

# [Article civil procedure code and an application](https://assignbuster.com/article-civil-procedure-code-and-an-application/)

Article 129 provides for an application for possession after removing resistance or obstruction to delivery of possession.

It is made in conformity with Order XXI, Rules 97, 98 or Rule 99 of the Civil Procedure Code and an application complaining of resistance or obstruction to delivery of possession is regarded as one to obtain possession after removal of the resistance or obstruction. Order XXI, Rule 97 of the Civil Procedure Code provides that where the holder of a decree for the possession of the immovable property or the purchaser of any such property sold in execution of the decree is resisted or obstructed by any person in obtaining the possession of the property he may make an application to the executing Court complaining of such resistance or obstruction. The provision of Rules 98 and 101 lay down that the executing Court shall determine all the questions including the question of title and if on such adjudication it is satisfied that the application has been resisted it may direct the judgment-debtor to deliver possession and if he violates he may be sent to civil prison. The period of limitation under Art. 129 is 30 days and terminus a quo is the date of resistance or obstruction. The obstruction must be that of which complaint is made. The date of resistance and not the date of anticipatory application filed by the person intending to resist c-r object to the delivery of possession to decree-holder or auction-purch; ser is the starting point.

What is contemplated under Art. 129 is the particular obstruction and if the application is within time it makes no difference if there was a prior obstruction because the prior obstruction is not the subject matter of the obstruction for which the present complaint is made. In Bhanwarilal v. Satyanarayana, (AIR 1995 SC 358), it has been held that when the application was filed by the decree-holder challenging the resistance under Order XXI, Rule 35(3) of the Civil Procedure Code praying for police assistance for removal of obstruction within 30 days of the date of obstruction to the execution of the decree and subsequently an application under Order XXI, Rule 97 of the Civil Procedure Code was filed though beyond 30 days after the resistances, such application cannot be dismissed on the ground of limitation when the earlier application under Order XXI, Rule 35(3) was filed within 30 days of the obstruction and that original petition should be treated as are under Order XXI, Rule 97 of the Civil Procedure Code.