A, Rules 3(a) and 5 and such person enters into a bond as provided therein, it shall be brought by the attaching officer and form part of the record. The bond shall be stamped with a Court-fee stamp of eight annas in Assam under Article 6, Schedule II of the Court-Fees Act. If the stamp is not available locally, the attaching officer shall realise the required value of the stamp in cash and make it over to the Nazir with the bond as soon as he returns to the station and the Nazir will attach to the bond the necessary court-fee stamp.

175. The attaching officer shall be provided with a separate receipt book of the kind prescribed by Rule 152 of this Chapter and a receipt shall be given by him for all sums paid to him under these rules. The amount realised must immediately on return to the headquarters be paid into Court and dealt with in the manner laid down in the Account Rules.

176. If necessary costs are paid by the decree-holder to the attaching officer and the attached property is removed to the court-house under Order 21-A, Rule 4, Civil Procedure Code, the attaching officer shall file in Court a memorandum of the expenses attending the removal supported by vouchers. Any surplus left in his hands shall be paid into Court. If however, the decree-holder be available when the attaching officer files the memorandum of expenses attending the removal, any surplus left in his hands may instead be refunded to the decree-holder who shall give a receipt for the same.

177. The Nazir will from time to time inspect livestock brought to Court under Rule 5 of Order 21-A, and satisfy himself that the animals are being properly fed and cared for and report to the Court if they are ill or undernourished.

178. A register shall be maintained by the Nazir in the prescribed Form No.(R)18 showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R)19 for ordinary movables and livestock attached in execution cases whether they are produced in Court or left in the custody of a surety.

4) Procedure to execute a writ of proclamation of sale and of sale of movable and immovable properties

Provisions under Civil Procedure Code

Section 65- Purchaser's title

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Section 73- Proceeds of execution sale to be rateably distributed among decree-holders

(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :

Provided as follows:—

(a) where any property is sold subject to a mortgage or charge, the mortgage or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

First, in defraying the expenses of the sale;

Secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgement-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

[Order XXI, C.P.C]

Sale Generally

64. Power to order property attached to be sold and proceeds to be paid to person entitled.- Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Case Law Reference

(i) Attachment of property before judgment. Sale of the attached property- Held, only that part of the attached property to be sold which shall satisfy the decree. Judgment-debtor should be given an opportunity of hearing before sale; *Vinod Kant Gautam v. State Bank of India, AIR 1994 NOC 5 (HP)*.

(ii) In auction sale this is obligatory on Court that only such portion of property as would satisfy decree is sold and not the entire property; *Ambati Narasayya v. M. Subba Rao, AIR 1990 SC 119: 1989 Supp (2) SCC 693*.

(iii) Under this provision the executing court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words ‘necessary to satisfy the decree’ clearly indicate that no sale can be allowed

beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the court should stop at that stage- *Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma* (1977) 3 SCC 337.

65. Sales by whom conducted and how made.-Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. Proclamation of sales by public auction. - (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-

- (a) the property to be sold or, where a part of the property would be sufficient to satisfy the decree, such part;
- (b) the revenue assessed upon the estate or part of the state, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. Mode of making proclamation.-(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Time of sale.-Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least fifteen days in the case of immovable property, and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale.

69. Adjournment or stoppage of sale.-(1) The Court may, in its discretion adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

71. Defaulting purchaser answerable for loss on re-sale- Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer or other person holding the sale, and shall, at the instance of either the decree holder

or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72. Decree holder not to bid for or buy property without permission-

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) **Where decree holder purchases, amount of decree may be taken as payment-** Where a decree holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree holder.

72A. Mortgagee not to bid at sale without the leave of the Court.- (1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be,-

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.

73. Restriction on bidding or purchase by officers.- No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of movable properties

74. Sale of agricultural produce.-(1) Where the property to be sold is agricultural produce, the sale be held,-

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,-

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day, the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. Special provisions relating to growing crops.-(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. Negotiable instruments and shares in corporation.- Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument of share through a broker.

