Subject :

C.P.C.

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Scope of Civil Procedure Code :

The **Code of Civil Procedure 1908** is a law that brings together and changes the rules of civil courts. The Ministry of Law and Justice in the government of India oversees this code. It was made into law on March 21, 1908, when the Imperial Legislative Council cancelled the Civil Procedure Code of 1882.

What is the Code of Civil Procedure?

The Code of Civil Procedure, 1908, serves as a set of rules for managing civil proceedings in India. It acts to revise and consolidate the laws guiding the Courts of Civil Judicature operations. The Code of Civil Procedure 1908 originated from the recommendations of the Twenty-seventh Report of the Law Commission of India.

Past of the Code of Civil Procedure 1908

Before 1859, no unified legislation governed civil courts in India. Various systems of civil procedure were in place in provincial and crown courts, each with its specific rules. The Civil Procedure Code (Act/VIII of 1859) was introduced as the first standard code but lacked effectiveness, especially in top courts and Sadar Diwani Adalat.

Following the Indian High Courts Act of 1861, the Supreme Court and Sadar Adalat were replaced by High Courts in Madras, Bombay, and Calcutta, where the 1859 code was applied. The Code of Civil Procedure 1877 succeeded the 1859 code and underwent amendments in 1878 and 1879. In 1882, the third Code of Civil Procedure was adopted with multiple amendments, eventually being replaced by the current Code of Civil Procedure in 1908, addressing the shortcomings of the previous code.

OBJECT of Code of Civil Procedure (1908)

The Code of Civil Procedure governs all actions in civil courts and the involved parties until the execution of the decree and order. Its purpose is to apply the principles of substantive law through procedural regulations.

What is a Judgement?

A **Judgement** is defined under **Section 2(9)** of the CPC as "the statement given by the judge on the grounds of a decree or order." In simpler terms, a judgement is the judge's reasoning behind the court's final decision in a civil suit. It is the final expression of the court's opinion on the matter after hearing the arguments, examining the evidence and considering the applicable laws.

A judgement is delivered after the court has heard both parties and it forms the basis for issuing a decree or order. A judgement must include a concise statement of the facts of the case, the points for determination, the decisions on those points and the reasoning behind those decisions.

Essentials of a Judgement

The key elements that a judgement must include, as per **Order XX Rule 4 of the CPC**, are as follows:

1. **Concise statement of the case**: The judge must provide a brief summary of the facts and circumstances leading to the case.
2. **Points for determination**: The judgement must outline the legal issues or questions that need to be addressed.
3. **Decision on each point**: The judge must express his or her ruling on each of the points raised.

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4. **Reasons for the decision**: The judge must provide a logical and legal explanation for reaching the final decision.
5. **Relief granted**: If the case involves a claim for relief, the judgement should specify the relief that is granted to the parties.

Pronouncement of Judgement

Once the court concludes the hearing, it is required to pronounce the judgement in open court, either immediately or on a later date fixed by the court, as per **Order XX Rule 1**. In cases where the judgement cannot be pronounced immediately, the court should attempt to pronounce it within 30 days, with a maximum extension of 60 days under exceptional circumstances.

A judgement must be signed and dated by the judge and, once signed, it cannot be altered except for clerical or arithmetical mistakes, as stated under **Section 152 of the CPC**.

Legal Precedent on Judgement

In the case of **Gajraj Singh v. Deohu (1951)**, the court held that a judgement must be intelligible and demonstrate that the judge has applied his mind to the facts and issues of the case. A judgement that does not reflect the reasoning behind the decision is not legally valid.

What is a Decree?

A Decree is defined under **Section 2(2)** of the CPC as the formal expression of an adjudication by a civil court, which conclusively determines the rights of the parties in relation to all or any of the matters in controversy in a suit. Simply put, a decree is the official declaration of the court's decision regarding the rights and obligations of the parties involved in a lawsuit.

A decree is issued after the judgement has been delivered and it can be either **preliminary** or **final**. A decree must be formally drawn up and must align with the judgement passed by the court.

Essentials of a Decree

The essential elements of a decree are as follows:

1. **Adjudication**: There must be a judicial determination of the matter in dispute.
2. **Suit**: The decree must arise from a civil suit; it cannot be issued in non-contentious proceedings.
3. **Determination of rights**: The decree must settle the substantive rights of the parties, not merely procedural rights.
4. **Conclusive determination**: The decision must be final and not subject to further adjudication, although it may be subject to appeal.
5. **Formal expression**: The court's decision must be expressed formally in writing and signed by the judge.

Types of Decrees

There are several types of decrees recognised under the CPC:

1. **Preliminary Decree**: This is issued when the court decides the rights of the parties but requires further proceedings to fully resolve the matter. For example, in a partition suit, a preliminary decree may be passed to define the shares of the parties.

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2. **Final Decree**: This decree fully and finally disposes of the matter in controversy between the parties. Once a final decree is passed, there is nothing left to be decided in the suit.
3. **Partly Preliminary and Partly Final Decree**: In some cases, a decree may be both preliminary and final. For example, in a suit for possession of property and mesne profits, the decree may be final regarding possession but preliminary regarding the determination of mesne profits.
4. **Deemed Decree**: Certain orders that resemble decrees but are not formally classified as such are known as deemed decrees. For example, the rejection of a plaint under **Order VI Rule 11** of the CPC is treated as a deemed decree.

Legal Significance of a Decree

A decree has legally binding force and can be executed through enforcement mechanisms if the party against whom it is passed fails to comply. A decree may be appealed and an appellate court may confirm, modify or overturn the decree. The **execution** of a decree involves taking steps to enforce the rights determined by the court.

What is an Order?

An **Order** is defined under **Section 2(14)** of the CPC as the formal expression of any decision of a civil court which is not a decree. Orders are issued by courts in response to applications made by parties during the course of a suit or proceeding. Unlike decrees, which conclusively determine the substantive rights of parties, orders typically deal with procedural matters or interlocutory decisions.

Essentials of an Order

The key elements of an order are as follows:

1. **Formal expression**: An order must be formally expressed in writing by the court.
2. **Non-decree**: An order must be a decision that does not qualify as a decree.
3. **Pronounced by a civil court**: The order must be issued by a civil court during legal proceedings.

Types of Orders

Orders can be broadly categorised into two types:

1. **Appealable Orders**: Certain orders are appealable and parties can challenge them before a higher court. Section 104 and **Order 43 Rule 1** of the CPC enumerate the orders that are appealable.
2. **Non-Appealable Orders**: Orders that cannot be appealed unless specifically provided for in the CPC. These are generally interlocutory orders that do not finally determine the rights of the parties.

Final and Interlocutory Orders

- **Final Orders**: A final order conclusively determines the rights of the parties on a particular issue or stage of the proceedings. It settles the matter completely with no further issues left for adjudication.
- **Interlocutory Orders**: These are temporary orders passed by the court during the pendency of a suit. They do not determine the final outcome but are issued to address procedural matters or provide interim relief to the parties. For example, an order granting or refusing an injunction is an interlocutory order.

