



Subject :
**Civil Procedure
Code-II & Limitation**

Paper : 4.3

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CODE OF CIVIL PROCEDURE - II

CHAPTER - 1 EXECUTION

Execution is the process of giving effect to any judicial order and to satisfy a court's judgment. With regard to property, executions are authorized in any action or proceeding in which a monetary judgment is recoverable and in any other action or proceeding when authorized by the statute.

PROCEDURE FOR EXECUTION : Section 37 defines the court which passed the decree and section 39 to 45 deals with the transfer for the execution of the decree by the court which passed the Decree to the another court. Section 38. Court by which decree may be executed. A decree may be executed either by the court which passed it, or by the Court to which it is sent for execution.. Section 39 provides for the Transfer of decree.(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction:

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

Merla Rammana v. Nallaparaju AIR 1956, it is the settled principle that the court which actually passed the decree does not lose its jurisdiction to execute it by the reason of the subject matter being transferred subsequently to the jurisdiction of the another court.

Section 43-44A deals with the power of the Indian courts to execute a decree passed by the Indian courts, the courts situate outside India.

APPLICATION FOR EXECUTION :

Section 10. Provides for the application for execution : Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof

Section 11. Oral application : (1) Where a decree is for the payment of money the court may, on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the court.

(2) Written application-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall

contain in a tabular form the following particulars, namely :—

- (a) the number of the suit;
 - (b) the names of the parties;
 - (c) the date of the decree;
 - (d) whether any appeal has been preferred from the decree;
 - (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
 - (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
 - (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
 - (h) the amount of the costs (if any) awarded;
 - (i) the name of the person against whom execution of the decree is sought; and the mode in which the assistance of the court is required, whether —
 - i) by the delivery of any property specifically decreed;
 - ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - iii) by the arrest and detention in prison of any person;
 - iv) by the appointment of a receiver;
 - v) otherwise, as the nature of the relief granted may require.
- (3) The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Section 105 provides for the Hearing of application.— (1) The court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an Order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the court does not appear, the court may hear the application *ex parte* and pass such Order as it thinks fit.

The code lays down the following modes of execution : Section 51 provides for the Powers of court to enforce execution. — The court may, on the application of the decree holder, order execution of the decree —

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- (d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfied-

(a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree —

- i) is likely to abscond or leave the local limits of the jurisdiction of the Court. or
- ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

Explanation : In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

18. Execution in case of cross decrees — (1) Where applications are made to a court for the execution of cross decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then-

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment debts due by the original assignor as in respect of judgment debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless-

(a) the decree holder in one of the Suits in which the decrees have been made is the judgment debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite,

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross decree in relation to a decree passed against him singly in favour of one or more of such persons.

ILLUSTRATIONS

(a) A holds a decree against B for Rs. 1,000, B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross decree under this rule

19. Execution in case of cross-claims under same decree — Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then, —

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Attachment : Section 60-64 and order 21 rules 41-57 provides for the attachment of the property. Section 60 deals with the Property liable to attachment and sale in execution of decree.-

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies, in so far as they are declared by the said Act not be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may, by notification in the Official Gazette, declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I : The moneys payable in relation to the matters mentioned in clauses (g), (h), (l), (la), (j), (I) and (O) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II : In clauses (l) and (la), “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.

Explanation III : In clause (l) “appropriate Government” means —

(i) as respects any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(ii) as respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV : For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled, unskilled or semi skilled labourer.

Explanation V : For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI : For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land —

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Section 61 - Partial exemption of agricultural produce :

The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Section 62 - Seizure of property in dwelling-house :

No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Section 63 - Property attached in execution of decrees of several Courts :

Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

Explanation : For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.

Section 64 - Private alienation of property after attachment to be void :

Where an attachment has been made, any private transfer or delivery of the property attached or of any interest there in and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the

attachment

Rule 41 provides for the Examination of judgment debtor as to his property : Where a decree is for the payment of money the decree holder may apply to the court for an Order that —

(a) the judgment debtor, or

(b) where the judgment debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what other property or means of satisfying the decree; and the court may make an order for the attendance and examination of such judgment debtor, or officer or other person, and for the production of any books or documents.

Sub rule 2 states that : Where a decree for the payment of money has remained unsatisfied for a period of, thirty years, the court may, on the application of the decree holder and without prejudice to its power under sub-rule (1), by order require the judgment debtor or where the judgment debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment debtor.

In case of disobedience of any order made under sub-rule (2), the court making the order, or any court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three month unless before the expiry of such terms the court directs his release.)

Rule 44. Attachment of agricultural produce : Where the property to be attached Is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment, —

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment debtor ordinarily resides or, with the leave of the court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the court.