77. Sale by public auction.- (1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the

officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

79. Delivery of movable property, debts and shares.-(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. Transfer of negotiable instruments and shares. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:-

A.B. by *C.D.* Judge of the Court of

(or as the case may be), in a suit by *E.F.* against *A.B.*

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Sale of immovable property (Order 21)

82. What courts may order sales -Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

83. Postponement of sale to enable judgment-debtor to raise amount of decree. (1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. Deposit by purchaser and re-sale on default.-(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

85. Time for payment in full of purchase-money.-The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. Procedure in default of payment.-In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Notification on re-sale.- Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Bid of co-sharer to have preference.-Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Civil Court Rules and Orders of Hon'ble the Gauhati High Court

[Chapter 10]

179. (1) If the property to be sold is an estate or a share of an estate paying revenue to Government, and revenue the payable on account of such estate or share exceeds the sum of Rs. 500, the proclamation of sale shall be published in the official Gazette.

(2) This rule shall not interfere with the discretion of the Court under Order 21, Rule 67 (2), in directing, whenever it thinks fit a similar publication of the intended sale of any other property or properties attached in execution of a decree.

180. (1) The District Judge shall select a local news-paper or news-papers and notify the name or names to the public and the subordinate Courts.

(2) Thereafter, if any Court in the exercise of its discretion orders publication of a sale proclamation under Order 21, Rule 67 (2) in respect of a particular sale, it should be published in one of the newspapers selected by the Court from such approved list.

181. (1) Subject to the proviso in Order 21, Rule 43, sale of property in execution of decrees in Courts (not being Courts of Small Causes) shall commence

on a certain day in each month to be fixed by the District Judge for Courts at headquarters. For Courts at outlying stations, the sale dates in each month shall be fixed by the District Judge in consultation with the presiding Judges of those Courts or any of them as he may think fit.

(2) It will be in the discretion of the District Judge to divide the Courts at headquarters into as many groups as may be convenient for the speedy completion of sales. The days fixed for the sales of each Court or group of Courts may be consecutive or otherwise according to the number of sales to be held on each day and care must be taken to fix sale dates of each Court or group of Courts at such intervals that all sales advertised for a certain day are completed on that date.

(3) Sale dates of outlying Courts should be fixed on the same principle and where there is more than one Court in the same station sale dates of all the Courts should not ordinarily be fixed for the same day.

(4) The same days shall not ordinarily be fixed for the sale of both movable and immovable property.

Note-Sales must commence punctually at 11.30 a.m. and every endeavour should be made to complete the sales on the dates fixed in the sale proclamations, Judicial sale being an important function of the Court it is very desirable that presiding Judges should from time to time, have the sales conducted in the Court room in their immediate present.

182. All cases in which property, except property of the nature specified in the proviso to Order 21, Rule 43 or Rule 187 of this Chapter is to be sold at each place of sale, be entered in lists for each place in the prescribed Form No. (M)3, separate lists being maintainable for cases relating to moveable property and for those relating to immovable property. Such lists shall be prepared by the office and after they have been approved and signed by the presiding Judge sent to the Nazir who shall, at the conclusion of the sale, every day, return the lists to the presiding Judge for inspection.

Note- Form No. (M)3.- List of cases in which sales are to be held, shall be destroyed after six months.

183. At the stated hour, which shall be 11-30 a.m. upon each fixed date, the sales shall be commenced, and shall be carried on in the order stated in the lists above mentioned, unless otherwise directed by the Court. No sale shall continue after sunset; but sales shall be held from day to day and throughout the day except when the Court is closed, and until the lists are finished; provided that this rule shall not interfere with the adjournment of any particular sale according to law (Order 21, Rule 69).

184. The Court may, if it so desires and if circumstances justify it, adjourn the sale to a date within the month.

185. Except as regards property of the kind mentioned in Rule 187, sales in execution of the decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court or by such other person as the Court may appoint in this behalf in the immediate presence of the presiding Judge. Where this is not possible sales may be held in another place within the Court premises to be selected by the presiding Judge; provided that the Court executing the decree may if it seems fit, for reasons to be specified in writing, direct, in the interest of the parties that the sale be held at any other time and place within its jurisdiction, and when acting under this last-mentioned proviso, shall except for good reasons to the contrary, give preference as regards choice of time and place to the wishes of the Judgment-debtor.

