**APPLICATION UNDER ORDER 21, RULE 2(2), C. P. C.**

IN THE COURT OF....................

Suit No..................... of 19........................................

C. D.................................;................................. Plaintiff

*versus*

C. F................................................................ Defendant

The applicant most respectfully submits as under: —

1. That a decree for payment of Rs..................... together with Rs. .................... as costs was passed by this Hon’ble Court against the applicant in suit No..................... of 19.................... which was decreed on.................... between .................... plaintiff *versus....................* Defendant.

2. That the total decreetal amount is Rs.....................

3. That out of the total decreetal amount the applicant has paid Rs. .................... to the decree-holder out of the Court in part satisfaction of the decree and has obtained a duly signed receipt therefor from the decree-holder which is annexed hereto and marked as Annexure A-l.

4. That the decree-holder has not certified the payment made to him by the applicant in this Hon’ble Court so far.

**PRAYER**

It is therefore most respectfully prayed that this Hon’ble Court may be pleased to issue notice to the decree holder to show cause as to why the payment should not be recorded as certified.

It is accordingly prayed.

Applicant

Through Advocate

Place:.....................

Dated:.....................

**CASE LAW**

***Order 21 Rule 2***

**CERTIFICATION FOR ADJUSTMENT — CONDITIONS FOR.**

The rule is well-established that there can be no certification of an adjustment between the decree-holder and the judgment-debtor O. 21, R. 2 after an auction sale is held in a case where a third party’s interest intervenes. In such a case, the Court has no alternative but to confirm the sale under Order 21, Rule 92 of the Code1. The Judicial Committee or the Privy Council in dealing with Order 21, Rule 2 held that an adjustment between the decree-holder and the judgment-debtor come at any time before the commission of an execution sale cannot nullify the decree by taking away the very foundation of the Court’s power to execute the decree, viz., the existence of a decree capable of execution1a.

**SCOPE OF THE RULE**

If an auction sale is to be disregarded the adjustment or full satisfaction of the decree must be made under O. 21, R. 2 before the sale. In such a case the sale is altogether void and without jurisdiction and need not, therefore, be set aside and there is no scope for making an application for setting aside the sale2.

**APPLICABILITY OF THE RULE.**

The law is clear that this Rule applies to adjustment of a money decree as well and the executing Court is bound to execute the decree even if the decree had been satisfied fully out of Court, unless the action had been certified or recorded by the executing Court in the manner provided by the Rule-3.

**CONDITIONS FOR APPLICABILITY OF THE RULE.**

Before the provisions of this Rule can apply, the decree must be a money decree in one form or another. Where the decree is for possession, injunction, etc., pure and simple without there being any direction for payment of money in any shape or form, the provisions of this Rule will have no application4.

1. Seth Nanhemal v. Umrao Singh, (1931) 58 I. A. 50(56).

la. Mohd. Yunus v. Mohd. Mustaqim and others, (1983) 4 S. C. C. 566: A. I. R. 1984 S. C. 38: (1984) 1 S. C. R. 211.

2. Parbatibai v. Dr. Smt. Laxmi Devi, 1972 M. P. L. J. 155.

3. A. V. Kannappa Mudaliar v. V. C. Chella Kutti Udayanr, (1972) 2 M. L. J. 7: 85 L. W. 187.

4. Kunjlal v. Jagdish, 1972 Kash. L. J. 142.

**WARRANTS OF RESTORATION OF POSSESSION.**

***Order 21, Rule 32***

Warrants of restoration of possession can be issued in favour of decree holder under Order 21 Rule 32 CPC.5

**MEANING OF ‘ADJUSTMENT’.**

An agreement between decree-holder and judgment-debtor to divide the disputed property and exercise full ownership over the part which was set apart to their respective shares, amounts to adjustment of the decree notwithstanding the executory character of the contract6.

**APPROPRIATION OF DEPOSIT OF DECREETAL AMOUNT.**

When the amounts paid by the debtor would be carrying counter interest, a certain portion of the decreetal amount relating to costs and current interest would not be carrying any interest at all. In order to avoid an incorrect result, the proper method that should be adopted is to appropriate the payments made by the judgment debtor first towards costs and interest payable under the decree and if any balance remains after such appropriation towards discharge of the principal amount7.

**LIMITATION FOR PAYMENT OUT OF COURT AND CERTIFICATION BY DECREE-HOLDER.**

There is no period of limitation prescribed for a certification by the decree-holder. No particular form of certification has been prescribed. A statement as to payment or adjustment made in column 5 of an execution application is, therefore, a proper certification and the execution Court is not precluded from recognising it under this Rule. The adjustment effected between the parties must be regarded as having been certified by the decree-holder and the Court executing the decree is not barred from recognising it8.

**EXECUTION PETITION — CIVIL COURT CANNOT REFER MATTER OF IMPLEMENTATION OF DECREE TO POLICE DURING PENDENCY**

***Order 21 Rule 32***

In an execution petition under Order 21 which is pending before the Executive

5. Nanda v. Ram Dhan, 2001 (2) CCC 330 (P&H).

6. P. Kunhi Kanan Nair v. N. Krishan, A. I. R. 1972 Ker. 90.

7. L. I. G. v. B. R. Honnappa, (1972) 2 Mys. L. J. 169.

8. Ram Kumar Bhargava v. Chaubey Rudra Datta, A. I. R. 1966 All. 556.

Court, at no point of time the Civil Courts can refer the matter of implementation of the decree, to the police. 9

**WARRANTS OF RESTORATION OF POSSESSION.**

***Order 21, Rule 32***

Warrants of restoration of possession can be issued in favour of decree holder under Order 21 Rule 32 CPC.10

9. Golikota Reddy v. Goli Raja Gopala Reddy, AIR 2001 AP. 110.

10. Nanda v. Ram Dhan, 2001 (2) CCC 330 (P. & H. ).