Rule 45. Provisions as to agricultural produce under attachment : (1) Where agricultural produce is attached, the court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the court in this behalf either in the Order of attachment or in any subsequent order, the judgment debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment debtor fails to do all or any of such acts, the decree holder may, with the permission of the court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree holder shall be recoverable from the judgment debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the Soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time

before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Rule 46. Attachment of debt, share and other property not in possession of judgment debtor.—

(1) In the case of —

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment debtor, except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting, —

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor.

(2) A copy of such Order shall be affixed on some conspicuous part of the court house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Rule 47. Attachment of share in movables.- Where the property to be attached consists of the share or interest of the judgment debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment debtor prohibiting him from transferring the share or interest or charging it in any way.

Rule 49. Attachment of partnership property :

● Property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

● The court may, on the application of the holder of a decree against a partner, make an Order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an Order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circumstances of the case may require.

● The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

- Every application for an Order under sub-rule (2) shall be served on the judgment debtor and on his partners or such of them as are within India.

- Every application made by any partner of the judgment debtor under sub-rule (3) shall be served on the decree holder and on the judgment debtor, and on such of the other partners as do not join in the application and as are within India.

- Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Rule 50 provides for the execution of decree against firm — (1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with summons and has failed to appear.

(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may Order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the Order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Attachment of negotiable instruments — Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by the actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.

52. Attachment of property in custody of court or public officer — Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued.

3. Attachment of decrees — (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made, —

(a) if the decrees were passed by the same Court, then by Order of such court, and

(b) if the decree sought to be attached was passed by another court then by the issue to such other court of a notice by the court which passed the decree sought to be executed, requesting such other court to stay the execution of its decree unless and until —

(i) the court which passed the decree sought to be executed cancels the notice, or (ii) (a) the holder of the decree sought to be executed, or

(b) his judgment debtor with the previous consent in writing of such decree holder, or with the permission of the attaching court, applies to the court receiving such notice to execute the attached decree.

(2) Where a court makes an Order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other court, also by sending to such other court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the court from which it was sent.

(5) The holder of a decree attached under this rule shall give the court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the court making an Order of attachment under this rule shall give notice of such Order to the judgment debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment debtor in contravention of such Order with knowledge thereof or after receipt of notice thereof, either through the court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. Attachment of immovable property — (1) Where the property is immovable, the attachment shall be made by an Order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1) The Order shall also require the judgment debtor to attend court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The Order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the Order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house, and also, where the property is land paying revenue to the government, in the office of the Collector of the District in which the land is situate and, where the property is land situate in village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.)

Sale of property: order 21 Rules 65-74 and sections 65-74 deals with the sale as a mode of execution. Rule 64 deals with the Power of the Court to Order property attached to be sold and proceeds to be paid to person entitled. Any court executing a decree may Order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Rule 66 provides for the Proclamation of sales by public auction. Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.

Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

Subrule provides that Every application for an Order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation. For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto

Rule 68. Time of sale — Save in the case of property of kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment debtor, take place until after the expiration of at least fifteen days in the case of immovable property, and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court house of the judge ordering the sale.

Rule 69. Adjournment or stoppage of sale — (1) The court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court house, no such adjournment shall be made without the leave of the court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

72. Decree holder not to bid for or buy property without permission, no holder of a decree in execution of which property is sold shall, without the express permission of the court, bid for or purchase the property. Where decree holder purchases, amount of decree may be taken as payment. Where a decree holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of section 73, be set-off against one another, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly. Where a decree holder purchases, by himself or through another person, without such permission, the court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by Order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree holder.

Precept: 46. Attachment of debt, share and other property not in possession of judgment debtor—

(1) In the case of —

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment debtor, except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting, —

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor.

32. Decree for specific performance for restitution of conjugal rights, or for an injunction —

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed in a corporation the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for a month, if the judgment debtor has not obeyed the decree and the decree holder has applied to have attached property sold, such property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

APPEAL : ORDER XLI : APPEALS FROM ORIGINAL DECREES

The word appeal has not been defined in the Code. A right of appeal is not a natural or inherent right it is a creature of statute and there is no right of appeal unless it is given clearly in the statute.

ESSENTIALS OF APPEAL

- A decree or an order
- An aggrieved party/person
- A reviewing body

WHO MAY APPEAL?

- Any aggrieved party to the suit or his legal representatives if such party is dead,
- Guardian ad litem appointed by the court,
- A person claiming under a party to the suit or a transferee of interests of such party,
- An auction-purchaser may appeal from an order in execution setting aside the sale on the ground of fraud.
- Any other person, with the leave of the court, if he is adversely affected.



