Minutes Of The Monthly Meeting Of The Judicial Officers, Chitral Held On 26.10.2019 In The Chamber of Hon'ble District & Sessions Judge, District Chitral.

The Monthly Meeting of Judicial Officers of District Chitral was convened on 26th October at 01:20 PM in the Chamber of Hon’ble District & Sessions Judge District, Chitral.

Mr. Javeid-ur-Rahman, Hon'ble District and Sessions Judge, Chitral chaired the meeting and attended by the following Judicial Officers:

1. Mr. Muhammad Khan Additional District & Sessions Judge, Chitral (On Zoom)
2. Mr. Nasir Khan, Senior Civil Judge (Admin), Chitral
3. Mr. Muhammad Irfan, Senior Civil Judge/AIQ (Judicial), Chitral
4. Mr. Aziz Ahmad, Civil Judge-II/IQ, Chitral
5. Mr. Abid Ur Rahim, Civil Judge-IV/IQ, Chitral
6. Mr. Qaiser Shalizad, Civil Judge-VI/IQ, Chitral
7. Mr. Jauhar Ali, Civil Judge-VII/IQ, Chitral
8. Mr. Farmanullah Civil Judge-I/IQ, Drosh, Chitral
9. Mr. Sajid Ali, Civil Judge, Booni, Chitral (on Zoom)

The proceedings commenced with recitation of few verses from the Holy Quran.

After brief review of the issues discussed and resolved in the previous meeting, the Chair expressed his satisfaction over the achievements in line of given directions.

Vide letter No. SDJ/PHC/REG/26-V.11-1-34/5488-5521 dated 07.10.2019 of the worthy Registrar Peshawar High Court, Peshawar, it was directed that in order to build capacity of judicial officer, ensure professional excellence, uniformity in discretionary matters, overcome stage fright, promote cordial relationship with bar and bench and to restore public
confidence the monthly meeting of judicial officer shall be divided into four segments i.e.

1. Performance Evaluation
2. Administration
3. Academics
4. Research Paper

In light of the above directions the following agenda points came under discussion in the monthly meeting of the judicial officers.

1. Performance Evaluation
2. Issues relating administration
3. Academics (CPC Management Rules, Juvenile Justice System Act, 2018)
4. Research Paper (Presentation by Mr. Qaiser Shahzad CJ-VI, Chitral, Topics:- Limitation, Modes and Procedure to execute decree)