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Criteria	Judgement	Decree	Order
Definition	A statement given by the judge based on a decree or order (Section 2(9) of CPC).	Formal expression of adjudication that conclusively determines rights (Section 2(2) of CPC).	Formal expression of a decision that is not a decree (Section 2(14) of CPC).
Essentials	A concise statement of the case, points for determination, the decision on points, reasons for the decision, and relief granted.	Adjudication, suit, determination of rights, conclusive, formal expression.	Formal expression, non-decree, must be issued by a civil court.
Types	No specific types of judgements.	Preliminary, Final, Partly Preliminary and Final, Deemed Decree.	Final, Interlocutory, Appealable, Non-Appealable.
Appealability	Judgements themselves are not appealable, but the decree/order based on it may be.	Appealable under normal circumstances, second appeals may also lie.	Only certain orders are appealable under Section 104 and Order 43 Rule 1.
Finality	Forms the basis for a decree or order, not final on its own.	Conclusive determination of rights; final except when appealed.	May or may not be final, depending on the nature of the order.
Relation to Case	Provides reasoning for the court's decision.	Concludes the rights of the parties in a civil suit.	Addresses procedural or substantive issues, may or may not conclude rights.

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<u>Ex-Parte Decree</u>

- **It is an exception to the general rule that an adjudication shall be pronounced in the presence of both the parties.**
- **It is a decree in absentia.**
- **It is pronounced if on the date of hearing the plaintiff is present, and the defendant is absent.**

When is an Ex-Parte Decree Passed

- **CPC provides for passing of an Ex Parte Decree wherever the presence of the defendant is required under the code and the defendant fails to appear.**

- **Following are the instances where the court can pass an Ex Parte Decree:**

1. Order 8, Rule 10

- **Rule 1 of Order 8 of CPC states that the defendant shall submit its written statement within 30 days from the date of service of summons.**
- **This time period of 30 days can be extended by the court to not more than 90 days from the date of service of summons.**
- **If the defendant fails to submit the written statement in such period, then the Court, under Rule 10 of Order 8, has the discretion to pass an Ex-Parte Decree.**

2. Order 9, Rule 6

- **This rule provides that the Court may proceed to try the case Ex-Parte, and pass an Ex Parte Decree in the same if:**
    - **On the day fixed in the summons for the defendant to appear, and answer, the plaintiff appears, and the defendant does not appear.**
    - **It is proved that the summons was duly served in sufficient time to enable the defendant to appear and answer.**

Remedies Against An Ex Parte Decree

- **Once an Ex Parte Decree has been passed against a judgement debtor, he/she can undertake any of the several remedies available to him under the code.**
- **CPC provides the following remedies against an Ex-Parte Decree:**

1. Setting Aside

- **Order 9, Rule 13 of the CPC, provides for the setting aside of the Ex-Parte decree passed against the defendant.**
- **Defendant against whom an Ex-Parte decree has been passed may apply to the Court by which the decree was passed for an order to set it aside and if he satisfies the Court that:**
    - **The summons was not duly served, or**
    - **He was prevented by any sufficient cause from appearing when the suit was called on for hearing.**
    - **If either of the above two conditions are satisfied, then the Court shall make an order setting aside the decree as against such defendant.**

2. Conditional Setting Aside of Decree

- **Court may, in its discretion, while setting aside a decree impose such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.**
- **Rule 14 of the Order 9 states that no decree is to be set aside without furnishing notice to the opposite party.**

3. Appeal

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- **According to Section 96(2) of the Code, an appeal may lie from an original decree passed ex parte.**

4. Review

- **A review under Section 114 of the code can be made against a decree passed Ex-Parte.**
- **Section 114 states that any person considering himself aggrieved—**
  (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred
  (b) by a decree or order from which no appeal is allowed by this Code, or
  (c) by a decision on a reference from a Court of Small Causes,
  may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Case Law

In the case of Bhanu Kumar Jain v. Archana Kumar & Anr (2004), the Apex Court set aside an Ex-Parte decree on the ground that the defendant had sufficient and reasonable grounds for not being able to attend the hearing of the suit on the day fixed in the summons.

Pleading in CPC

Order 6, Rule 17 of the Civil Procedure Code: Order 6, Rule 17 of the Civil Procedure Code (CPC) is a legal provision that allows parties involved in a civil suit to amend their pleadings. Pleadings are the formal, written statements filed by the parties in a case, outlining their respective claims and defenses. The purpose of this arrangement is to ensure that justice is effectively administered by providing flexibility in the presentation of cases.

Amendment under this rule is a discretionary power granted to the courts. This allows parties to correct any errors, omissions, or deficiencies in their original pleadings, thereby ensuring a fair trial without unduly limiting the scope of the case. The underlying principle is that technical aspects should not overshadow the pursuit of justice.

The rule empowers the court to allow amendments at any stage of the proceedings. Whether before or after the commencement of the trial, the court has the authority to permit alterations in the pleadings. This flexibility recognizes that litigation is dynamic and that parties may discover new facts or legal arguments to incorporate into their initial motion as the case progresses.

Rules of Pleading

The rules of pleading maybe divided into two parts for better understanding:

- Fundamental or Basic Rules
- Particular or Other Rules

Fundamental or Basic Rules: Sub Rule (I) of Rule 2 of the code lays down the fundamental rules of pleading. It states, "Every pleading shall contain, and contain only a statement in a concise form of the material facts on

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which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved"

When the above provision is analyzed, we get the following general principles:

- Pleadings should state facts and not law
- The facts stated should be material facts.
- Pleadings should not state the evidence
- The facts should be stated in a concise form

The principles shall be discussed in detail:

1. **Pleadings should state Facts and not Law**: The first fundamental principle of pleadings is that they should only state facts and not the law. In the case of Kedar Lal v. Hari Lal[4] the court held that it is the duty of the parties to state only the facts on which they rely upon for their claims. The court further said that it is the duty of the court to apply the law to the facts pleaded. The court in Gouri Dutt Ganesh Lall Firm v. Madho Prasad[5] summarised the law of pleading in just four words, "Plead facts not Law"

Therefore a custom or usage is a question of fact which must be specifically pleaded, also intention is a question of fact and it must be pleaded. Similarly waiver or negligence is a plea of fact which must be mentioned in the pleading. However a plea about maintainability of a suit raises a question of law and thus need not be pleaded[6].

In Ram Prasad v. State of Madhya Pradesh[7] it was held that a mixed question of law and fact however should be specifically pleaded. Again in Union of India v. Sita Ram Jaiswal[8] the court held that a point of law which is required to be supported by facts should be pleaded with necessary facts.

- **The Facts stated should be Material Facts:** The second principle of pleadings is that they should contain a statement of material facts only. However the term "material facts" has not been defined in the code. The Supreme Court in Udhav Singh v. Madhav Rao Scindia[9] has defined material facts as, all the primary fact which needs to be proven at the trial by a party to establish the existence of a cause of action or his defence are material facts.

It has been observed by the courts that what type of facts or information would amount to material fact is a subjective issue and depends on the circumstances of a case and thus differs from case to case.

- **The Pleadings should state facts and not evidence**: The third fundamental rule of pleadings says that in pleadings, evidence of facts distinguished from the facts itself need not be pleaded. In other words, the pleadings should contain a statement of material fact on which a party relies but not the evidence by which such facts are to be proved.