RIGHT OF APPEAL

- There is no natural or inherent right to appeal. It is a statutory right and it can be conditional or qualified.
 - It exists only when a statute confers it.
 - The scope of such right is also determined by the statute that confers it.
 - It is a substantive right.
 - This vested right can be taken away only by a subsequent enactment if it so provides expressly or by necessary implication and not otherwise.
- Right to appeal is a universal requirement because all men are fallible and judges are human beings and may commit a mistake.
- Right to file a suit is an inherent right unless the suit is barred by a statute but right to file an appeal is conferred by the Statute only.
 - While a suit creates a cause, an appeal reviews and corrects the proceedings in a cause already constituted.

In **Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126** it has been held that suit is inherent, general or common law right and it need not be provided by any statute, however, appeal is a statutory right and is maintainable only when some statute provides the remedy of appeal.

Management of M/s Devi Theatre v. Vishwanath Raju AIR 2004SC332 Right of appeal under Section 96 C.P.C. is not conditional. Accordingly admission of such appeal cannot be conditional e.g. it cannot be ordered along with admission of appeal that in case certain amount is not deposited within certain time order of admission of appeal shall stand withdrawn or recalled.

S.96 provides for Appeal from original decree:

- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.
- (2) An appeal may lie from an original decree passed ex parte.
- (3) No appeal shall lie from a decree passed by the Court with the consent of parties.
- (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

Order XLI of CPC provides for appeals from original decrees

Form of appeal — (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. the memorandum shall be accompanied. by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgement on which it is founded

(2) Contents of memorandum- The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit

2. Grounds which may be taken in appeal :

The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandums :

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

3A. Application for condonation of delay :

(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1) the Court shall not make in order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiff or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiff or defendants, as the case may be.

Stay of proceedings and of execution.

5. Stay by Appellate Court :

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) Stay by Court which passed the decree- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied —

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.

6. Security in case of order for execution of decree appealed from :

(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. Exercise of powers in appeal from order made in execution of decree :

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal.

8. Registry of memorandum of appeals :

(1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

(2) Register of Appeals- Such book shall be called the Register of Appeals.

9. Appellate Court may require appellant to furnish security for costs :

(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Where appellant resides out of India —

Provided that the Court shall demand such security in all casts in which the appellant is residing out of India, and is not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. Power to dismiss appeal without sending notice to Lower Courts :

(1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub - rule (1), it shall deliver a judgement, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgement.]

11A. Time within which under rule 11 should be concluded :

Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.]

12. Day for hearing appeal :

(1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. Appellate Court to give notice to Court whose decree appealed from :

(1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Transmission of Papers to Appellate Court — Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Copies of exhibits in Court whose decree appealed from — Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

14. Publication and service of notice of day for hearing appeal : Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the

respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice. Appellate Court may itself cause notice to be served — Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to. The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal. Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal. Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.

15. Contents of notice :

The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard ex parte.

Procedure on hearing.

16. Right to begin :

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

17. Dismissal of appeal for appellants' default :

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(2) Hearing appeal ex parte- Where the appellant appears and the respondent does not appear the appeal shall be heard ex parte.

18. Dismissal of and where notice not served in consequence of appellant's failure to deposit costs :

On the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the Period fixed, the sum required to defray the cost of serving the notice 23 [or, if the notice is returned and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray of the cost of any further attempt to serve the notice,] the Court may make an order that the appeal be dismissed : .

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Re-admission of appeal dismissed for default :

Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20. Power to adjourn hearing and direct persons appearing interested to be made respondents :

(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.

21. Re-hearing on application of respondent against whom ex parte decree made :

Where an appeal is heard ex parte and judgement is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. Upon hearing respondent may object to decree as if he had preferred a separate appeal :

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

25 [Explanation : A respondent aggrieved by a finding of the Court in the judgement on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto — Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

23. Remand of case by Appellate Court :

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate court may, if it fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgement and order to the Court from whose decree the appeal is preferred. ,which directions to re-admit the suit under its original number in the register

of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other Cases : Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

24. Where evidence on record sufficient Appellate Court may determine case finally : Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgement of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from : Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together its findings thereon and the reasons therefor 26 [within such time as may be fixed by the Appellate Court or extended by it from time to time].

26. Findings and evidence to be put on record. Objections to finding :

(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal- After the expiration of the period so, fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. Production of additional in Appellate Court :

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise if due diligence, be produced by him at the time when the decree appealed against was or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Mode of taking additional evidence :

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded : Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

JUDGEMENT IN APPEAL

30. Judgement when and where pronounced : The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgement in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders. Where a written judgement is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgement, but a copy of the whole judgement shall be made available for the perusal of the parties or their pleaders immediately after the judgement is pronounced.]

33. Power of Court of Appeal : The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection 25[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

28 [Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

ILLUSTRATION

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X. appeals and A and Y are respondents. The Appellate Court decides in favour of X. it has power to pass a decree against Y.