Note 1- An order appointing an officer or other person to conduct a sale under Order 22, Rule 65 shall be in writing.

Note 2- When sales at district headquarters are not held in the immediate presence of presiding Judges, in their own courts, they may be held at any other place in the Court premises determined by the District Judge in consultation with the presiding Judges of other Courts, or any of them, as he think fit.

Note 3-The person conducting the sale is only a recorder of bids and his function ministerial. All bids must be placed before the presiding Judge. No sale is complete till the Court formally accepts the bid and declares the purchaser under Order 21, Rule 84.

Case Law Reference

- i) It is settled law that the provisions of Order 21, Rule 84 of the CPC, are mandatory and non-compliance thereof will make the sale a nullity. *Tapesh Chandra Bagchi -Vs- United Bank of India Ltd. and other A.I.R 1969 (A & N) 10.*
- ii) Having examined the language of the relevant rules and the judicial decisions bearing upon the subject, we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory; and upon non-compliance with these provisions, there is no sale at all- *Manilal Mohanlal v. Sayed Ahmed, AIR 1954 SC 349.*

- iii) *Seth Banarsi Dass v. Distt. Magistrate and Collector*, (1996) 2 SCC 689- The officer conducting the sale has the power to grant time to pay the price. In the absence of such facility being given, the auction purchaser must pay the full price at the time of the sale, otherwise the property is liable to be resold.
- iv) *Dhirendra Nath Goari v. Sudhir Chandra Ghosh*, (1964) 6 SCR 1001 : AIR 1964 SC 1300- A party who received the notice of the proclamation but did not attend at the drawing up of the proclamation or did not object to the said defect cannot maintain an application under Order 21, Rule 90 of the Code of Civil Procedure.
- v) *Jaswantlal Natvarlal Thakkar v. Sushilaben Manilal Dangarwala*, 1991 Supp (2) SCC 691- Under Order XXI, Rule 90 CPC, it is not sufficient for the party to contend that there was an illegality or irregularity in the conduct of the sale, he must also prove by adducing sufficient facts that some substantial injury has been caused to him as a result of the order under Order XXI, Rule 72 having been passed without such notice.
- vi) *Shafiqur Rehman Khan v. Mohd. Jahan Begum*, (1982) 2 SCC 456- If the identity of the property is established, but not otherwise, the decree will be executed and the decree- holders will be put in possession of the property in accordance with law.
- vii) *Kummathi Narayanappa v. Talari Akkulappa*, 1963 SCC OnLine AP 193 : (1964) 2 ALT 190 : AIR 1965 AP 215- Apart from publication from a local newspaper, the mandatory provisions of order XXI Rule 54(2) C.P.C. have to be followed Viz; that the sale proclamation has to be published at some place on or adjacent to the property by beat of drum or by any other customary mode, and a copy of the proclamation is required to be affixed on a conspicuous part of the property or in the village –Chavdil, otherwise it is a clear violation of the mandatory provisions and therefore, it has to be concluded that the sale has been held without proclamation.
- viii) *Shalimar Cinema v. Bhasin Film Corpn.*, (1987) 4 SCC 717- Court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. Though it may not be necessary for the court to make a valuation and enter it in the sale proclamation in every case, it is desirable at least in cases of sale of valuable property that the court make its valuation and enter it in the sale proclamation.

186. When a Court does not accept a bid or orders resale, the reasons therefore shall be recorded.

186(A). When leave to bid is necessary, under Order 21, Rule 72, Civil Procedure Code, in cases in which the Court may consider that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Court for reasons to be recorded, to give leave to bid at the sale, only on condition that applicant's bid shall not be less than the amount so fixed by the Court, which amount shall, as far as practicable, be determined with reference to the probable marked value of the property or of the lot or lots into which the property is divided for sale.

187. All sales of livestock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets which have not been brought to Court, shall unless the Court otherwise directs, be held at such market in the neighbourhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expense in conveyance and carriage.

188. If it appears to the Court that immediate sale of movable property in the custody of the Nazir is necessary; e.g., by reason of its being perishable, it may authorise him to sell the same by public auction and may give such directions as to date and place of sale and manner of publishing the same as the circumstances of the particular case demand.