Facts are of two types:

- Facta Probanda: The facts required to be proven (material facts)
- Facta Probantia: The facts by means of which they are to be proved (particulars or evidence)

The pleadings should only contain the Facta Probanda or the material facts of the case. The material facts on which the plaintiff relies for his claim or the defendant relies on for his defence is called the Facta Probanda. The Facta Probanda must be mentioned in the plaint or written statement. However the evidence by means of

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which the material facts are to be proved which is known as Facta Probantia need not be stated in pleadings. They are not the fact in issue but only are the relevant facts which required to be proved at the trial in order to establish the fact of the issue.

- **The Pleading should be Concise**: The fourth and the last fundamental rule of pleadings states that pleadings should be drafted with sufficient brevity and they should also be precise. In Virendra Kashinath v. Vinayak N. Joshi[10], the court observed that pleadings should be brief and concise, also niggling should be avoided. However that does not amount to the fact that essential facts need to be omitted or missed in an attempt to get brevity in pleadings.

Every pleading should be divided into paragraphs and sub paragraphs. Each allegation should be contained in separate paragraph. Dates, totals and numbers should be mentioned in figures as well as in words.

Other Rules of Pleadings

Rules 4-18 of Order 6 of the Code contain the other rules of pleadings over the ones discussed above.

The rules may be summarized as:

- Wherever misrepresentations, fraud, breach of trust, willful default or undue influence are pleaded in the pleadings, particulars with dates and items should be stated. (Rule 4 of Order VI of the Civil Procedure Code, 1908)
- The performance of a condition precedent need not be pleaded since it is implied in the pleadings. Non-performance of a condition precedent, however, must be specifically and expressly pleaded. (Rule 6 of Order VI of the Civil Procedure Code, 1908)
- Generally departure from pleading is not permissible and except by way of amendment, no party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings (Rule 7 of Order VI of the Civil Procedure Code, 1908)
- A bare denial of a contract by the opposite party will be construed only as a denial of factum of a contract and not the legality, validity or enforceability of such contract. (Rule 8 of Order VI of the Civil Procedure Code, 1908)
- Documents need not be set out at length in the pleadings unless the words therein are material. (Rule 9 of Order VI of the Civil Procedure Code, 1908)
- Wherever malice, fraudulent intention, knowledge or other condition of the mind of a person is material, it may be alleged in the pleading only as a fact without setting out the circumstances from which it is to be inferred (Rule 10 of Order VI of the Civil Procedure Code, 1908). Such circumstances really constitute evidence in proof of material facts
- Whenever giving of notice to any person is necessary or a condition precedent, pleadings should only state regarding giving of such notice, without setting out the form or precise term of such notice or the circumstances from which it is to be inferred, unless they are material. (Rule 11 of Order VI of Civil Procedure Code, 1908)
- Implied contracts or relations between persons may be alleged as a fact, and the series of letters, conversations and the circumstances from which they are to be inferred should be pleaded generally. (Rule 12 of Order VI of Civil Procedure Code, 1908)

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- Facts which the law presumes in favour of a party or as to which the burden of proof lies upon the other side need not be pleaded. (Rule 13 of Order VI of Civil Procedure Code, 1908)
- Every pleading should be signed by the party or one of the parties or by his pleader. (Rule 14 of Order VI of Civil Procedure Code, 1908)
- A party to the suit should supply his address. He should also supply address of the opposite party. (Rule 14-A of Order VI of Civil Procedure Code, 1908)
- Every pleading should be verified on affidavit by the party or by one of the parties or by a person acquainted with the facts of the case. (Rule 15 of Order VI of Civil Procedure Code, 1908)
- A Court may order striking out a pleading if it is unnecessary, scandalous, frivolous, and vexatious or tends to prejudice, embarrass or delay fair trial of the suit. (Rule 16 of Order VI of Civil Procedure Code, 1908)
- A Court may allow amendment of pleadings. (Rule 17 of Order VI of Civil Procedure Code, 1908)
- Forms in Appendix A of the Code should be used wherever they are applicable. Where they are not applicable, forms of like nature should be used. (Rule 3 of Order VI of Civil Procedure Code, 1908)
- Every pleading should be divided into paragraphs, numbered consecutively. Each allegation or averment should be stated in a separate paragraph. (Rule 2(2) of Order VI of Code of Civil Procedure, 1908)
- Dates, totals and numbers should be written in figures as well as in words (Rule 2(3) of Order VI of Code of Civil Procedure, 1908)

Amendment of Pleadings

Amendment is the formal revision or addition or alteration or modification of the pleadings. Many a times the party may find it necessary to amend his pleadings before or during the trial of the case. Rule 17 of Order VI provides that the court may at any stage allow either party to alter or amend his pleadings in such manner or terms as maybe just and all such amendments shall be made as necessary for the purpose of determining the real questions in controversy between the parties. Proviso to Rule 17 of Order VI as inserted by Civil Procedure Code (Amendment) Act, 2002 restricts and curtails power of the court to allow amendment in pleadings by enacting that no application for amendment should be made after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised before the commencement of trial.

Object of Amendment to Pleadings

The object of the rule of pleadings is that the court should try the merits of the cases that come before them and should consequently allow all amendments that maybe necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other party. The amendment is necessary for determining the real questions in controversy between the parties. Amendment in pleading helps the parties correct their mistakes in the pleadings. In the case of **Cropper v. Smith**[11], the court stated that the object behind amendment of pleadings is to protect the rights of the parties and not to punish them for the mistake made by them in the pleadings

Circumstances under which Amendment of Pleadings can be granted

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In the case of **Kishan Das v. Vithoba Bachelor** [12] the court stated that there are two certain conditions to be satisfied before granting leave for amendment of pleadings :

- The grant of leave should not lead to injustice to another party.
- The Amendment of pleading is necessary for determining the real question of controversy between parties.

Further in the case of **Rajkumar Gurwara Thr. L.Rs v S.K. Sarawagi and Co. Pvt. Ltd. And Anr**[13], the honourable supreme stated conditions when amendments of pleadings can be allowed they are:

- When nature of the case will change by allowing application for amendment of appeal
- When a new cause of action arises by allowing application of an amendment
- When Amendments of pleadings defeats the law of limitation

Other points on which amendment of pleadings is granted:

- When the application of amendment is filed to avoid multiplicity of suits
- When parties in the plaint or written statements wrongfully described
- When plaintiff omits to add some properties to the plaint

When if an amendment to pleading refused?

Pleading to an amendment can be refused by the court on several grounds. The grounds on which an amendment to a pleading could be refused are stated below:

- An application of amendment of pleadings maybe rejected by the court when the proposed amendment is not necessary for determining the real question of controversy between the parties
- An application of amendment of pleadings is rejected when it leads to the introduction of a new case or changes the fundamental character of the case. In the case of **Modi Spg. Mills v. Ladha Ram & Sons**[14] the Supreme Court held that "the defendant cannot be allowed to change completely the case made in certain paragraphs of the written statement and substitute an entirely different and new case"
- An application to amendment of pleading maybe refused by the court when the proposed alteration or modification is unjust.
- The court may refuse the amendment to the pleading if the application for the amendment violates the legal right or cause injustice to the other party
- An application for amendment of pleading maybe refused when it leads to needless complications in the case.
- The Court may refuse the application to amendment if there has been an excessive delay in filing the suit.
- The court shall not grant any application for amendment of pleadings if it has been made with malafide intentions.
- The court may also refuse the application to amendment of a pleading if even after several opportunities to the parties to apply for amendment they failed to do so.