34. Dissent to be recorded : Where the appeal is heard by more judges than one, any judge dissenting from the judgement of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

DECREE IN APPEAL

35. Date and contents of decree : (1) The decree of the Appellate Court shall bear date the day on which the judgement was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Judge dissenting from judgement need not sign decree —

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgement of the Court to sign the decree.

36. Copies of Judgement and decree to be furnished to parties : Certified copies of the judge-

ment and decree in appeal shall be furnished to the parties on application to the Appellate their expense.

37. Certified copy of decree to be sent to Court whose decree appealed from : A copy of the judgement and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgement of the Appellate Court shall be made in the register of civil suits.

Order 33 of the Code of Civil Procedure deals with suits by indigent persons whereas Order 44 thereof deals with appeals by indigent persons.

10. Order 33 Rule 1 of the Code of Civil Procedure provides for instituting of suits by indigent person, stating :

“1. Suits may be instituted by indigent person— Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I — A person is an indigent person, —

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II — Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III — Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.”

SECOND APPEAL : Sections 100-103 , 107-108 and order 42 deal with second appeal. The provides for the second appeal in the High Court whre the High court is satisfied that the case involves asubstantial question of law. The following are the essentials of second appeal :

- A second appeal lies in the High Court
- Only on the based on the substantial question of law
- The High Court should formulate the substantial question
- No appeal lies in money decree where the amount does not exceed twenty five thousand rupees
- Appeal may be filed against an exparte decree

Sections 100 & 103 C.P.C.:

8. These provisions provide for the conditions precedent for entertaining a Second Appeal and the specific manner of its disposal. Section 100 CPC reads as follows :

According to section 100. Second Appeal : An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. Where

the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

“103. Power of High Court to determine issue of fact — In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal, —

(a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100.”

In **Chunilal Mehta v. Century Spg & Mfg .Co. Ltd AIR 1962** the supreme court observed that the propertest for determining whether a question of law raised in the case is substantial question would be whether it is of general public importance or affects the rights of the parties.

Appeal from order : Appeal from orders under order 43 : Section 104-108 and order 43 deal with appeals form orders. Oder has been defined s the formal expression of an adjudication which is not an decree. The code has made certain orders to be appealable.

Appeal from orders under order 43 :

An appeal shall be from the following orders under the provisions of section 104, namely :—

- an order awarding compensatory costs in respect of false and vexatious claims or defense.
- an order refusing leave to institute suit against public nuisance.
- an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte.
- an order awarding compensation for obtaining arrest and detention, attachment or injunction
- an order imposing fine
- order dismissing suit out defence for non compliance with an order for discovery.
- an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.
- an order refusing to set aside the statement or dismissal of a suit
- * an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- * an order rejecting an application for permission to sue as an indigent person;
- * orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- * an order to deposite money for attachment of property;
- * an order under rule 1, rule [rule 2A], rule 4 or rule 10 of Order XXXIX;
- * an order to appoint receiver;

- * an order to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- * an order of remanding a case, where an appeal would lie from the decree of the Appellate court;
- * an order under rule 4 of Order XLVII granting an application for review.

Appeal to the Supreme Court : The Supreme Court stands out to be at the apex of the pyramid of the Courts in India. It is the Highest Court of Appeal in India. Apart from having the appellate jurisdiction of the Honorable Court, it also acts as a guardian of the Constitution of India. Sections 109 and 112 read with order 45 deal with appeals to the Supreme court.

The following are the Jurisdictions of the Supreme Court :

- Original Jurisdiction — Acts as a Guardian of the Constitution
- Appellate Jurisdiction — Has the power to hear the appeals in all the cases lie with the High Court :
- Writ Jurisdiction — For enforcing the Fundamental Rights
- Advisory Jurisdiction — The Supreme Court has the authority to advise the President for the Question of law or fact.

109. When appeals lie to the Supreme Court — Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies —

- (i) that the case involves a substantial question of law of general importance and
- (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

112. Saving — (1) Nothing contained in this Code shall be deemed —

- (a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution, or
- (b) to interfere with any rules made by the Supreme Court, and for the time being force, for the presentation of appeals to that Court, or their conduct before that court.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice admiralty jurisdiction, or to appeals from orders and decrees of Prize courts.

15. Procedure to enforce orders of the Supreme Court — (1) Whoever desires to obtain execution of any decree or order] of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the court from which the appeal to the Supreme Court was preferred.

(2) Such court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other court as the Supreme Court by such decree or order may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) Unless the Supreme Court otherwise directs, no decree or order of that court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party of deceased respondent in a case, where such opposite party or

respondent did not appear either at the hearing in the court whose decree was complained of or at any proceedings subsequent to the decree of that court, but such order shall have the same force and effect as if it had been made before the death took place.