**Performance Evaluation**

The court vise institution, disposal and pendency of case were presented and discussed in detail. As per statistical figure 41 cases have been disposed of out of target cases as per Para 6 (vii,viii) of the Unit Policy. As per date pertaining to the month of September 2019 total 3127 cases (including fresh institution and remand cases) were pending, in all courts for disposal, out of which 519 cases have been disposed of and the overall pendency was reduced to 2598 cases. The honorable chair appreciated the overall performance of judicial officers, however, added that judicial officers should focus more over disposal of target cases. The statistical data as reflected in the table below depicts the total number of cases disposed of, the units earned by each Judicial Officer against the number of required units whereas, the data also reflect the number of cases disposed of through full judgments.
<table>
<thead>
<tr>
<th>S No</th>
<th>Name of Judicial Officer</th>
<th>Designation</th>
<th>Required Units</th>
<th>Earned Units</th>
<th>No of cases disposed of under CPC Management Rules</th>
<th>Judgments Delivered</th>
<th>No of target Cases disposed of as per para 6 (vi)</th>
<th>Total number of cases Instituted/RU/TI</th>
<th>Total Number of cases T/O</th>
<th>Total Number of cases Disposal</th>
<th>Closing Pendency</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>JAYAID UR REHMAN</td>
<td>DSJ CHITRAL</td>
<td>56</td>
<td>97</td>
<td>3</td>
<td>2</td>
<td>17</td>
<td>19</td>
<td>47</td>
<td>16</td>
<td>4</td>
<td>117</td>
</tr>
<tr>
<td>2</td>
<td>MUHAMMAD KHAN</td>
<td>ADJ-CTL</td>
<td>24</td>
<td>64</td>
<td>0</td>
<td>0</td>
<td>13</td>
<td>28</td>
<td>3</td>
<td>0</td>
<td>29</td>
<td>262</td>
</tr>
<tr>
<td>3</td>
<td>MUHAMMAD KHAN</td>
<td>ADJ-BOONI</td>
<td>14</td>
<td>35</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>24</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>MUHAMMAD KHAN</td>
<td>ADJ-DROSH</td>
<td>21</td>
<td>50</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>7</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>5</td>
<td>NASIR KHAN</td>
<td>SCJ (ADMN)</td>
<td>30</td>
<td>78</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>67</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>MUHAMMAD IRENA</td>
<td>SCJ (Indi) CTI</td>
<td>37</td>
<td>76</td>
<td>4</td>
<td>4</td>
<td>11</td>
<td>16</td>
<td>35</td>
<td>1</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>7</td>
<td>AZIZ AHMAD</td>
<td>CJ-II CTI</td>
<td>42</td>
<td>52</td>
<td>3</td>
<td>0</td>
<td>9</td>
<td>4</td>
<td>35</td>
<td>1</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>8</td>
<td>ABDUR REHMAN</td>
<td>CLV-CTL</td>
<td>47</td>
<td>93</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>9</td>
<td>QASAR SHAHZAD</td>
<td>CJ-VI CTI</td>
<td>55</td>
<td>84</td>
<td>15</td>
<td>7</td>
<td>15</td>
<td>53</td>
<td>36</td>
<td>0</td>
<td>38</td>
<td>34</td>
</tr>
<tr>
<td>10</td>
<td>JAURARAFI</td>
<td>CJ-VII CTI</td>
<td>44</td>
<td>53</td>
<td>9</td>
<td>0</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>11</td>
<td>SAID ALI KHAN</td>
<td>CJ-BOONI</td>
<td>5</td>
<td>58</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>15</td>
<td>15</td>
<td>1</td>
<td>0</td>
<td>23</td>
</tr>
<tr>
<td>12</td>
<td>SAID ALI KHAN</td>
<td>CJ-MASTU</td>
<td>80</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>13</td>
<td>FARMAN ULLAH</td>
<td>CJ-II DROSH</td>
<td>73</td>
<td>99</td>
<td>5</td>
<td>1</td>
<td>13</td>
<td>44</td>
<td>31</td>
<td>0</td>
<td>0</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td><strong>Grand Total</strong></td>
<td></td>
<td><strong>43</strong></td>
<td><strong>12</strong></td>
<td><strong>109</strong></td>
<td><strong>31</strong></td>
<td><strong>41</strong></td>
<td><strong>306</strong></td>
<td><strong>289</strong></td>
<td><strong>24</strong></td>
<td><strong>66</strong></td>
<td><strong>264</strong></td>
</tr>
</tbody>
</table>

(Page 3 of 6)
The chair directed, that alongside the new cases should also be disposed of as to achieve the target of disposal of 20% cases more than the number of cases instituted during the month. All the Judicial Officers' ensured compliance.

2. Issues Relating Administration

- Uniform of ministerial staff:

  The chair directed that the instruction regarding attire for the ministerial staff must be complied with in letter and spirit, any deviation or violation by any staff member would entail disciplinary action against the delinquent official.

- Compilation of case files:

  The chair expressed his satisfaction over compilation of record/case files. However, he urged that still the judicial officers need to closely observe indexation of case file as to ensure its compilation in accordance with High Court Rules and Orders. The participation ensured compliance.

3. Academics (CPC Management Rules, Juvenile Justice System Act, 2018)

  The topic of CPC Management Rules and Juvenile Justice System Act, 2018 were selected for academic discussion. Fruitful discussion on the above topics was held in the meeting. The learned Senior Civil Judge (Admin), who had already arranged orientation session for the learned members of the bar on the CPC Management Rules had delivered a comprehensive presentation on CPC Management Rules and Juvenile Justice System Act, 2018, followed by group discussion amongst the participants.

