

# **Rules and Forms Prescribed by the Board of Revenue under Section 48 of Bihar and Orissa Public Demands Recovery Act, 1914**

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### **Rule**

### **RULES-AND-FORMS-PRESCRIBED-BY-THE-BOARD-OF-REVENUE-UNDER SECTION 48 OF BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914**

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Rules and Forms Prescribed by the Board of Revenue under Section 48 of Bihar and Orissa Public Demands Recovery Act, 1914Published under Board's Notification No. 4.7.10, dated 06.09.1915Last Updated 17th February, 2020Attachment of Movable Property Etc.

#### **1. Application for attachment of movable property in the possession of the certificate-debtor.**

- At the time of making an application for the attachment of movable property in the possession of the certificate-debtor the certificate-holder shall declare whether the property is above or below Rs. 20 in value. If the property is declared to be above Rs. 20 in value the certificate-holder shall pay the costs of issuing the proclamation of sale. If, however, the value of the property, having been declared to be Rs. 20 or under, should be found, as determined by Rule 2, to exceed to Rs. 20, the certificate-holder shall pay the costs of issuing the proclamation of sale immediately on receipt of notice of attachment.Exception. - The Rule does not apply when the certificate-holder is the Government.

## **2. Procedure for the attachment of movable property when its value is up to Rs. 20, or above.**

- When the attaching officer believes that the property attached does not exceed Rs. 20 in value he shall inform the debtor or, in his absence, any present adult member of his family, that it will be sold by public auction at once without the issue of any proclamation. In case the certificate-holder, or the certificate-debtor, or, any person on his behalf objects to this the attaching officer shall convoke a panchayat not less than three respectable adult male inhabitants of the neighbourhood, of whom ordinarily the headman of the village should be one, and shall require them to assess the value of the property. If they determine that it exceeds Rs. 20 in value, he shall deal with it according to the Rules for the sale of movable property exceeding Rs. 20 in value, otherwise he shall forthwith proceed to sell it by auction, after giving such reasonable notice as the circumstances of the case admit of to intending purchasers.

**Maintenance and Custody, While Under Attachment of Live-Stock and Other Movable Property**

## **3. Removal of property to the Certificate-Office.**

- If no suitable place can be found in the village for the sale custody of the attached property, the attaching officer shall remove the property to the office of the Certificate Officer at the certificate-holder's expense. In the event of the certificate holder failing to provide the necessary funds the attachment shall be withdrawn.

## **4. List of property under attachment.**

- Whenever attached property is kept at the place where it attached, the officer shall forthwith report the fact to the Certificate Officer, and with his report shall forward an accurate list of the property seized, so that the Certificate Officer may thereon at once issue the proclamation of sale.

## **5. Debtor's consent to sale of property under attachment.**

- If the debtor gives his consent in writing to the sale of the property without awaiting the expiry of the prescribed term, the officer shall receive and forward the writing without delay to the Certificate Officer for orders.

## **6. Custody of property under attachment, at the certificate office or under Nazir's supervision.**

- When the property is removed to the office of the Certificate Officer, it shall be kept by the Nazir on his own sole responsibility in such a place as may be approved by the Certificate-Officer. If the property cannot, from its nature or bulk, be conveniently kept in the office premises, or in the personal custody of Nazir, he may, subject to approval by the Certificate-Officer make such an arrangements for its safe custody under his own supervision as may most convenient and economical, and the Certificate-Officer, may fix the remuneration to be allowed to any person not

being an officer subordinate to the Certificate-Officer, in whose custody the property is kept.

## **7. Claim of any person that the certificate debtor to property under attachment.**

- When property remains at the place where it is attached in the custody of the attaching officer, any person other than the certificate-debtor claims the same, or any part of it, the officer shall nevertheless, unless the certificate-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Certificate-Officer.

## **8. Withdrawal of attachment.**

- If the certificate holder withdraws an attachment, or if it be withdrawn under Rule 3 or Rule 10 of these Rules, the attaching officer shall inform the debtor, or, in his absence an adult member of his family, that the property is at his disposal. In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the certificate-debtor, the officer shall, if the property has been removed from the premises in which it was seized, replace it where it was found at the time of seizure.