Plaint:

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Order 7 of the CPC defines a plaint. A plaint is a statement of claim that the plaintiff files in which he sets forth the material facts on which he bases his arguments, demands, and requests for relief. The purpose of the plaint is to introduce the plaintiff's case to the court and the opposing party (the defendant). The plaint is the foundation of the lawsuit. The whole plaint must be examined considering the evidence supporting the claim in order to determine the true substance of the lawsuit.

Order 7 Rule 1: Particulars of a plaint:

The plaint shall contain:

I. the name of the specific court where the lawsuit is first brought.

II. Name, location, and details of the plaintiff's house

III. Name, location, and particulars of the defendant's house.

IV. a declaration of unsoundness of mind or minority if the plaintiff or defendant falls under any of those criteria.

V. the facts that gave rise to the cause of action and when it did.

VI. the circumstances that demonstrate the court's jurisdiction.

VII. The relief claimed by the plaintiff.

VIII. The sum, if any, permitted or forfeited by the plaintiff

IX. a declaration outlining the amount the case's acknowledged value for the object of the lawsuit.

Order 7 Rule 2: In money lawsuits:

When the plaintiff sues the defendant for recovery of money, then he shall state the precise amount which is to be claimed, in the plaint.

However, the approximate sum may be asserted in the plaint where the plaintiff sues for menes profits, unpaid accounts, or movables whose worth cannot be determined by due diligence.

Order 7 Rule 5: The defendant's liability and interest needs to be shown:

The plaint shall contain the defendant's interest and liability in the subject matter of the lawsuit.

Order 7 Rule 6: Grounds for exemption from limitation law

If the plaint is filed after the limitations stipulated for its institution has passed, it must additionally state the grounds for any exemptions the plaintiff may be claiming. If the court deems it appropriate, it may grant exemption on certain grounds. The court may, however, allow this exemption on any other grounds claimed by the plaintiff that are not specified in the plaint as long as they do not invalidate the grounds in the plaint.

Order 7 Rule 7: The relief must be specifically stated in the plaint by the plaintiff:

This Rule specifies how the plaintiff may express their request for relief, or their plea. According to the law, the plaintiff must provide a particular request for remedy in their complaint, as well as any general requests or alternatives that the court could make at its discretion.

Order 7 Rule 9: Procedure for admitting a plaint:

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According to this regulation, if the defendant receives a summons from the court, the plaintiff is required to file as many copies of the plaint with the court as there are defendants within seven days of the summons order being issued. Additionally, the plaintiff is required to pay the summons-issuing fees. In addition, Rule 11(f) stipulates that failure to follow Rule 9's requirements might result in the plaint being rejected.

Order 7 Rule 10: Return of the plaint:

The return of a plaint is covered under Order VII Rule 10-10 B. Rule 10 states that the court shall return the plaint to be presented in the appropriate court where the complaint should have been initiated if it determines at any point in the proceeding that it lacks jurisdiction, whether territorial, financial, or as to the subject matter.

When the defendant has appeared, the court must inform the plaintiff of its judgement before returning the plaint. The court of appeal or revision may return the plaint in accordance with this regulation after setting aside the decree.

When returning the plaint, the judge must sign the date of presentation and return, the name of the party who presented it, and also state the reasons of the return.

The endorsement according to Sub-Rule 2 shall be subject to Section 14 of the Limitation Act, 1963, i.e., that period shall not be subject to limitation if the plaintiff prosecutes in good faith but in the wrong court.

The Supreme Court ruled in ONGC v. Modern Construction Co., [1]that a plaint that has been returned to the relevant court after being filed in the incorrect court cannot be considered to constitute a continuation of the lawsuit. When the complaint is submitted to the appropriate court, the lawsuit is deemed to have started.

Order 7 Rule 11: Rejection of a plaint:

According to rule 11 of order VII, the plaint shall be rejected in the following cases:

i. Where the cause of action is not disclosed- The court will dismiss a plaint if it does not state a cause of action. The plaintiff would not be entitled to remedy, even if the claims made in the plaint were proven, the court must determine.

In Roop Lal Sathi v. Nachhattter Singh Gill[2], the Supreme Court ruled that a part of the complaint cannot be rejected and that the entire complaint should be rejected if no cause of action is presented.

2. when the plaintiff fails to update the valuation after being instructed by the court to do so within a certain time frame and the remedy sought is undervalued;

3. When the remedy sought is appropriately valued but the plaint is insufficiently stamped, and the plaintiff is asked by the court to furnish the requisite stamp paper within a time set by the Court but fails to do so.

4. where it is implied from the plaint's language that the lawsuit is illegal under any applicable law;

5. If a duplicate filing is not made;

6. when the plaintiff disregards Rule 9 requirements. It indicates that the plaintiff has seven days to submit copies of the complaint for each defendant and the required summons fees.

On these grounds, the court does not reject the plaint prima facie; instead, it gives the plaintiff time to rectify such faults, and if those shortcomings are not addressed, the court will proceed with such rejection.

This rejection of the plaint can be made at any time before the conclusion of the trial, and the grounds for rejection must be determined solely by a simple reading of the plaint, not on the basis of accusations put forward by the defendant in his written declaration or on the basis of the application for rejection.

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The grounds specified in the regulation are not exhaustive; the court may discover more defects in the plaint that will result in its rejection. For example, one such flaw is the failure to serve a notice under Section 80 of the CPC and the subsequent filing of a plaint. In Mayar H.K. Ltd. v. Owner and Parties, Vessel M.V. Fortune Express[3], the Supreme Court ruled that the reasons for dismissing a plaint provided in Rule 11 are not exhaustive. Other relevant grounds can also be used to dismiss a complaint. If the plaint is determined to be vexatious or meritless, with no clear right to sue, the court may dismiss it.

Part rejection of a plaint: In Madhav Prasad Aggarwal v. Axis Bank[4], the Supreme Court pronounced that a plaint can be rejected in part or not at all. It is not acceptable to reject a plaint qua any specific portion of a plaint, even against some of the defendant(s), The proviso also states that once the time set by the court for the removal of mistakes under clauses (b) or (c) has elapsed, no additional time shall be granted unless the court is satisfied that the plaintiff was hindered by an exceptional cause. According to Section 2(2) of the CPC, an order rejecting a plaint is deemed to be a decree.

The Hon'ble Supreme Court stated in R.K. Roja v. U.S.Rayadu & Anr.[5] that an application under Order VII Rule 11 may be brought at any stage, but once the application gets filed, the court must dispose of the same before continuing with the trial."

Order 7 Rule 12: The procedure for the rejection of plaint:

When a plaint is rejected, the Judge should record an order stating the reasons for such rejection.