4. Research Paper on Limitation, Modes and Procedure to execute decree)

  In light of the direction of Hon’ble Peshawar High Court, Peshawar vide letter No.SDJ/PHC/REG/26-V.11-1-34/5488-5521 dated 07.10.2019,
Mr. Qaisar Shahzad learned Civil Judge, Chitral was assigned the task to prepare research paper on Limitation, Modes and Procedure to execute decree, who submitted his research paper, thereafter, the learned judicial officers were asked to submit five critical questions for discussion in the meeting on the said topic. The learned Civil Judge, Qaisar Shahzad had presented and discussed his research paper in the meeting followed by question-answer session. The research paper along with questions of judicial officers is annexed herewith, whereas separate copy is already sent to KP Judicial Academy for research analysis. The chair appreciated the efforts of learned Civil Judge Qaisar Shahzad. Mr. Aziz Ahmad learned Civil Judge was also assigned a topic on Law of Islamic Inheritance to submit his research paper by 10th of November, 2019.

**Cases of Small Claim and Minor Offences**

As per statistical statement, during the preceding month total 33 cases of small claims were pending and 11 new cases instituted, out of which 11 cases have been disposed of leaving a balance of 33 cases. The Hon'ble Chair directed that all pending cases relating Small Claims shall be dispose of by end of November, 2019. All the Judicial Officers assured compliance.

Meeting ended with a positive note of thanks to and from the Chair.

---

*Drafted by*

**NASIR KHAN**

Senior Civil Judge (Admin),
Chitral.

*Approved by*

**JAPARD-UR-RAHMAN**

District & Sessions Judge/ZQ,
Chitral.
Copy Forwarded to:

1. The Registrar, August Peshawar High Court, Peshawar.
2. The Member Inspection Team, Peshawar High Court, Peshawar.
3. The Focal person NJP-2009 for Peshawar High Court, Peshawar.
4. All Judicial Officers at District, Chitral.
5. Information Centre District Court, Chitral.

[Signature]
AIYAI-D-UR-RAHMAN
District & Sessions Judge/ZQ
Chitral.
LIMITATION, MODE AND PROCEDURE TO EXECUTE DECREE

Every society is governed by law, which is a command of a sovereign. Laws are enacted to maintain peace and harmony in a society. A law is legislated by the legislature, which is commonly called “Parliament”, it is implemented by the executive and it is interpreted by the judiciary. In Pakistani legal system, the civil courts, which are the courts of first instance, are governed by The Code of Civil Procedure, 1908, i.e the CPC. Not only the CPC provides a full-fledge structure for conducting trial in civil cases, but it also lays down a complete structure for execution of decrees; a decree is formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit (Section 2(2) CPC). Part II of the CPC titled as “Execution” from Sections 36 to 74 and Order XXI of the first schedule to the CPC deal with the topic, i.e what are the modes of execution of a decree, what should be the procedure and in what time limit a decree-holder can knock the doors of a court, passing a decree in his favour, for its execution.

In every legal system, law of limitation exists in which time period is specifically provided to approach a court. In Pakistan too, law of limitation exists, viz The Limitation Act, 1908. According to a numerous judgments of Hon’ble Superior judiciary of Pakistan, law of limitation is not a mere technicality or formality, but it has to be strictly adhered; some key judgments of the August Apex court in this respect are 2007 SCMR 1446, PLD 2015 SC 212 and PLD 2016 SC 872. A question arises here, is there any time limit for filing an execution petition? Article 182 of the Limitation Act, 1908 provided a maximum period of three years from the date of decree or order of any civil court other that the application to which section 48 of the CPC applied, and applications provided for by Article 183 of the Act. Section 48 of the CPC initially provided a time period of twelve years for execution, which was reduced to six years through the Law Reforms Ordinance XII of 1972. Through the same Ordinance, Article 182 of the Act was also omitted. Thus, prior to repeal of Article 182 of the Act, the maximum time period for approaching any civil court for execution of a decree was three years. This gives rise to another question, whether after repeal of Article 182 of the Act, time limitation for filing execution petition is now six years? This question came up for decision before the Hon’ble Apex court in Mahboob Khan’s case (PID 1990 SC 778). In that judgment, the Hon’ble Apex Court was pleased to hold, after discussing the entire scheme of law on this subject and definition of word “fresh” used in Section 48 of the CPC, that first application for execution of a decree is governed by Article 181 of the Act and the rest of the applications, i.e fresh application, will be governed by Section 48 of the CPC. Hence, the first execution application must be filed within three years from a decree. An execution filed after this three years time will be time barred, and a decree holder cannot get any benefit of Section 48 of the CPC.