Section 113 - Reference to High Court :

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit;

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

Explanation — In this section "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State.

Review : Section 114, Order 41 Rule 1 of CPC : The review proceedings will be initiated, on the application of an aggrieved party or person, i.e party or person who has legal grievance. An application for review shall lie to the following authorities.

(i) Review application against decree or order of High Court :

When decree or order, against which reviewed is prayed, is that of High Court, review application should be filed before any judge of High Court.

(ii) Some judge or his successor :

When the decree or order is that of court, other than High Court, it shall be reviewed by same judge or his successor, if the review application is filed by aggrieved person on the following grounds

- Discovery of new and important matter or evidence, or
- A clerical or arithmetical mistake, apparent on the face of the decree

Review application can be filed on basis of either of following grounds : (i) Appealable Decree or Order When any person is aggrieved by a decree or order and appeal is allowed against such decree or order, but appeal is not filed, review application can be filed against such decree or order.

(ii) No Right of Appeal allowed : Where no right of appeal is allowed to an aggrieved party, he can file a review application.

(iii) Discovery of new and important matter or evidence : When new and important matter or evidence is discovered, but such matter or evidence was not within knowledge of aggrieved person or such matter or evidence could not be produced by aggrieved person at that time when decree or order was passed, review application can be filed.

(iv) When any mistake or error is apparent on face of record, and not require any extra evidence to establish it, than a review application can be filed.

(v) Party may apply for review, an order or decree when there is any other sufficient ground or reason, review application can be filed.

Application for review may be rejected : (i) Where it appears to the court, that there is no sufficient reason for review.

(ii) Where an application for review is heard by more than one judges, and the court is equally divided.

115. Revision — (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears —

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit :—

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation : In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a Suit or other proceeding.

The code of civil procedure is a branch of procedural law. For the purpose of providing justice the Court possess statutory powers as well as such other powers which are complementary to those powers which are generally called the inherent powers of the court and which are required for providing the end of justice.

The general meaning of the term inherent is natural. Sections 148 - 153- B deal with the inherent powers of the court. Section 148 provides that the court has power to enlarge any period fixed or granted upto 30 days. For application of this section the period must have been fixed or granted by the court and such period must be for doing an act prescribed or allowed by the code.

Sec 149 empowers the court to allow a party to make up the deficiency of court fees payable on plaint, memorandum of appeal etc. Sec 150 provides for where the business of any court is transferred to any other court the transferee court will exercise same powers and discharge same duties conferred or imposed by the code. Under section 151 the court can recall its own orders and correct mistakes and can set aside an ex parte order passed against the party and can issue temporary injunctions. This section is based on the doctrine of actus curiae in minimis gravabit (an act of the court shall prejudice no one). Section 152 enacts that clerical, arithmetical, mistakes in judgements, decrees or orders may at any time be corrected by the court.

Sec 153-A provides where the appellate court dismisses an appeal power of amendment under section 152 can be exercised by the court of first instance.

Differences between Appeal and revision :

- Appeal lies in the superior court not necessarily to the high court whereas revision is only done by the High court

- A right to appeal is the substantive right while revisional power is discretionary

- A revisional application is filed on the ground of jurisdictional error an appeal lies on a question of fact and law

Differenece between Appeal and reference :

- A right to appeal is vested in the parties the power of reference is vested in the court
- Reference is always made in the High Court whereas appeal can be filed in the superior court
- The grounds of appeal is wider than the grounds of reference.

CAVEAT : the word Caveat has not been defined in the code. It came from the Latin term beware. Sec 148-Aof the code provides for the lodging of Caveat.

Right to lodge a caveat — (1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a court, any person claiming a right to appear before the court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveat or) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the court shall serve a notice of the application on the caveat or.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveat or, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period

RESTITUTION : Section 144 of the Code deals with the doctrine of restitution. The doctrine of restitution is based upon the well known maxim "actus curiaeneminemgravabit", the act of the court shall harm no one. Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified, and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order. .

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

Transfer of Cases: sections 22- 25 enact the law as regards transfer and withdrawal of the suits, appeals, and other proceedings from one court to another court.

22. Power to transfer Suits which may be Instituted in more than one court.- Where a suit may be instituted in any one of two or more courts and is instituted in one of such courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have suit transferred to another court, and the court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several courts having jurisdiction the suit shall proceed.

23. To what Court application lies —

(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. General power of transfer and withdrawal —

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

25. Power of State Government to transfer suits —

(1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the State Government, by notification in the Official Gazette transfer such suit, appeal or proceeding to any other High Court:

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case

LAW OF LIMITATION :

Till 1859 there was no definite law of limitation from the year 1793 various regulations were passed prescribing the limitation for the institution of the suits. The question of limitation finally solved by the Limitation Act of 1908 and again modified by the law commission and a new Act came into force called The Limitation Act of 1963.