189. The proceeds of a sale effected in execution of a decree will only be paid out of Court on an application made for that purpose in writing.

190. (1) When a decree-holder applies for leave to purchase under Order 21, Rule 72, no order to set off the purchase money against the amount of the decree shall be made on that application. If a decree-holder-auction-purchaser desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

(2) Upon the hearing of such petition, the costs of execution including the poundage fee shall be added to the decree, and in cases in which the amount of the purchase money exceeds the amount of the decree and such costs, the decree-holder-auction-purchaser shall pay into Court the sum of 25 percent. On the balance of the purchase money after deducting the amount of the decree and of such costs and shall pay the balance at the expiration of fifteen days in accordance with Order 21, Rule 85, Civil Procedure Code.

191. (1) When a sale is set aside under Order XXI, Rule 89, 90 or 91 the entire purchase money including the amount deducted for payment of the poundage fee, should ordinarily be refunded to the auction-purchaser.

(2) When application to set aside a sale is made under Order XXI, Rule 89, Civil Procedure Code, the court may direct the application to deposit the poundage fee and other costs before entertaining the application.

(3) When application to set aside a sale is made under Order XXI, Rule 90, Civil Procedure Code, the Court may direct the applicant to deposit the poundage fee and may then include the amount in the costs (if any) recoverable from the executing creditor.

(4) When a sale is set under Order XXI, Rule 91, Civil Procedure Code, the Court may make an order enabling the auction-purchaser to recover the poundage fee as part of his costs from the executing creditor.

192. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act (XI of 1878), are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the said Act.

193. Civil Courts notifying sales of any estate or shares of an estate to the Collector, after the same have been confirmed, should send to the Collector, punctually, in the first week of each quarter, a statement of the sales of estates or shares of estates, which have been confirmed during the previous quarter. A blank statement is to be submitted if no sales have been confirmed.

Note-The statement should be submitted in Form No. (S)20.

194. Whenever the Civil Courts may have occasion to sell, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, they shall, on confirming the sale, forward a copy of the sale certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

195. When after the confirmation of a sale of immovable property an application is made for a certificate of sale and the requisite stamped paper is filed, a draft shall be made in the prescribed form and the original prepared from the draft.

Note 1- If the connected record has been despatched to the District Record Room, under the rules for the periodical transmission of records, the Court should call for it for preparation of the sale certificates and no cost is livable from the party for transmission of the record.

Note 2- Applications for sale certificate need not bear any court-fee stamp. If no stamps are filed with the application for sale certificates the application should be rejected. If the application is filed with insufficient stamps, reasonable time shall be allowed to file the deficit on failure to make up the deficiency within the time allowed, the application shall be rejected. In all cases of rejection, the stamps originally filed with the application shall be return to the applicant, whose dated receipt shall be taken in the remarks column of Form No. (R)27.

Note 3- For form of certificate of sale of land, see Form No. (J)47, Vol. II.

Note 4- Sale certificates prepared shall be notified as soon as they are ready for delivery, in a register in Form No. (M)4, with necessary modifications. Entries will be made in the register from day to day and signed by the presiding Judge, who will see that the register is laid at some conspicuous part of the Court room for the information of all concerned.

Note 5- No applications for copies of sale certificates shall be entertained by Civil Courts. If such copies are required, application may be made for the purpose to the Registry Office.

196. (1) All certificates of sale of immovable property, besides showing as accurate a description of the property sold as the nature of each case will permit, shall invariably mention the date on which the sale became absolute.

(2) The following particulars should be inserted in every case,-

- (i) The "addition" (as defined; section 2 of the Indian Registration Act, 1908), of the person who is declared to be the purchaser;
- (ii) Particulars sufficient to identify the property, as required by Section 22 (2) of the same Act;
- (iii) The name of each registration sub-district in which any party of the property is situate.