According to Section 38 of the CPC, a decree may be executed by the court which passed it, or by the court to which it is sent for execution. Section 51 of the CPC prescribes the following modes of execution of a decree :-

LIMITATION, MODE AND PROCEDURE TO EXECUTE DECREE

QAISER SHAHZAD
1. By delivery of any property specifically decreed,
2. By attachment and sale or sale without attachment of any property,
3. By arrest and detention in prison,
4. By appointing a receiver, or
5. In such other manner as the nature of the relief granted may require.

The Hon'ble Peshawar High Court, Peshawar has been pleased to add, through amendments made in the first schedule vide Notification dated 23.01.2018, the following two further modes for execution of a decree :-

A. The executing court shall seek details of assets of the judgment debtor directly from any Government Department or bank or institution or agency whether or not within the territorial jurisdiction of the executing court,

B. Blockage of CNIC of the judgment debtor (Order XXI Rule 117 CPC).

All these modes are applied for decree for payment of money (Order XXI Rule 30 CPC), specific movable property (Order XXI Rule 31 CPC), specific performance, restitution of conjugal rights, injunction (Order XXI Rule 32 CPC), execution for document, endorsement of negotiable instrument (Order XXI Rule 34 CPC) and decree for immovable property Order XXI Rule 35 CPC).

The process of execution can be initiated on oral request of the decree holder in case of money decree, and in other cases, on a written application of the decree holder, containing the following details (Order XXI Rule 11 CPC):-

1. The number of the suit,
2. The names of the parties,
3. The date of the decree,
4. Whether any appeal has been preferred from the decree,
5. Whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree,
6. Whether any, and (if any) what previous applications have been made for the execution of the decree, the dates of such applications and their result,
7. The amount with interest (if any) due upon the decree or other relief granted thereby, together with particulars of any cross-decree whether passed before or after the date of the decree sought to be executed,
8. The amount of the costs (if any) awarded,
9. The name of the person against whom execution of the decree is sought,
10. The mode in which the assistance of the court is required.

In case where an application for execution is made after more than one year of the date of decree or against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44 A of the CPC, the executing court is obliged to issue a show cause notice to the judgment

LIMITATION, MODE AND PROCEDURE TO EXECUTE DECREE

Qaiser Shahzad
debtor for a date to be fixed that why the decree shall not be executed against him. However, the executing court can forgo to issue this notice if it considers that it would cause unreasonable delay or would defeat the ends of justice. In case the judgment debtor does not appear or does not show cause to the satisfaction of the court that why the decree should not be executed, the court shall order the decree to be executed. However, if the judgment debtor offers any objection that must be considered and the court must make such order as it thinks fit (Order XXI Rule 22 CPC), but such objections shall not be considered unless, in case of money decree, the judgement debtor either deposits the decretal amount in court or furnish security for its payment, and, in case of any other decree, he furnishes security for the due performance of the decree. Thereafter, the executing court shall issue the process of execution (Order XXI Rule 23-A CPC).

For the purpose of decision of the abovementioned objections, management conference has to be done, and where the executing court is of the opinion that the issue/objection needs evidence, then a schedule for its decision has to be determined which shall in no case be of more than thirty days.

An executing court may also stay the execution in case a suit against the decree holder, filed by the judgement debtor, is pending in any court, but this order of stay must be made on furnishing security by the judgment debtor (Order XXI Rule 29 CPC). Similarly, in the province of K.P.K, when a suit under Rule 63 of Order XXI CPC is pending, the executing court shall stay the execution on intimation by the court, in which such suit is filed, if the trial court considers that execution of the former decree should be stayed.