Order 7 Rule 13:

According to the rule, the plaintiff is permitted to file a new complaint in the appropriate court for the same cause of action, subject to time restrictions, as a result of the order of rejection. Res-Judicata isn't applicable to such orders despite being a decree. Due to the fact that the rejection of the plaint is a deemed decree, the plaintiff has the following two legal remedies:

a) Because it is a decree, Order 41 applies.

b) The plaintiff may file a new lawsuit for the same cause of action.

Order 7 Rule 14: Production of documents upon which the plaintiff files suit or pleads :

This rule lays forth requirements for the documents that the plaintiff must attach to the complaint they file and which must be in his or her possession in order to prove the claim.

If the document is not in the possession or power of the plaintiff then he must state in whose possession or power the document is.

All the document relied by the plaintiff must be submitted to the court in which the case is instituted and a copy shall be filed.

It is mandatory for the plaintiff to prepare the list of the documents on which he relies along with that he must produce copies, if he fails to produce it during the presentation of the plaint then he's not allowed to produce or present it further at the time of hearing, unless the court allows him to do so.

He must also specify the reason why he is not able to produce the documents during the presentation of the plaint.

Also, any document which is required to be used at the time of defendant's witness, then it should ne produced during the cross-examination of defendant's witness or at the time of hearing, such documents can be produced to refresh his memory.

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Written statement

Order 8 of cpc,1908 defines a written statement. It is a term with a specific meaning that typically denotes a response to the complaint made by the plaintiff. In other words, it is the defendant's pleading in which he addresses the major allegations made by the plaintiff in the lawsuit and adds any fresh evidence in his favour or raises legal challenges to the plaintiff's assertions.

Pleading of new facts

According to Order VIII Rule 2, the defendant may provide additional facts in a Written Statement in the CPC if they show that the case should be dismissed despite what the plaintiff failed to state in their complaint.

However, these facts must be expressed precisely and concisely, not in generic or ambiguous language. They must be brought up at the beginning and cannot be brought up afterwards, as during the appeal process.

Denying the facts

The defendant has the choice of accepting or denying the claims made by the plaintiff in the Written Statement. An allegation is deemed accepted if it is not refuted. The Code of Civil Procedure's Order VIII Rule 3 highlights the significance of a concise and precise denial. The defendant must respond to each charge specifically; they cannot simply offer a blanket denial.

An evasive denial or one that does not specifically address the substance of the claim is not considered a proper denial, according to Order VIII Rule 4.

Order 8 Rule 1: Written Statement:

A written statement is also known as statement of defense.

The defendant must file the written statement within 30 days from the date of service of summons. If the defendant is unable to present his written statement within 30 days from the date of service of summons, then it can take the permission of the court and has to give specific reason of why he was unable to submit the written statement and then, can submit the written statement within 90 days from the date of service of summons, if the court permits.

Order 8 Rule 1A:

If the defendant relies on a document, then that document must be produced along with the written statement.

Order 8 Rule 2:

The defendant is required to raise in his pleading any defences that, if raised, would be likely to surprise the other party or raise factual issues unrelated to the plaint, such as, for example, fraud, limitations, releases, payments, performances, or facts demonstrating illegality. The defendant is also required to raise any grounds for challenge that show that the lawsuit cannot be maintained or that the payment is illegal or unenforceable under the law. He can also plead that the transaction is void or voidable when plaintiff sues on a contract.

Order 8 Rule 3:

When the plaintiff makes allegations against the defendant, then the defendant must deny it specifically. General denial is not permissible.

Order 8 Rule 4:

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Evasive denial is not specific as it has no meaning at all. The defendant must answer the point of substance rather than denying it evasively.

Order 8 Rule 5:

Except for claims made against individuals with disabilities, every factual allegation in the plaint shall be presumed to be admitted unless specifically or necessarily impliedly denied or stated in the defendant's pleading to the contrary. However, the court may, in its discretion, order that any fact so stated be proven in another manner.

Except where a person with a handicap is involved, it is legal for the court to grant judgement based solely on the facts stated in the plaint when the defendant has not filed a pleading. However, the court reserves the right to, at its discretion, demand proof of any such truth.

The Court must take into consideration whether the defendant could have or has engaged a pleader when deciding how to proceed under the proviso to subrule (1) or under subrule (2).

When a decision is made in accordance with this rule, an order must be created in support of that decision and include the date the decision was made.

Order 8 Rule 6:

A claim added by the defendant against the plaintiff in a written statement is known as a set-off. In a cross-claim between the plaintiff and the defendant, known as a set-off, the plaintiff is contractually required to pay the defendant that sum of money.

Set-Off Essentials

- The plaintiff's lawsuit must be intended to recover money.
- The amount of the defendant's set-off demand must be specified.
- The defendant's written declaration includes money that must be retrieved through the legal system. For instance, the defendant is not permitted to claim any winnings from a wager with the plaintiff.
- The defendant's claim cannot be for more money than the court will allow. It simply implies that each court has a financial threshold above which it can only hear matters involving that amount of money. The defendant is not permitted to assert his set-off because it is outside the court's pecuniary jurisdiction. For instance, if a defendant seeks a set-off of 1 lakh but the court only has pecuniary jurisdiction over 50 thousand, the court's pecuniary authority is exceeded. In that instance, the defendant cannot assert that set off.
- Both the plaintiff and the defendant must fill out the same fields in the plaintiff's claim. Therefore, the defendant is not permitted to assert a set-off in which the plaintiff was not the primary party. Money that is recoverable from someone who is a relative of the plaintiff cannot be claimed by the defendant.

Objective of set-off in a Written Statement

- to stop the filing of a new lawsuit before the court.
- Multiple suits between the plaintiff and the defendant can be avoided.
- It saves the court's crucial time.

Order 8 Rule 6A:

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The Counter-claim is covered in Order VIII Rule 6A. It indicates that the defendant may join any claim or right resulting from the plaintiff's cause of action. This cause of action may have arisen before the plaintiff's lawsuit was instituted or may have done so subsequently. The claim made here is known as a counterclaim. Because the defendant could have filed a new lawsuit for this cause of action, the counter-claim was placed in the written statement to avoid several lawsuits from being filed, which would have forced both the court and the parties to waste their time.

Order 8 Rule 6B:

According to this, the defendant should have explained the basis for the counterclaim he is relying on in the lawsuit.

Order 8 Rule 6C:

In accordance with this rule, the plaintiff may ask the court to keep the counterclaim separate from the lawsuit and to resolve it separately. The court may, at the plaintiff's request, order the counterclaim excluded, if it finds it proper to do so.

Order 8 Rule 6D:

If the suit filed by the plaintiff is withdrawn or dismissed then also the counterclaim can proceed and the defendant shall be treated as plaintiff and the plaintiff shall be treated as defendant.

Order 8 Rule 6E:

If the plaintiff fails or does not reply to the counter claim made by the defendant then the court can presume that the plaintiff has admitted it and can pronounce the judgement against the plaintiff.

Order 8 Rule 6F:

The court may issue the judgement to settle any outstanding amounts owed to the plaintiff or defendant after resolving the set-off and counterclaim in the lawsuit.

Order 8 Rule 6G:

All requirements for the written statement must be included in the written statement that the plaintiff files in response to the counterclaim.