## **9. Feeding and tending of live-stock under attachment.**

- Whenever livestock is kept at the place where it has been attached, the certificate-debtor shall be at liberty to undertake the due feeding at the tending of it, under the supervision of the attaching officer but the latter shall, if required by the certificate-holder, and on his paying for the same at a rate to be fixed by the certificate-Officer, engage the services of as many persons as may be necessary for the safe custody of it.

## **10. Cost for feedings live-stock and expenses attending its removal to certificate office.**

- In the event of the certificate-debtor failing to feed attached livestock, the officer shall call upon the certificate-holder either to pay for feeding it on the spot or for the expenses attending its removal to the office of the Certificate-officer. If the certificate-holder fails to provide for either, the officer shall report the matter without delay to the Certificate-Officer who may thereupon withdraw the attachment.

## **11. Responsibility of Nazir for safe custody and proper feeding.**

- When attached live-stock is brought to the office of the Certificate-Officer, the Nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

## 12. Custody of live-stock in pounds.

- If there be a legally constituted pound in or near the office of the Certificate-Officer, the Nazir shall be at liberty to place in it such attached live-stock as can properly be kept there, in which case the pound-keeper shall be responsible for the property to the Nazir and shall receive the same rates for the accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

## 13. Custody of live-stock otherwise than in pound and rates to be allowed for custody and maintenance.

- If there be no pound available, or if, in the opinion of the Certificate-Officer, it be inconvenient to lodge the attached live-stock in the pound, the Nazir may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Certificate-Officer. The Certificate Officer shall, from time to time, fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The Collector may make any alterations he deems fit in the rates so prescribed.

## 14. Fees to be charged where attachment of movable property is by actual seizure.

(1) Where process of attachment of movable property by actual seizure is issued, fees at the following rates shall be charged, and the officer deputed to attach such property shall be furnished with a certificate stating the period for which the fees in accordance with this Rule have been paid -

(i)	When the amount under the Certificate exceeds Rs. 1000 -	Rs. P.
	(a) for the seizure under the order of attachment	2.00
	(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, per diem	0.40
(ii)	When amount under certificate is Rs. 1,000 or under, but above Rs. 50 -	
	(a) for the seizure under the order of attachment	1.00
	(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, per diem	0.25
(iii)	When the amount under certificate is Rs. 50 or under -	
	(a) for the seizure under the order of attachment	0.50
	(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, per diem	0.25

[Note. [Rate of surcharge 0.40, 0.15, 0.20, 0.35, and 0.40, Substituted for Rs. 0.60, Rs. 0.20, Rs. 0.30, 0.50 and 0.60 respectively by C.S. No. 2, dated 9.3.1962.] - A surcharge at the following rates shall be levied on the fees prescribed under this Rule -]

	Rate of Surcharge Rs. P.
1. On every whole rupee	0.40
2. (a) on a fraction of rupee up to and including[twenty five paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]	0.15
(b) on a fraction of a rupee exceeding[twenty five paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]but not exceeding[fifty paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]	0.20
(c) on a fraction of a rupee exceeding[fifty paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]but not exceeding[seventy five paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]	0.35
(d) on a fraction exceeding[seventy five paise] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]but less than[one rupee] [[Substituted for '4 annas', '8, annas', '12 annas' and '16 annas' respectively.]]	0.40

(2) When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) referred to above shall be paid in each case and the daily fee (b) only for the man actually employed. The daily fee (c) shall be paid at the time of obtaining the process for so many days as the Certificate-Officer shall order not being ordinarily less than fifteen days and the number of days required for the coming and going of the attaching officer; but where that officer is not to be left in possession, then the daily fee shall be paid only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the certificate-holder shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Certificate-Officer shall fix the daily fee with reference to the provisions of Rule 13 of Schedule II of the Act: Provided that, if it appears that for any reason the number of days fixed by the Certificate-Officer under this Rule and in respect of which fees have been paid is likely to be exceeded, and the certificate-holder desires to maintain the attachment the certificate-holder shall apply to the certificate Officer to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in sub-rule (3), if such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period. (3) The fees prescribed by this Rule shall be payable in advance at the time when the petition for service or execution is presented, and shall be paid by means of Court-fee stamps affixed to the petition in addition to the stamp necessary for its own validity.