The court passing a decree may, on the application of the decree holder, can transfer it to another court where the judgment debtor actually and voluntarily resides or carries or personally works for gain within the local limits of such other court or the judgment debtor does not have any property in the jurisdiction of the transferor court or a property, which is ordered to be delivered or sold, is situated outside the jurisdiction of the transferor court or for any reason, but that reason must be recorded by the transferor court. For transfer of decree, an application has to be moved by the decree-holder, but this application is not required where the court passing a decree sends it to a court subordinate to it. The transferee court has got the same powers to execute a decree, which the original court has (Section 30 CPC). Nevertheless, the transferee court can stay the execution to enable the judgment debtor to apply to the court which passed the decree or to the appellate court for stay of the execution or for any other order relating to the decree or execution provided that the transferee court must record reasons for such order (Order XXI Rule 26 CPC).

The executing court can also, on the application of the decree holder, issue a precept to any other court, which would be competent to execute the decree, where any property belonging the judgment debtor is situated. A precept is an order whereby the
The original court requires such other court to attach property of the judgment debtor situated within the jurisdiction of that other court. In the precept, the property, meant to be attached, has to be specified. The court receiving the precept has to attach the property in the same manner provided for attachment of property. The life of a precept is two months unless the period of attachment is extended by an order of the original court or unless before the determination of such attachment the decree has been transferred to the court by which the attachment has been made and the decree holder has applied for an order for the sale of such property (Section 46 CPC). The right to apply for the issuance of the precept is not an independent right, but is a step towards execution.

An executing court can not only execute a decree, but it can also determine all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree. No separate suit can be filed for determination of those questions (Section 47 CPC).

A decree can be executed against the legal representatives of the deceased judgment debtor, if he dies before the decree has been fully satisfied, but each legal representative will be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of (Section 50 CPC). Similarly, where a money decree is passed against a party as the legal representative of a deceased person, it may be executed by the attachment and sale of any such property. If no such property remains in the possession of the judgment debtor and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally (Section 52 CPC).

While attaching an immovable property, the executing court can only order that its alienation in any manner is prohibited, and this order must be affixed on the property attached, notice board 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 property is situated (Order XXI Rule 58 CPC). Unlike attachment of immovable property in Code of Criminal Procedure, 1898, the attachment of immovable property by the civil court in execution of a decree does not mean that the property attached has been prohibited for use and occupation by the judgment debtor. On the other hand, the movable property must be actually seized when its attachment order is passed by the executing court (Order XXI Rule 43 CPC). However, a claimant of the property attached can prefer an objection to the court executing the decree, and no separate suit shall lie (Order XXI Rule 58 CPC).

In the province of K.P.K, the executing court can order sale of the property attached, after consent in writing of the judgment debtor, after expiration of fifteen days...
in case of immovable property and after expiration of one week in case of movable property (Order XXI Rule 68 CPC). This sale must 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 the manner prescribed (Order XXI Rule 65 CPC). Prior to sale by auction, a proclamation must be drawn, after notice to the decree holder and the judgment debtor, in the language of the court and shall state the time and place of sale. This proclamation must contain the following details and must be affixed on the property attached, notice board of the court-house, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the property is situated and it must be published in the official Gazette or in a local newspaper, the cost of such publication shall be deemed to be costs of the sale (Order XXI Rule 66 CPC).

1. The property to be sold,
2. The revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or is part of an estate paying revenue to the Government,
3. Any incumbrance to which the property is liable,
4. The amount for the recovery of which the sale is ordered,
5. Every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property.

When sale of immovable property becomes absolute, a sale certificate has to be issued to the purchaser by the court in which the property sold has to be specified and the name of the person who at the time of sale was declared to be the purchaser. Such sale shall bear the date and day on which the sale became absolute (Order XXI Rule 94 CPC).

The above are modes and procedure for execution of decrees, and time limitation for submitting an execution petition.