Order 8 Rule 7:

If the defendant's set-off is based on different grounds then it shall be stated distinctively and separately.

Order 8 Rule 8:

After filling the written statement if any new fact arises then the defendant and plaintiff can plead the court to add it.

Order 8 Rule 9:

Unless the court specifically forbids them under certain terms and conditions, neither the plaintiff nor the defendant may bring any further proceedings for a written declaration to assert the defence of counterclaim or set-off. The court may set a deadline of 30 days for them to submit the additional written statement.

Order 8 Rule 10:

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If the parties don't submit their written statements by the deadline, the court has the authority to issue a judgement under Order VIII Rule 10. If a party fails, the court will issue a ruling against them and may potentially issue a decree to end the conflict. The ruling further stated that no court could order an extension of the deadline for submitting a written statement.

Section 27: Summons to the defendant:

Once a suit is instituted, within 30 days of the institution of that suit the plaintiff must take steps to issue the summons to the defendant.

	Set-off	**Counterclaim**
Nature	Statutory defence	Cross-action initiated by
Basis	Must be an ascertained sum or arise from the same transaction as the plaintiff's claim	Not required to arise from
Purpose	Defence against plaintiff's claim	Offensive measure again
Pleadings	Pleaded in the written statement	Treated as a separate clai
Scope	Generally cannot exceed the plaintiff's claim	Can exceed the plaintiff's
Jurisdiction limits	Claims must not exceed the court's pecuniary jurisdiction limits	Claims must not exce jurisdiction limits

Injunctions

chapter VII and chapter VIII in Part III of Preventive Relief of 'The Specific Relief Act, 1963 from section number 36 to 42 and in order XXXIX, Rules of the Code of Civil Procedure. Injuction is a wide term, and many definitions have been given. The injunction definition in law is a legal remedy imposed by the court in civil proceedings. This note highlights the provisions related to injuctions in 'The Specific Relief Act, 1963'.

* Preventive Relief how granted : Section 36 of 'The Specific Relief Act, 1963' provides, "Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual".

* The term "injuction" has been the subject of various attempts of definition. As defined by Joyce, "An order remedial, the general purpose of which is to restrain the commission or continuance of some wrongful act of the party informed."

* In Burney injunction has been defined to be a judicial process, by which one who has invaded or is threatening to invade the rights, legal or equitable, of another is restrained from continuing or commencing such wrongful act."

* The definition which clearly includes both is given by Lord Halsbury. According to him "An injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing".

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* Injunctions acts in personam. It does not run with property.

* An injunction may be issued for and against individuals, public bodies or even the State.

* Disobedience of an injuction is punishable as contempt of court.

There are three characteristics of an injunction :

1) It is a judicial process.

2) The relief obtained thereby is a restraint or prevention and,

3) The act prevented or restrained is a wrongful act.

* The granting of the relief of injunction is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound principles. While exercising its discretionary powers the court must keep in mind the well-settled principles of justice and fair play. (Executive committee Vaishya Degree College Shamli v. Lakshmi Narain…..SC, 1976).

* An injunction will not be issued,

i) Where damages are the appropriate remedy.

ii) Where injunction is not the appropriate relief.

iii) Where the plaintiff is not entitled to for, on account of his conduct.

iv) Where the contract cannot be specifically enforced.

v) Where the injunction would operate inequitable.

Kinds of Injunction

Section 36 : Preventive relief how granted

Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Injunctions are either temporary (interlocutory) or perpetual. They are defined in section 37.

Section 37 : Temporary and perpetual(permanent) injunctions

(1) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from, the assertion of a right, or from the commission of an act, which could be contrary to the rights of the plaintiff.

* A Temporary injunction is an interim(meantime, not permanent) relief which safeguards the subject-matter in its existing condition while the issue is in the suit or proceeding. A temporary injunction stays in force for a prescribed time or till the courts deem fit, or till the further order is passed by the court. Whereas a Permanent injunction is made at the time of final judgement and remains in force for a long time.

* A Temporary injunction is an order of the court whereas a Permanent injunction is a decree.

* Code of Civil Procedure regulates Temporary injunction whereas Permanent injunction is regulated by the Specific Relief Act, 1963.

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* A Temporary injunction since provisional, can be reversed by court granting it. Whereas a Permanent injunction is irrevocable by the court who passes the order. But it may be set aside by appellate or higher courts.

Cases in which temporary injunction may be granted :

A temporay injunction may be granted in the following cases :

I) For protection of interest in property in following cases :

i) If the property in dispute in a suit is in danger of being wasted or damaged, or transfer ownership by any party to the suit.

ii) When the defendand threatens, or intends to remove or dispose of his property with the intention to defraud creditors.

iii) If the defendand threatens to dispossess the plaintiff or cause injury to the plaintiff in relation to any property in dispute in suit.

II) Injunction to restrain repetition or continuance of breach of contract or other injury of any kind either before or after judgement, the plaintiff may apply to the court for a temporary injunction.

Section 38 : Perpetual injunction when granted :

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II. (Chapter II is related to specific performance of contract)

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely,-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings..

Requirements for applicability of this section are,

i) there must be legal right express or implied in favour of the applicant.

ii) such a right must be violated or there should be a threatened invasion.

iii) such a right should be an existing one.

iv) the case should be fit for the exercise of court's discretion.

v) it should not fall within the restraining provisions contained in or referred to in section 41 (which is related to 'injunctions when refused').

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'Obligation' word has been used in a wide sense and it may arise from Contract, Trust, Tort, or Any other legal obligation.

As per section 38(2) a permanent injunction will be granted to prevent breach of contract only in those cases where the contract is capable of specific performance and it is again made clear in section 41(e).

Kishan Lal v. Radhye Shyam, it was held that, an injunction cannot be issued in favour of a trespasser against the true owner.

In Municipal Board v. Abdul Hammeed where the plaintiff fails to establish his legal right to the property or his legal right to continue in possession, he could not be granted perpetual injunction against the owner or the manager of the property.

Some illustrations where perpetual injunction can be granted :

1. A lets certain lands to B and B contracts not to dig sand. A may sue for an injunction to restrain B from digging in violation of his contract.

2. A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

3. In the course of A's employment as an advocate, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

4. A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

5. A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

Section 39 : Mandatory injunctions :

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

The injunctions which command the defendant to do something is termed as 'Mandatory Injunction'.

Salmond defines mandatory injunction as, "an order requiring the defendant to do a positive act for the purpose of putting an end to a wrongful state of things created by him, or otherwise in fulfilment of the legal obligations".

Illustration (a) : A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs b's lights.

Illustration (b) : A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing. The Court may also order all written communication made by B, as patient, to A, as medical adviser, to be destroyed.

Illustration (c) : A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

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As held in Lakshi v. Tara, two elements must be taken into consideration while granting mandatory injunction. Firstly, the Court has to determine what acts are necessary in order to prevent a breach of obligation and secondly, the requisite acts must be such as the Court is capable of enforcing.

For example, in illustration a, pulling down of a building. In illustration b, destruction of written communication. In illustration c, pulling down of eaves.

