

A problem of unrealised decrees



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Courts must resist entertaining pleas against enforcement of decrees that rely on technicalities. This will mean overhauling the Code of Civil Procedure

1 AS A LAWYER practising in Indian courts, one is often asked almost regularly, "How long before the decree is enforced?". To that question, the standard answer is, "I do not know". Instances of the Indian courts sympathising with the difficulties faced by a decree-holder in reaping the fruits of the litigation are abundant; these date as far back as 1872, in *General Manager of the Raj Durbhunga v. Coomar Ramaput Sing*, and recently (earlier this year), in *Air Liquide Deutschland GmbH v. Goyal MG Gases (P) Ltd.*

The government, in its zeal to simplify doing business in the country, has pursued various steps, one of which is improving the alternate dispute resolution mechanism. A faster resolution of disputes rightly fosters a healthier business environment. Thus, since 2015, the Arbitration Act, 1996 has seen frequent amendments. They do not however, address the most important aspect—enforcement. Enforcement is eventually conducted under the execution mechanism provided for decrees under the Code of Civil Procedure, 1908. The anomaly then is stark: An award, even if pronounced within the timelines stipulated under the 1996 Act, languishes in the courts awaiting enforcement, defeating the very purpose of a law to speed up resolution of disputes.

Although India has entered its *amrit kaal*, with respect to the ease of investment, such ambitions can't be meaningfully achieved if, after successfully surviving a hard and long litigious battle, or post arduous and time-consuming negotiations, an investor is not able to enjoy the fruits of such labour. Such an investor would in fact see this as a failing on part of the state machinery, including the courts, on providing adequate protective support.

Pertinently, the Supreme Court in *Shub Karan Bubna v. Sita Saran Bubna* had suggested that the Law Commission should consider moving away from separate execution proceedings altogether and instead implement a continuous civil dispute resolution process. Since this was not implemented, in *Rahul S. Shah v. Jinendra Kumar Gandhi*, the Supreme Court issued several directions to "end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree". Importantly, now, the executing courts are to dispose of all execution proceedings within six months from the date of filing, which can only be extended by recording reasons for delay. This, however, does not address the underlying epidemic.

Keeping the execution/enforcement procedures separate from the suit needs to be reassessed, as observed by the SC

India is the sixth largest economy in the world after USA, China, Japan, Germany and the United Kingdom. Having said that, its civil justice system still ranks at an abysmal 110 out of 139 nations.

The problems that mar the judiciary are not at all difficult to narrate. These include an overworked and understaffed judicial machinery, lack of state support, inadequate court/judicial infrastructure, antiquated laws and an unwillingness on the part of stakeholders to change with times. These problems translate into long-winded court hearings, adjournments, frequent objections by judgement-debtors, delayed disclosure of assets, never-ending appeals, non-inclination of the courts to resort to penal measures, cumbersome procedural road blocks, resistance to use newer technologies and to generally move on with times.

Investors do not suffer from any illusions; they recognise that disputes in business are a given. What they want is protection of investment. Indian courts

and the government have done precious little to address this concern of investors. In a recent address, Justice DY Chandrachud said, "Court is yet another service which is provided by the State to all its citizens". It is about time that the government and judiciary wake up to the reality—that there is a deficiency in providing this service.

If India's dream to be a \$5 trillion economy is to be realised, it is imperative that the government invests in court infrastructure—nay overhauls it—and that the courts expedite the rate of disposal of cases, more particularly execution/enforcement proceedings. As a matter of practice, courts should resist the temptation to entertain pleas against enforcement, especially those that are technical in nature. This will also mean overhauling the Code of Civil Procedure, simplification and streamlining of the law on enforcement proceedings, reducing procedural hurdles, weaning off unnecessarily time-consuming bureaucratic processes and imposing strict timelines at various stages of a proceeding. Currently, a wide variety of modes of execution in respect of different types of assets exist. Furthermore, navigating the law on attachment of assets, obtaining warrants for sale and the like, bring the process to a crawl. Just the aspect of completing service or issuing notice on the judgment debtor is itself cumbersome, considering we are well past our prime in the age of technology. This needs to be addressed.

Keeping the execution/enforcement procedures separate from the suit needs to be re-assessed, as also observed by the Supreme Court. It goes without saying nothing will be achieved if the other stakeholders in this arena, namely the lawyers and the litigants, do not play ball.

The system should be such that when an investor says, "Show me the money!", we should be able to deliver Jerry Maguire from the eponymous movie.