Section 3 provides for the bar of limitation and also provides that every suit instituted preferred and application made after the prescribe the period shall be dismissed , although the limita-

tion period has not been set up as a defence.

5 Extension of prescribed period in certain cases. -Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

6. Legal disability —

- Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

- Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

- Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

- Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

- Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died. Explanation.-For the purposes of this section, 'minor' includes a child in the womb.

Sec 7. Disability of one of several persons. — Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

11. Suits on contracts entered into outside the territories to which the Act extends —

(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this Act.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless —

(a) the rule has extinguished the contract; and

(b) the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.

12. Exclusion of time in legal proceedings —

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for.-In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

18. Effect of acknowledgment in writing —

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation. For the purposes of this section—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

22. Continuing breaches and torts.-In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. 22. Continuing breaches and torts.-In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

Execution : Meaning, Nature and Scope

The term “execution” is not defined in the CPC. The term “execution” means implementing or enforcing or giving effect to an order or a judgment passed by the court of justice. In simple words “execution” means the process of enforcing or giving effect to the decree or judgment of the court, by compelling the judgment-debtor to carry out the mandate of the decree or order and enable the decree-holder to recover the thing granted to him by judgment.

Illustration:

X files a suit against Y for Rs 20,000 and obtains a decree against him. Here X would be called the decree-holder, Y is the judgment-debtor, and the amount of Rs 20,000 is the judgment- debt. Y is bound to pay Rs 20,000 to X, as the decree is passed against him. Suppose Y refuses to pay the decretal amount to X, X can recover the said amount by execution through the judicial process. The principles governing the execution of a decree or order are given in Section 36 to Section 74 (substantive law) and Order 21 of the code which provides for procedural law.

Leading cases -

In Ghan Shyam Das v. Anant Kumar Sinha, the Supreme Court dealt with the provisions of the code relating to the execution of orders and decree and stated that the Code contains elaborate provisions which deal with all questions regarding executability of a decree in all aspects.

The Court further observed that numerous provisions of Order 21 take care of various situations providing effective remedies to judgment-debtors, decree-holders and claimant objectors. In the cases, where provisions are not capable of giving relief inadequate measures and appropriate time, to an aggrieved party, then filing a regular suit in the civil court is the solution.

The Court further explained that the judicial quality of the remedy under Civil Procedure Code is considered to be superior as compared to other statutes therefore, the judges are expected to do better as they are entrusted with the administration of justice.

Powers of executing court

The section states the jurisdiction and power of the court in executing a decree. An application for execution of the decree can either be oral or written. The court may execute decree as per the mode of implementation prayed by the decree-holder or as the court deems fit.

Mode of executing a decree

- By delivery of any property (movable or immovable) specifically decreed.
- By sale of the property with or without the attachment of the property. If the property is situated within the jurisdiction of the court then it has the power to attach the property.
- By arrest and detention. However, this mode should not be exercised without giving a reasonable opportunity to the judgment-debtor, in the form of a show-cause notice as to why he should not be imprisoned.
- Execution by appointing a receiver.

- If any other mode apart from the ones mentioned in clause(a) to (c) needs to be used in the execution of a decree then clause(e) comes into play.

Conclusion

It clearly appears from the above discussion, that execution means implementing or enforcing or giving effect to an order or a judgment passed by the court of justice. The provisions contained in Order 21 covers different types of situation and provide effective remedies to the judgment-debtors, claimant objectors and third parties apart from the decree-holder.

The Code takes care of the rights of judgment-debtors too. Various modes of execution of a decree are also provided by the Code which includes arrest, detention of the judgment-debtor, delivery of possession, attachment of the property, by sale, partition, the appointment of receiver and payment of money etc. Thus, the provisions are rendered effective or capable of giving relief to an aggrieved party.

APPEAL MEANING

An appeal is a procedure by which a judgment/request of a subordinate court is tested under the steady observance of its prevalent court. An appeal can be documented distinctly by an individual who is a member or party to the case under the steady observance of the subordinate court. Be that as it may, at the demise or death of such an individual, his lawful beneficiaries and successors in appeal should file or keep up a previously documented appeal in numerous issues. The individual documenting or proceeding with an appeal is known as the appealing party or appellant and the concerned court is named as the appellate court or re-appraising court. Party involved with the particular case doesn't have any inalienable right to challenge the judgment/request of a court under the observance of its Superior Court.