Difference between permanent and mandatory injunction : Permanent injunctions are granted after the court has made a final determination in the case. They prohibit the defendant from continuing a particular action or behavior. Whreas, Mandatory injunctions require the defendant to carry out a particular action. They are often granted in cases of breach of contract, where the plaintiff requires the defendant to fulfill their contractual obligations.

Mandatory injunctions however, will not be granted in following cases :

i) Where compensation in terms of money would be an adequate relief'

ii) Where the balance of convenience is in favour of the defendant.

iii) Where the plaintiff id guilty of allowing the obstructions to be completed before coming to the court.

iv) Where it is desired to create a new state of thing. Mandatory injunctions are granted to restore status quo.

Section 41: Injunction when refused :

An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

Damages in lieu of or in addition to Injunction. (Sec. 40)

The section provides that, the plaintiff in a suit for perpetual injunction under section 38 or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction, and court may, if it thinks fit, award such damages. The plaintiff has to specifically include in his plaint a claim for damages also. If he has not done so, he may seek permission of the court for the amendment of his

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pleading. But where a suit, in which damages were not claimed, is dismissed, a subsequent separate suit for damages would not lie.

Foreign judgment

The enforcement of judgements of "Foreign Courts" in a country comes under the ambit of Private International Law. Sections 13 and 14 of The Code of Civil Procedure, 1908 are a manifestation of Private International Law in Indian domestic laws and the aforementioned sections and related judicial pronouncements (since India is a common law country) govern the enforceability of foreign judgements in India .

OBJECTIVE OF ENACTMENT OF PROVISIONS FOR ENFORCEMENT OF JUDGEMENTS PASSED BY FOREIGN COURTS

The enforcement of a judgement passed by a foreign court is based on the principle that the adjudication of a dispute by a foreign court of competent jurisdiction gives rise to a legal obligation to execute the verdict of the court.

While the rules with respect to Private International Law and the enforcement of its principles differ from nation to nation, there are certain regulations which are deemed to be applicable to almost all civilised legal jurisdictions.

This nature of recognition is catered for not for the sake of international courtesy but instead for the furtherance of justice, equity and good conscience and to take foreign law and judicial pronouncements into consideration can in no manner be considered as derogation of the sovereignty of a nation – state [3].

As rightly stated by Cardozo, J., in the case of **Locks v. Standard Oil Co**.[4], refusal of courts in one jurisdiction to act upon the decrees passed by courts possessing appropriate jurisdiction in foreign jurisdictions will make it difficult to carry out tasks in the modern world. He further stated that there arises no reason to not recognise foreign judicial pronouncements unless the same would lead to a violation of the principles of justice, equity and good conscience or is against morality and public policy.

FOREIGN JUDGEMENTS WHEN NOT BINDING

Under Section 13 of the CPC, a foreign judgement shall operate as res judicata with respect to the parties involved except when one or more conditions specified in clauses (a) to (f) of S. 13 become applicable.

According to the principle laid down by AV Dicey [5] and referred to in the case of **Viswanathan v Abdul** [6], a judgement passed by a foreign court cannot be assailed on the basis of either mistake of law or mistake of fact.

Thus, a foreign judgement shall not be considered as conclusive in the following 6 cases:

1. When the Foreign Judgement has not been issued by a court with competent jurisdiction,
2. When the Foreign Judgement is not based on merits.
3. When the Foreign Judgement is against Indian or International Law
4. When the Foreign Judgement is opposed to the principles of natural justice.
5. When the Foreign Judgement has been obtained by fraudulent means
6. When the Foreign Judgement is in breach of Indian Law.

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- **When a Foreign Judgement has been Passed by a court lacking jurisdiction**

It is a universally recognised and essential principle of law that a judgement if passed by a court with respect to a dispute which it lacks the jurisdiction to adjudicate is null and void.

Thus, applying the same rule to Private International Law and its embodiment in the CPC, a foreign judgement must have been passed by a court of competent jurisdiction to be recognised as being conclusive and thus be enforceable [7]. The court must be competent by virtue of both the law of the state and by the definition of International Law and must have directly adjudicated upon the legal matter which is being pleaded as res judicata to be enforced.

Furthermore, what is considered "conclusive" is the judgement and not the ratio decidendi i.e., the reasoning behind the judgement.

A landmark judgement in this regard is the case of **Gurdyal Singh v. Rajah of Faridkot** [8].

In this case a person "A" filed a suit in the court of the native state of Faridkot against a former employee "B" for misappropriation of a particular sum of money belonging to "A". B was a domicile of another native state Jhind. B had travelled to Faridkot in 1869 to work under A but left Fardikot in 1874 and returned to Jhind. The present suit was brought by A against B in 1879 when B was neither residing in or was a domicile of Faridkot and B did not appear at the hearing of the suit in Fardikot and an ex parte decree was passed by the court at Faridkot against B.

When A filed a suit in a court in British occupied Indian territory, the court refused to enforce the decree passed by the court at Fardikot on the ground that the court at Fardikot had no jurisdiction to adjudicate the suit. The mere fact that the alleged embezzlement took place in Faridkot would not grant jurisdiction to the court at Fardikot. Neither was B residing in nor was he a domicile of Faridkot at the time that the adverse decree was passed. Thus, taking into consideration the rules of Private International Law, the court at Faridkot lacked jurisdiction and the decree so passed would be null and void.

- **When a Foreign Judgements are not passed on merits of the case**

In order to be considered conclusive, the judgement passed by a foreign court must have been given on the merits of the case [9].

A judgement is said to have been issued on merits if the judge, post the conduct of a fair hearing, allowing both parties to represent their case and scrutinising the evidence, rules in favour of a party to the dispute.

Thus, in certain cases such as when a suit is dismissed due to the plaintiff failing to appear in court, such judgements are not considered to be judgements made on the basis of the merits of the case.

However, a judgement passed by a court ex parte will not lead to it automatically being considered to not be based on merits of the case [10].

- **When a Foreign Judgement is Against Indian or International Law**

A judgement which is not consistent with, is against or is predicated upon an incorrect interpretation of international law or a refusal to recognise Indian law wherever applicable shall not be considered to be a conclusive judgement5.

However, the mistake must be prima facie apparent in the proceedings.

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As stated in the case of **Narasimha Rao v. Venkata Lakshmi** [11], when a foreign judgement is delivered based on grounds which are inconsistent, unrecognised or in transgression of Indian or International law, it will not be considered conclusive and shall not be enforceable in India.

- **When a Foreign Judgement is Passed in Direct Contravention of the Principles of Natural Justice**

A judgement passed by a court must be so obtained after following the due process of law. This means that the court must abide by and enforce the principles of natural justice.

In the case of **Satya v. Teja Singh** , the husband was able to divorce his wife by misleading the court stating that he was an American citizen even though he was not. The Supreme Court of India recognising that the husband had defrauded the foreign court held that the decree of divorce would not be enforceable and was null and void.

- **When a Foreign Judgement is Found to be in Violation of Indian Law**

When a foreign judgement is predicated upon a violation of Indian law, it would not be enforceable in India.

It is imprudent for any nation – state to adopt blindly the rules of Private International Law. Each and every case that is adjudicated by the courts in the Republic of India must be done in accordance with Indian law and must not go against Indian public policy.