## **15. Sale of movable property falling under Rule 13 of Schedule II, or of value not exceeding Rs. 20, or of greater value.**

- Sale of property under the proviso to Rule 13 of Schedule II of the Act and of movable property not exceeding Rs. 20 in value shall be held on the spot or at the nearest market place or at the sadar or sub-divisional headquarters. Such sales will necessarily be conducted by peons when they are the attaching officers. Sales of movable property of greater value may under Rule 25 of Schedule II take

place only after the issue of a proclamation, but they may be held on the spot or at the nearest market place or at the sadar or sub-divisional headquarters as may seem convenient and conducive to the securing of good prices, provided that the place and time of sale are notified in the proclamation. For such sales officers of higher rank than peons should always be deputed when the value of property is estimated to exceed Rs. 50. When the value is between Rs. 20 and Rs. 50 the Certificate-Officer may, by a special order, depute a peon if he considers it desirable to do so.

## **16. Purchase by the certificate holder.**

- (i) No holder of a certificate in execution of which movable property is sold shall, without the express permission of the Certificate-Officer bid for or purchase the property. (ii) Where a certificate-holder purchases with such permission, the purchase-money and the amount due on the certificate may be set off against one another and the Certificate-Officer executing the certificate shall enter up to the satisfaction of the certificate in whole or in part accordingly. (iii) Where a certificate-holder purchases, by himself or through another person, without such permission, the Certificate-Officer may, if he thinks fit, on the application of the certificate-debtor or any other person whose interests are affected by the sale, by written order set aside the sale; and the cost of such application and orders, and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the certificate-holder. (iv) This Rule shall not apply when the certificate-holder is the Government. Poundage Fees

## **17. Levy of poundage fees.**

- (i) Poundage fees shall be leviable in Court-fees stamps in all cases of sale under the Bihar and Orissa Public Demands Recovery Act, 1914, at the rate of two per cent on the gross amount realised by the sale up to Rs. 1,000, and at the rate of 1 per cent on all excess of gross proceeds beyond Rs. 1,000: Provided that, where a sale of immovable property is set aside under Section 31, sub-section (2), of the Act any poundage or other fee charged for selling the property shall, on application, be refunded. (ii) The percentage leviable shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of [fifty paise] [Substituted for '8 annas' and '4 annas' respectively.] shall be levied for every Rs. 25 or part of Rs. 25 realised by the sale, up to Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, a fee of [twenty five paise] [Substituted for '8 annas' and '4 annas' respectively.] shall be levied for every Rs. 25 or part thereof of the excess proceeds above Rs. 1,000. (iii) In case in which several properties are sold in satisfaction of one certificate only one poundage fee, calculated on the gross sale-proceeds, shall be levied, 2 per cent being charged on the gross sale-proceeds up to Rs. 1,000 and one percent of the excess over Rs. 1,000 of such proceeds. (iv) The proceeds of a sale effected in execution of any certificate may be paid out of Court only on an application made for that purpose in writing, and the poundage fee for selling the property shall be paid by stamps affixed to the first of such applications, whether it be, or be not, made by the person who obtained the order for sale, or whether it does or does not, extend to the whole of the proceeds. No fee shall be chargeable upon any such application subsequent to the first. (v) In case in which the certificate-holder applies for leave to purchase under Rule 16 (i), no order to set off the purchase-money against the amount of certificate shall be made upon the application for leave to purchase. Such order shall be made upon a petition presented after the

property has been knocked down to the certificate holder at the auction sale, and such petition shall be stamped with stamps of the value of the poundage fee due for selling the property. Note. - On the fees prescribed in clause (i) of this Rule, a surcharge at the rate of 2[Nineteen paise] shall be levied for every Rs. 25, or part thereof realised by the sale, upto Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, a surcharge of [twenty paise] [Substituted for '3 annas' and '2 annas' respectively.] shall be levied for every Rs.25, or part thereof the excess proceeds above Rs. 1,000.

### **18. Addition of costs, etc., to certificate and payment by certificate-holder of purchase-money in excess of the amount of certificate.**

- Upon the hearing of the petition referred to in Rule 17 (v), the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained and shall be added to the certificate; and in cases in which the amount of the purchase-money exceeds the amount of the certificate and of such costs, the certificate-holder who has so purchased the property shall pay to the Certificate-Officer the sum of 25 per cent upon the balance of th. purchase-money after deducting the amount of the certificate and of such costs, an . shall pay the balance on or before the fifteenth day from the sale in accordance with Rule 25 of Schedule II of the Act.