(3) Where necessary the following particulars may be given in a Schedule to the sale certificate-

- (i) Whether the property sold is subject to encumbrances, if so, the exact nature of the encumbrances. This must be in accordance with what is stated in the sale proclamation;
- (ii) Area;
- (iii) Boundaries;
- (iv) If the property sold is a whole revenue-paying estate then tauzi number on the rolls of the Collectorate;

- (v) If it is a share of a revenue-paying estate, and if separate account has been opened in respect of the same then the number of the separate account;
- (vi) The amount of revenue payable for the same;
- (vii) If the property sold is a tenure, then the name of the proprietor, and whether the name of the judgment- debtor is recorded in the proprietor's books;
- (viii) If there has been a record-of-rights, then the cadastral survey number of the property sold.

(4) The description given of the property in the certificate of sale must correspond with that given in the sale proclamation prepared under Order 21, Rule 66 of the Code.

197. After the sale certificate has been prepared from the draft under Rule 195 ante, both sale be carefully compared. If they are found to agree, the sale certificate shall be made over to the party applying for it and draft shall be certified to be a true copy and forwarded to the Registry Office without delay. On each copy the amount of stamp duty paid on the original certificate under Article 18 of Schedule I of the Indian Stamp Act, 1899, as amended by the Assam Stamp (Amendment) Act, 1956 must be noted. Under Article 24(a) of the same Schedule such copies are themselves required to be stamped. In their preparation, however, forms printed on paper of a uniform size, and having a margin for binding, must be used.

198. (i) For the purpose of forwarding copies of sale certificates to the Registry Office, Civil Courts shall use High Court Form No. (S)2, i e., Assam Schedule VII, Form No. 56.

(ii) Copies of sale certificates shall ordinarily be sent in batches accompanied by a single form; if necessary use should also be made of reverse of the top half of the form for noting particulars of the copies despatched.

(iii) The printed form must be used by all Civil Courts irrespective of whether they are situated at the same station as the Registry Office or not.

(iv) Copy of sale certificates, with the prescribed form duly filled in, shall, in the case of courts located at the same station as the Registry Office, be sent by peon and in other cases by unregistered post.

Note-Acknowledgments of the receipt of copies of sale certificates sent to the Registry Office by registered post shall be numbered and noted in Column 12 of the register Form No. (R)27, they shall then be filed in serial order on a new file and made up ultimately into yearly bundles which shall be preserved for three years.

199. Each court shall maintain a register in the prescribed Form No. (R)27 in which only those applications for sale certificate which have been filed with the requisite stamps or with insufficient stamps shall be entered in serial order.

Note- This register shall be examined at least once a week by the presiding Judge, who particularly see that no undue delay is made in calling for records from the record-room or in the preparation of sale certificates and the fact of such examination having been made together with such instructions or remarks as may appear necessary shall be entered by him.

5) The procedure to be followed to execute the warrant to give possession of land.

Wherever, commission is required to be ordered in any execution proceeding for the purpose of identification of decretal land or for any other purpose, provision of Order 26, CPC can be applied.

Order 26, rule 9, CPC- Commissions to make local investigations- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profit or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Order 26, rule 13, CPC- Commission to make partition of immovable property- Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Order 26, rule 18A, CPC- Application of order to execution proceeding- The provisions of this order shall apply, so far as may be, to proceedings in execution of a decree or order.

[Provisions Under Order XXI of C.P.C]

35. Decree of immovable property- (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.

Case Law Reference

- i) Execution of decree for possession of immovable property objected by third party not bound by decree- Held, the executing Court should consider his objections in view of Order XXI, rule 35, *Inder Singh v. Piara Singh*, AIR 1993 P & H 83.
- ii) In a decree for delivery of immovable property where land in dispute consists of consolidation holding and pre-empted holding and capable of being extricated from conglomerated holding, relief of actual possession cannot be denied; *Harsuck Singh v. Harba Singh*, AIR 1990 SC 1978.