APPEAL FROM ORDER

IMPORTANT CASE LAWS

1. Scope of Section 104:

Subal Paul v. Malina Paul, (2003) 10 SCC 361: "By reason of Section 104 of the Code of Civil Procedure the bar of appeal under a special statute is saved. A plain reading of Section 104 of the Code of Civil Procedure would show that an appeal shall lie from an appealable order and no other order save as otherwise expressly provided in the body of this Code or by any law for the time being in force. Section 104 of the Code merely recognises appeals provided under special statute. It does not create a right of appeal as such. It does not, therefore, bar any further appeal also, if the same is provided for under any other Act, for the time being in force. Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

2. Appeals allowed under Section 104:

P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672:

At this stage it would be appropriate to analyse Section 104 CPC. Sub-section (1) of Section 104 CPC provides for an appeal from the orders enumerated under sub-section (1) which contemplates

an appeal from the orders enumerated therein, as also appeals expressly provided in the body of the Code or by any law for the time being in force. Sub-section (1) therefore contemplates three types of orders from which appeals are provided, namely,

(1) orders enumerated in sub-section (1),

(2) appeals otherwise expressly provided in the body of the Code, and

(3) appeals provided by any law for the time being in force.

Object of the Limitation Act

The Law of limitation prescribes a time period within which a right can be enforced in a Court of Law. The time period for various suits has been provided in the schedule of the Act. The main purpose of this Act is to prevent litigation from being dragged for a long time and quick disposal of cases which leads to effective litigation. As per the Jammu and Kashmir Reorganisation Act, 2019, provisions of the Limitation Act will now apply to the whole of India. The Limitation Act, 1963 contains provisions relating to the computation of time for the period of limitation, condonation of delay, etc. The Limitation Act contains 32 sections and 137 articles and the articles are divided into 10 parts.

Limitation Bars Remedy

Section 3 lays down the general rule that if any suit, appeal or application is brought before the Court after the expiry of the prescribed time then the court shall dismiss such suit, appeal or application as time-barred. The law of limitation only bars the judicial remedy and does not extinguish the right. In other words, It means that the statute of limitation prescribes only the period within which legal proceedings have to be initiated. It does not restrict any period for setting up a defence to such actions. Hence, the original right to suit is not barred. However, Section 27 is an exception to this rule.

The Supreme Court in Punjab National Bank and Ors v. Surendra Prasad Sinha held that the rules of limitation are not meant to destroy the rights of the parties. Section 3 only bars the remedy but does not destroy the right which the remedy relates to.

In case of Against the Judgement in As 15/1996 v. K.J Anthony, the Court held that a defendant in a suit can put forward any defence though such defence may not be enforceable in the court, for being barred by limitation.

It was held in Bombay Dyeing and Manufacturing v. State of Bombay that the statute of limitations only bars the remedy but does not extinguish the debt.

Limitation Does Not Bar Defence

The law of limitation does not restrict the defendant if he raises a legitimate plea in his defence even though the suit is time-barred. It was held in Rullia Ram Hakim Rai v. Fateh Singh, the bar of limitation does not stand in the way of defence. It only bars action and it is only its recovery that is time-barred. There is no provision that prohibits or prevents a debtor from clearing his time-barred outstandings.

The Supreme Court observed in *Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi*, the Limitation Act takes away the plaintiff's remedy to enforce his rights by bringing an action in a court of law, but it does not place any restriction on the defendant to put forward his defence though such defence is barred by limitation and is unenforceable in the Court.

Application to courts

Under Section 3(c), an application by a notice of motion in a High Court can be made when the application is presented to the proper officer of that court. If the period prescribed for any application expires on the day on which the court is closed, the application shall be made on the day on which the court reopens as per Section 4.

Plea of limitation: Duty of Court

The Court is under an obligation to dismiss a suit if it is filed beyond the time prescribed by the Limitation Act. The provisions of Section 3 are mandatory and the Court will not proceed with the suit if it is barred by time. Under Section 3 of the Act, it is clearly mentioned that every suit instituted, appeal preferred and the application made after the prescribed period shall be dismissed. Even though limitation has not been set up as a defence.

It was held in *Craft Centre v. Koncherry Coir Factories*, it is the duty of the plaintiff to convince the Court that his suit is within time. If it is out of time and the plaintiff relies on any acknowledgments in order to save the limitations then he has to plead them or prove, if denied. The Court further held that, provision of Section 3 is absolute and mandatory and if a suit is barred by the time the court is under a duty to dismiss the suit even at the appellate stage though the issue of limitation may not have been raised. It was held in *ICICI Bank Ltd v. Trishla Apparels Pvt Ltd* that there is no doubt that the court is duty-bound to dismiss the suit in a case if it is barred by time even though no such plea has been taken by the opposite party.

In *Mukund Ltd v. Mumbai International Airport*, it was ruled that it is explicitly clear that when a suit is barred by limitation, the Court is precluded from proceeding on the merits of the contentions and in fact is obliged to dismiss the suit.

