

# **Precepts- Section 46 of CPC**

## **Meaning-Written Order (आज्ञा पत्र)**

A precept is a written order issued by a court to another court, directing to attach the property of Judgment debtor against which a decree to be executed.

## Section 46:

1. "Upon the application of the decree holder the court which passed the decree may, whenever it thinks fit, issue a precept to any other court which would be competent to execute such decree to attach any property belonging to the judgment debtor.
2. The court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree".

**Proviso:** Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the court which passed the decree 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.

## **Procedure for Issuing Precepts Under Section 46 of CPC**

The procedure for issuing a precept under Section 46 of CPC is as follows:

1. The decree-holder must apply to the court that passed the decree for the issuance of a precept. The application must be accompanied by a certified copy of the decree and a Affidavit from the decree-holder stating that the decree has not been fully executed.
2. The court that passed the decree will examine the application and the accompanying documents. If the court is satisfied that the decree is valid and enforceable and that the decree-holder has taken all necessary steps to execute the decree within its own jurisdiction, it will issue a precept to the court of competent jurisdiction in the area where the property to be executed is situated.
3. The precept will specify the property against which the action to be taken and the action also must be mentioned in precepts.
4. The executing court will receive the precept and will take all necessary steps to execute the decree in accordance with the terms of the precept.

## 2.1 Object of receipt:

The object of precept is to enable a decree holder to obtain an interim attachment where there is ground to apprehend that he may otherwise be deprived of the fruit of the decree.

## 2.2 Power of the court to which is sent:

The court to which a precept is sent has no jurisdiction to question the validity of the precept. Therefore, it must attach the property as it received the precept. The attachment takes effect from the day when the precept is received by the court but the court to which the precept is sent may stay the execution of precept if the judgment debtor deposits the decretal amount in court or furnishes sufficient security for payment thereof.

### 2.3 Who may execute precept:

Precept can be sent only to that court which is competent to execute the decree. Competency includes competency regarding subject matter as well as pecuniary jurisdiction of the transferee court.

2.4 Nature of attachment: A precept is an interim attachment; its operation restricted a period of two months unless this period is extended, or up to the time of the transfer of the decree to the court by which the attachment has been made. Permanent attachment can not be made under section 46.

## **M.L. Kapoor & Sons v. Union of India (1969):**

In this case, the Supreme Court of India held that the executing court has the same powers in executing the decree as if it had been passed by itself. This means that the executing court can take all necessary steps to enforce the decree, including issuing a warrant of arrest or attachment of property, appointing a receiver, selling property, and making payments to the parties.

## **Sunder Singh v. State of U.P. (2001):**

In this case, the Supreme Court of India held that the executing court is entitled to make orders for the protection of the property to be executed. The court held that the executing court can pass orders to prevent the judgment debtor from disposing of or damaging the property, and can also appoint a receiver to take possession of the property.

## **Anil Kumar Sharma v. Sudesh Kumari (2012):**

In this case, the Delhi High Court held that the executing court has the power to set aside the sale of property if it is found that the sale was conducted in an irregular or improper manner. The court held that the executing court can also order a fresh sale if it is necessary to do so in order to protect the interests of the parties.

These case laws have clarified the scope of Section 46 of CPC and have laid down important principles for the issuance and execution of precepts. They provide guidance to the executing courts and to the parties involved in execution proceedings.



# Conclusion

Section 46 of CPC plays an important role in ensuring that decrees can be executed effectively throughout India. By providing a mechanism for issuing precepts, the CPC facilitates the enforcement of decrees and ensures that the rights of decree-holders are protected.