36. Decree for delivery of immovable property when in occupancy of tenant.- Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

95. Delivery of property in occupancy of judgment-debtor.-Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate

in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

96. Delivery of property in occupancy of tenant.-Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser

[Order 21, CPC]

97. Resistance or obstruction to possession of immovable property.- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Case Law Reference

(i) A third party in possession of a property claiming independent right of a decree for possession of immovable property under execution, could resist decree by seeking adjudication of his objections under Order 21, rule 97; *Shreenath v. Rajesh*, AIR 1998 SC 1827/(1998) 4 SCC 543

(ii) The execution court is enjoined to adjudicate the claim or the objection or the claim to resistance. As seen, Rule 97 enables such a person to make an application which must be independent of the judgment-debtor or a person having derivate right from the judgment-debtor. The applicant in his own right must be in possession of the property. *Noorduddin v. K.L. Anand (Dr)*, (1995) 1 SCC 242 .

(iii) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed

in the normal manner by obtaining warrant for possession under Order 21, Rule 35 then the decree-holder has to move an application under Order 21, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 98, *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, (1997) 3 SCC 694 .

(iv) Rule 97 of Order 21 specially provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property, such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the Court to proceed to adjudicate upon such complaint in accordance with the procedure laid down; *Silver line Form Pvt. Ltd. v. Rajiv Trust*, AIR 1998 SC 1754/(1998) 3 SCC 723.

(v) Decree for execution of sale deed in favour of the decree holder-District Registrar during pendency of the execution case, communicated to the executing court that the decreetal land was protected forest land and not transferable as per Government rules- Communication treated to be petition under Order 21, rule 99 CPC, *Supriya Debbarma V. Rebati Mohan Jamatia & ors*, (2014)1 TLR 657

98. Orders after adjudication.- (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Civil Court Rules and Orders of Hon'ble Gauhati High Court

[Chapter 10]

Resistance to Execution (Anticipated and Actual)

203. (1) A decree-holder praying for Police help in execution shall state in his application the full reasons thereof, supported, if required by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of Police help. If upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of Police of the District for such Police aid as the latter may be able to give in the execution of the writ. It is to be understood that Police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

(2) The requisition to the Superintendent of Police should state in brief the need for such aid, the number and rank of men required, the nature of the process and the place where it is to be executed. It will be for the Superintendent of Police to decide how best and when he will be in a position to offer the help sought.

(a) Costs for Police help shall be charged in executing decrees in cases where such help is considered necessary because of apprehensions of violence or obstruction from the judgment-debtor himself. The party concerned shall be ordered to deposit such costs for the service as the Superintendent of Police may require under the rules of the department;

(b) Costs for Police aid shall not be levied in cases where Police help is required because of conditions of a general character, such as the locality being in a disturbed state or a class of people, similarly situated, being likely to make a common cause with the judgment-debtor and resist execution.

(c) In cases where a levy of costs is ordered, such costs shall be added to the costs of execution.

Note 1-It shall be the duty of the Court to decide in each case under which category it falls, that is whether Police aid should be given under Clause (a) above in which case the party has to deposit necessary costs or under Clause (b) in which case no costs are to be charged.

Note 2- Police aid shall not be requisitioned or taken in effecting the arrest of judgment-debtors unless it is clear that no other means will possibly achieve the required result.

204. (1) When a process-serving peon or other officer in execution or service of any process entrusted to him (e.g. writ of attachment, warrant of arrest, etc.) is resisted or obstructed by the judgment-debtor or any other person; or when property duly attached or the person duly arrested is illegally snatched away from his custody by any of them, he shall immediately send a report to the Court concerned from the place of occurrence.

(2) If the Court upon a consideration of the facts disclosed in the process-server's declaration or affidavit (when called for), supplemented, if necessary, by the examination on oath of the process-server or any other person alleged to have been present at the occurrence, is of opinion that a complaint to a Criminal Court is necessary in interest of justice, it shall make a complaint accordingly, carefully observing the provisions of Section 195 (1)(a) Criminal Procedure Code.

(3) If the case is of sufficient importance and the Court is of opinion that a competent lawyer should be engaged for the prosecution for the ends of justice and better conduct of the case, it should write to the District Judge who will then, if considered necessary, move the proper authority for the purpose.

(4) The Court should, after the termination of the criminal case (if any), make a request to the Criminal Court to forward a copy of the judgment with a view to see whether there has been any adverse finding or comment against the conduct of the peon concerned, necessitating the taking of disciplinary action.