Starting point of Limitation

The time from which period of limitation begins to run depends upon the subject matter of the case and a specific starting point of such period is provided extensively by the Schedule in the Act. It generally starts from the date when the summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event that forms the basis of the suit takes place. The Supreme Court in *Trustee's Port Bombay v. The Premier Automobile* held that the starting point of limitation is the accrual of the cause of action.

Expiry Period of Limitation When Court is Closed

When a court is closed on a certain day and the period of limitation expires on that day, then any suit, appeal or application shall be taken up to the Court on the day on which it reopens. This means that a party is prevented not by his own fault but because of the Court being closed on that

day. Section 4 of the Limitation Act provides that when the period of limitation is prescribed for any suit, appeal or application and such period expires on a day when the Court is closed, such suit, appeal or application shall be instituted, preferred or made on the day on which the Court reopens. The explanation to this section mentions that within the meaning of this Section a Court shall be deemed to be closed on any day if during any part of the normal working of the Court it remains closed on that day.

For instance, if a Court reopens on 1st January and the time for filing the appeal expires on 30th December (the day on which the Court remains closed) then the appeal can be preferred on the 1st of January when the Court reopens.

Condonation of Delay

Condonation of delay means that extension of time given in certain cases provided there is sufficient cause for such delay. Section 5 talks about the extension of the prescribed period in certain cases. It provides that if the appellant or the applicant satisfies the court that he had sufficient cause to not prefer the appeal or application within that period, such appeal or application can be admitted after the prescribed time. This Section further mentions that an application made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908). The explanation states that in ascertaining or computing the period prescribed when the applicant or appellant has been misled by any order, practice or judgment of the High Court. It will be a sufficient cause within the meaning of this section.

However, If a party does not show any cogent ground for delay then the application, suit or appeal will be rejected by the court.

In the case of State of Kerala v. K. T. Shaduli Yussuff, the court held, whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the circumstances of a particular case.

Sufficient Cause

Sufficient cause means that there should be adequate reasons or reasonable ground for the court to believe that the applicant was prevented from being proceeding with the application in a Court of Law.

In State (NCT of Delhi) v. Ahmed Jaan, it was said that the expression “sufficient cause” should receive a liberal construction. In Balwant Singh (Dead) v. Jagdish Singh & Ors, the Supreme Court held that it is obligatory upon the applicant to show sufficient cause because of which he was prevented from continuing to prosecute the proceeding in the suit. In this case, there was a delay of 778 days in filing the application for bringing the legal representatives on record.

In Ornate Traders Private Limited v. Mumbai, the Bombay High Court ruled that where there is sufficient cause shown and the application for condonation of delay has moved bonafidely, the court would usually condone the delay but where the delay has not been explained at all and there is an inordinate delay in addition to negligence and carelessness, the discretion of the court would normally be against the applicant.

The Bombay High Court in Brij Indar Singh v. Kanshi Ram observed that the true guide for the Court while exercising jurisdiction under Section 5 is *whether the litigant acted with sensible and reasonable diligence in prosecuting the appeal.*

Whether an applicant has given a sufficient cause or not depends upon the discretion of the court and the circumstances of each case. For instance, a Court can condone the delay on medical grounds.

Case law: Collector (LA) v. Katiji (1987)

Facts

In this case, an appeal was preferred by the State of Jammu and Kashmir against the decision of enhancing the compensation in the matter of acquisition of land for a public purpose, raising important questions with regard to principles of valuation. An appeal for condonation of delay was filed but was dismissed by the High Court as time-barred because it was four days late. The State later appealed to the Supreme Court by special leave.

Held

The Supreme Court allowed the appeal and ruled that the expression 'sufficient cause' under Section 5 is adequately elastic to enable the Court to do substantial justice to parties. The order of the High Court dismissing the appeal as time-barred was set aside and the matter was remitted back to the High Court to dispose of the appeal on merit after affording a reasonable opportunity of hearing to both sides.

The Supreme Court also laid down certain principles to be followed by the Court while interpreting the matter relating to condonation of delay:

- Normally a litigant does not get the benefit by lodging a late appeal;
- Refusal to condone delay might result in a meritorious matter being thrown out;
- Delay must be explained in a pragmatic matter;
- A litigant does not stand to benefit by resorting to delay but in fact, he is at serious risk;
- It must be understood that the judiciary is resected not because of its power to legalize injustice on technical grounds but because it is capable of removing injustice.

Delay by Government

Under Section 25, where a property belonging to the Government over which access and use of light or any way or watercourse or the use of any water, have been peaceably and openly enjoyed as an easement and as of a right by any person claiming title thereto, without any interruption for thirty years, the right to such access and use of light or air, or way or waterway, or use of their easement shall be absolute and indefeasible, In case of a private property it is twenty years.