**APPLICATION UNDER ORDER 21, RULE 97, 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 possession of the property mentioned in the decree dated .................... of this Hon’ble Court was passed in favour of the applicant against the judgment-debtor.

2. That on.................... (date) the applicant obtained from this Hon’ble Court a warrant for possession of the house of the judgment-debtor and on .................... (date) the court Amin visited the house of the Judgment Debtor to execute warrant of possession.

3. That the decree could not be executed due to resistence and obstruction caused by the judgment-debtor and the members of his family.

4. That the resistance and obstruction caused by the judgment-debtor and by other members of his family was without any just cause.

**PRAYER**

It is, therefore most respectfully prayed that this Hon’ble Court may be pleased to issue notice to the opposite parties and investigation may be ordered to be made in the matter and thereafter orders may be passed to put the applicant in possession of the property.

It is accordingly prayed.

Plaintiff

Through Advocate

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

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

**case law**

***Order 21 Rule 97***

**LIMITATION FOR PROCEEDINGS UNDER THE RULE**

Article 167 of the Limitation Act gives a right to the decree-holder to initiate proceedings under this Rule within 30 days from the date of resistance. The law does not contemplate removal of cause of action or extention of limitation for initiating a proceeding under this Rule merely by putting second or any number of subsequent applications being resisted every time by the same person and initiating a proceeding within 30 days of the second or the last resistance1.

**LIMITATION IN CASE OF TWO SUCCESSIVE OBSTRUCTIONS.**

What Article 129 of the Limitation Act of 1983 does is to bar the making of an application about the resistance or obstruction which was made more than 30 days ago. If a second obstruction is made, the complaint is not about the first obstruction but is about the second obstruction and since the law allows the decree-holder to make such an application, it cannot be said that the provisions of Article 129 are made nugatory2.

**WHAT SHOULD BE STARTING POINT OF LIMITATION.**

Each obstruction made in execution of warrant for delivery of possession provides a fresh cause of action for filing an application under this Rule3.

**APPLICABILITY OF THE RULE**

What is required to be shown in order to maintain an obstruction to delivery of property is really possession of the person so obstructing. But proof of such possession would be of no avail unless it is further established that possession was not obtained from or under the judgment-debtor, for if it be otherwise, it would naturally be subject to the result of the suit. Any transaction during pendency of the suit would be hit by the rule of his pendens and therefore possession of person obstructing, based upon his coming into possession *pendente lite,* would of course be not sufficient. That is why what has to be shown is independent possession4.

If an order is passed by an executing Court after 1st February 1977 disposing of an application under this Rule which was pending on that date, the order passed by the executing Court is appealable under the provisions of the amended Code and the aggrieved party has no right to file a suit under the provisions of the Code as it stood before the amendment5.

**APPEAL AGAINST ORDER**

Order under Rule 97 in accordance with Rule 98 is only appealable, *and* revision is not competent6.

**NON-MAINTAINABILITY OF OBJECTION BY MINOR SON OF JUDGMENT-DEBTOR.**

Where the suit for eviction had been decreed and the decree became final, the objection filed by a minor son of the judgment-debtor before execution of the decree would not be maintainable7.

**EXECUTION PROCEEDINGS**

***Order 21 Rule 97***

The suit in respect of same subject matter of property filed after intimation of execution proceedings by appellant who is not a party to the decree is not maintainable.8

**RECORDING OF COMPROMISE**

The order dismissing the execution petition as withdrawn cannot be taken as recording of the compromise by the executing court.9

1. Smt. Madora Bibi v. Mohd Mateen, A. I. R. 1980 All. 206: 1980 (6) All. L. R. 246.

2. Parmeswaran v. Kumara Pillai, A. I. R. 1981 Ker. 29.

3. Narayan and another v. Smt. Kalyan Bai, (Raj. H. C. ) 1985 (2) C. C. C. 584.

4. Raghavan Nair v. Bhagyalakshmi Amma, A. I. R. 1972 Ker. 125: 1972 Ker. L. T. 339.

5. Dattatray v. Mangal, A. I. R. 1983 M. P. 82: 1983 M. P. L. J. 23: 1983 Jab. L. J. 242.

6. Smt. Santilal Paul v. Nandkishore Mukherjee, A. I. R. 1981 Cal. 219: (1981) 1 C. H. N. 401: (1981) 85 C. W. N 497.

7. Kishan Kumar Kanaujia v. Smt. Rakesh Gupta, A. I. R. 1983 All. 256.

8. Prasantha Banerji v. Pushpa Ashoke Chandani, AIR 2000 SC 3567 (2).

9. Lakshmi Narayanan v. S. S. Pandian, AIR 2000 SC 2757.