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With regard to the distribution of the proceeds of sale the section provides: “Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceedings of sale shall be applied— Firstly, in defraying the expenses of the sale; Secondly, in discharging the amount due under the decree; Thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to sale of the property, applied to the court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof?”

Necessary conditions:

From a reading of the section it is manifest that the following conditions must be present to entitle a decree-holder to participate in the assets of a judgment-debtor: (1) The decree-holder claiming to share in the rateable distribution should have applied for execution to the court which holds the assets; (2) Such application should have been made before the receipt of assets held by the court; (3) The assets of which rateable distribution is claimed must be assets held by the court; (4) The attaching creditor as well as the decree-holder claiming to participate in the assets should be holders of decrees for the payment of money; and (5) Such decree should have been obtained against the same judgment-debtor. The essential conditions for the application of S. 73 are: (1) The assets must be held the court; (2) The decrees obtained by the decree-holder and the attaching creditor must be decrees for payment of money; (3) Such decree should have been obtained against the same judgment-debtor; (4) The creditor claiming rateable

distribution must have applied for execution to the court by which assets are held; and (5) Such an application must have been made before the assets are received by court. (Bharat Paint Mart v. Bhagwati Devi, 1961 A.

L. J. 964). It has been held that where the holder of a decree against two or more persons applies for a rateable distribution of the assets realized from the property belonging to one of such persons, the application is one for the execution of the decree against the same judgment-debtor. A decree against a partner and a decree against him in his individual capacity are decrees against the same judgment-debtor, but a decree against a firm and a decree against a partner in his individual capacity are not against the same judgment-debtor.