### **19. [ Mode of payment of Court fee by a Nationalized Bank at the time of filing a requisition for certificate. [Added vide Section 2 of Amendment Rules, 2011.]**

- A Nationalized Bank shall be required to pay 25 per cent (Twenty five per cent) of the requisite court fee at the time of filing requisition under Section 5 of the Bihar and Orissa Public Demands Recovery Act, 1914. The balance 75 per cent (Seventy five per cent) shall be the first charge on the first and on subsequent instalments of the certificate amount realized, as the case may be, and the same will be deposited by the requisitioning authority in the appropriate head of account of the State Government. Explanation. - For the purpose of this Rule "Nationalized Bank" means a bank as mentioned in clause (i) or (ii) of Rule 15 of Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, 1914.] Forms Form No. 1 Summons to appear and answer charge of obstructing execution of certificate [See Section 33 (2) of the Act] Certificate  
No.....of.....To, Whereas.....the certificate-holder in the above certificate has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession. You are hereby summoned to appear in this Court on the.....day of.....20.....at.....A.M. to answer the said complaint. Given under my hand and seal, this day of. 20... Certificate Officer of..... Form No. 2 Warrant of Committal [See Section 34 of the Act] To, The Officer-in-charge of the Civil Prison at Whereas the under mentioned property has been sold to the purchaser..... at auction sale in execution of certificate-case no.....dated..... without any just cause resisted (or obstructed) and is still resisting.....(or obstructing) the said.....obtaining in possession of the property; and whereas the said.....has made application to this Court that the said.....be committed to the civil prison. You are hereby required to take and receive the said.....into the civil prison and to keep him imprisoned therein for the period of.....days. Given under my hand and seal, this.....day of.....20

.....Certificate Officer of.....Form No. 3Order for the release of a person imprisoned in execution of a certificate[See Sections 40 and 41 of the Act]DistrictCertificate no.....of.....20.....To,The Officer-in-charge of the civil prison at Under orders passed this day, you are hereby directed to set free certificate-holder, now in your custody.Dated.....Certificate Officer of.....Form No. 4Attachment in ExecutionProhibitory order, where the property consists of debts not being negotiable instruments, or of movable property not in the possession of the certificate-debtor.[See Rule 16(1)(a) and (c) of Schedule II of the Act]To,Whereas.....has failed to satisfy certificate no.....of 20....for Rs it is ordered that certificate-debtor be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from [your] ['A certaom debt alleged now to be due from you, 'or' certain movable property in your possession but alleged to belong'.] ..... to the said certificate-debtor, namely.....and that you the said.....be and you are hereby prohibited and restrained, until the further order of [this Court from] ['Making payment of the said debt, 'or' giving delivery of the said movable property. 'any person whomsoever, or otherwise than into this Court.....to.....Given under my hand and seal, this.....day of.....20.....Certificate Officer of.....Form No. 5Attachment in ExecutionProhibition order, where the property consists of shares in the capital of a corporation[See Rule 16(1)(b) of Schedule II of the Act]To,..... certificate-debtor and to .....Secretary of..... Corporation.....Whereas.....has failed to satisfy certificate no.....of..... 20.....for Rs.....it is ordered that you, the defendant, be, and you are hereby prohibited and restrained, until the further order of this Court from making any transfer of.....shares in the aforesaid corporation, namely.....or from receiving payment of any dividends thereon; and you.....the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.Given under my hand and seal, this day of.20.....Certificate OfficerForm No. 6Attachment of ExaminationProhibitory order where the property to be attached consists of movable property, to which the certificate-debtor is entitled subject to a lien or right of some other person to the immediate possession hereof.[See Rule 16(1)(c) of Schedule II of the Act]To,Whereas.....has failed to satisfy certificate no.....of..... 20,.....for Rs.....it is ordered that the certificate-debtor be, and is hereby prohibited and restrained until the further order of this Court from receiving from.....the following property in the possession of the said.....that is to say,.....to which the certificate-debtor is entitled, subject to any claim of the said.....and the said is hereby prohibited and restrained, until the further order of this Court from delivering the said property to any person or persons whomsoever.Given under my hand and seal, this day of.20.....Certificate OfficerForm No. 7Order to attach salary of public officer or servant of railway company or local authority[See Rule 18 of Schedule II of the Act]To,Whereas.....certificate-debtor or in certificate case no.....of... 20..... is [a] [Describe office of certificate debtor.]receiving his salary/allowance at your hands and whereas certificate holder in the said case, has applied in this Court for the attachment of the salary/allowance of the said.....to the extent of due to him under the certificate, you are hereby required to withhold the said of from the .....of the certificate, you are hereby required to withhold the said of..... from the salary/allowance.....of the said.....in monthly instalments of .....and the remit the said sum/monthly instalments to the Court.Given under my hand and seal, this.....day of.....20.....Certificate OfficerForm No. 8Order of attachment of negotiable instrument[See Rule 19 of Schedule II of the Act]To,The



Collectorate Nazir, Whereas an order has been passed by this Court on the.....day of.  
 20.....for the attachment of.....you are hereby directed to seize the said.....and bring  
 the same into Court. Given under my hand and seal, this.....day of.....20.....Certificate  
 Officer Form No. 9 Prohibitory order, where the property consists of money or any security in the  
 custody of a Court of Justice or officer of Government [See Rule 20 of Schedule II of the  
 Act] Certificate Case No.....of 20.....To, Sir, The certificate-holder having applied under Rule  
 20 of Schedule II of the Bihar and Orissa Public Demands Recovery Act, 1914, for an attachment of  
 certain money now in [your hands] [Here state how the money is supposed to be in the hands of the  
 person addressed, on what account, etc.]; I request that you will hold the said money subject to the  
 further order of this Court. Yours faithfully Certificate Officer Dated.....day  
 of.....20.....Form No. 10 Notice to person in possession of movable property sold in  
 execution [See Rule 35 (2) of Schedule II of the Act] To, Whereas.....has become the purchaser at  
 a public sale in execution of certificate no.....dated.....20.....of.....now in your  
 possession, you are hereby prohibited from delivering possession of the and..... to any  
 person. Given under my hand and seal, this.....day of.....20.....Certificate Officer Form  
 No. 11 Prohibitory order against the transfer of shares sold in execution [See Rule 35(3) of Schedule  
 II of the Act] To, And.....Secretary of.....Corporation. Whereas has become the purchaser  
 at a public sale in execution of certificate no. ....dated.....20.....of certain share in the  
 above Corporation, that is to say, of.....standing in the name of your.....; it is ordered that  
 you.....be, and you are hereby, prohibited from making any transfer of the said shares to any  
 person except the said.....the purchaser aforesaid or from receiving any dividends thereon;  
 and you.....Secretary of the said Corporation, from permitting any such transfer or making  
 any such payment to any person except the said.....the purchaser aforesaid, payment to any  
 person except the said.....the purchaser aforesaid. Given under my hand and seal,  
 this.....day of.....20.....Certificate Officer Form No. 12 Prohibitory order against  
 payment of debts sold to execution to any person other than the purchaser [See Rule 35(3) of  
 Schedule II of the Act] To,.....and  
 to.....Whereas.....has become the purchaser at a public sale in  
 execution of certificate no.....of.....20.....being debts due from you.....to you.....it  
 is ordered that you be and you are hereby, prohibited from receiving, and you.....from  
 making; payment of the said debt to any person or persons except the said. Given under my hand  
 and seal, this.....day of.....20.....Certificate Officer Form No. 13 Certificate to  
 certificate-debtor authorising him to mortgage, lease or sell property [See Rule 42 of Schedule II of  
 the Act] Whereas in execution of certificate no.....of.....20.....an order  
 was made on the.....day of.....20..... for the sale of the under mentioned property of  
 the certificate-debtor and whereas the Court has, on the application of the said certificate-debtor,  
 postponed the said sale to enable him to raise the amount of the certificate by mortgage, lease, or  
 private sale of the said property or of some part thereof; This is to certify that the Court do thereby  
 authorise the said certificate-debtor to make the proposed mortgage, lease, or sale within a period of  
 ..... from the date of this certificate: Provided that all money payable under such  
 mortgage, lease, or sale shall be paid into this Court and not to the said  
 certificate-debtor. Description of Property Given under my hand and seal, this.....day  
 of.....20.....Certificate Officer