In the case of **Ruchi Majoo v. Sanjeev Majoo**], the Supreme Court held that in matters related to child custody, the most important issue is that of the welfare of the child. As such, a court in India must review the case on its own and adjudicate the matter, taking into consideration the ruling of the foreign court.

. 44A of the CPC states that a "Reciprocating Territory" is any country or territory outside the Republic of India which the Union Government can via notification in the Gazette of India declare as being a reciprocating territory.

A certified copy of a judgement passed by a superior court in any reciprocating territory when filed in a District Court in India shall be executable in India and its execution will have the same effect as if it was passed by a District Court in India.

In the case of **Kevin George Vaz v. Cotton Textiles Exports**] the phrase "reciprocating territory" was defined by the court as any nation or territory outside India that the union government has recognized as a reciprocating territory. The term "a territory outside India" was construed by the Court to include territory that may be part of a nation as well as territory that may have ceased to be part of a nation.

- **Manner of Enforcement of Foreign Judgements/Decrees**

The pathway to be taken for enforcement of a foreign judgement depends on whether the court is present in a reciprocating territory or not.

- **When Judgement Passed by Foreign Court of a Reciprocating Territory**

1. 44A of the CPC states that a judgement passed by a superior court of a reciprocating territory can be executed in India as if it were passed by an Indian District Court.
2. 44A (1) of the CPC states that when a certified copy of a decree passed by a superior court of a reciprocating territory is filed in a district court in India, it shall be executable in India and its execution will have the same effect as if it was passed by a District Court in India (as laid down in Order 21 of the CPC).

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When an execution application is being filed, the original certified copy of the relevant decree and a certificate obtained from the superior court has to be attached to the application.

When the relevant judgement/decree has been passed by the court of a territory not designated as a reciprocating territory by the Union Government, the applicant must file a suit on the foreign judgement or the original cause of action or both in a court in India possessing competent jurisdiction

In the case of **Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd**.[15], the Bombay High Court held that when a foreign court from a territory which is not a reciprocating territory passes a decree, the person who has obtained such a decree must file a suit on the foreign judgement or the original cause of action or both in a court in India possessing competent jurisdiction. This is because the foreign decree cannot be directly executed. Only a domestic decree which has been passed by an Indian Court of competent jurisdiction which is based on a suit based on the foreign decree is enforceable. This decree is obtained only when the decree holder can show to the Indian court that the foreign decree satisfies the test as laid down in S. 13 of the CPC.

A suit on a foreign decree must be filed within 3 years from the date when the foreign decree was passed.

Suits by or against Government

79 CPC Description

In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government,2[the Union of India], and

(b) in the case of a suit by or against a State Government, the State.

Section 80 of the act:

- Section 80 of the act which talks about the 2 months' notice to the concerned departments before the institution of the suit makes the procedure of filing a suit in case of public officers, a unique and complicated one. The period of notice is two months and the department /officers to whom it is supposed to be delivered has been covered in. still it is been a debatable topic as to whether such delay of 2 months be given for instituting a suit against the public officers.
- The legislative intention behind enacting Section 80:
- Inspite of the fact ,that such provision could necessarily cause delay in the process of obtaining justice, the legislative committee felt that such notice is of utmost importance because it gives an opportunity to the public officials to settle the claim if found to be true and also deny the same stating the reason for rejection. By enacting such provision they have not only saved the expenses and complication of a citizen but also have reduced the burden of the court by giving a chance of out of the court settlement. After the law commission sent their recommendations regarding the delay in the procedure due to the notice of 2 months period the legislative joint committee enacted an Code of Civil Procedure (amendment) Act of1976 in which clause 27 inserted a special provision which speaks about the

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elimination of notice period in case of emergency situations and such exemption will be provided in very few cases which will be discretionary for the court to accept the same or not. The objects and reasons as mentioned for not removing the 2 month notice period notice in case of general cases was the same reasoning as such notice would reduce the burden of court and would enable the parties to come to out of court settlement without bearing the expense[6]. Thus Section 80(2) and 80(3) were inserted by way of 1976 amendment. The other procedures relating to notice have been evolved through judicial precedents are as follows

Interpleader suits: Section 88 and Order 35 of the CPC

- **Object of Interpleader suit:-**
- The main object to filing an interpleader suit is to get claims of rival defendants adjudicated. It is a process wherein the plaintiff calls upon the rival claimants to appear before the court and get their respective claims decided.
- **Conditions: section 88:-**
- For filing an interpleader suit there must be satisfying the following conditions:-
- 1. There must be some debt, sum f money or other property movable or immovable in dispute;
- 2. Two or more persons must be claiming it adversely to one another;
- 3. The plaintiff does not claim any interest in it except the charges, or cost and is ready to pay or deliver it to the right claimant;
- 4. There must not be pending suit in which the right of the rival claimants can be properly adjudicated.
- **Procedure laid down by order 35 of CPC:-**
- Order 35 laid down following condition which shall be satisfied by the plaintiff who seeks to file an interpleader suit;
- 1. The plaintiff shall state that he has no interest in the subject matter in dispute other than the charges or costs;
- 2. The claim made by the defendants severally; and
- 3. There is no collusion between the plaintiff and any of the defendants.
- In the case of **Mangal Bhikaji Nagpase v. State of Maharashtra in1997** the **BombayHigh Court** held that it is mandatory for the plaintiff to affirm that he has no interest in the subject matter of the dispute other than costs and charges.
- In the case of **Asaan Ali v. Sarada Charan Kastagir AIR 1922 Cal 138 the Calcutta High Court** held that for a suit to be an interpleader suit, the applicant should be willing to hand over the property to the claimant and should not have any interest in it but if the applicant has an interest in the suit then such suit shall be dismissed on the discovery of the fact that the plaintiff has an interest in the subject matter of the suit.
- During the pendency of the interpleader suit, if any of the defendants filed a suit against the Plaintiff, then that suit shall be stayed under sec. 10 of CPC Res Sub-judice.
- **Liability of the plaintiff:-**
- At the first hearing of the interpleader suit the court may declare that the plaintiff is discharged from all liability, and award him his costs and dismiss him from the suit, unless the justice or convenience so requires his presence.
- **Examples:-**

- A is in possession of the property claimed by B and C adversely. A does not claim any interest in the property and is ready to deliver it to the rightful owner he can file an interpleader suit.
- **Conclusion:-**
- At last, as per the above-stated matter, it is clear that an interpleader suit is actually between the defendants. The plaintiff cannot claim any interest in the subject matter of such suit except the charges and the costs as admissible to him under the law.
- **Order 17 CPC Adjournment**
-

1. Court may grant time and adjourn hearing

1[(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.]

(2) Costs of adjournment-In every such case the Court shall fix a day for the further hearing of the suit and 2[shall make such Orders as to costs occassioned by the adjournment or such higher costs as the court deems fit]:

3[Provided that,-

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day unti 1 all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such Orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

Affidavit is dealt in Order 19 of Civil Procedure Code, 1908. We often come across a situation where

the government department and various other authorities ask for an affidavit declaring a certain statement such as date of birth, marriage, change of place etc.
Important Points of Affidavit

- A court may order that any fact may be proved by affidavit ordinarily a fact maybe proved by oral evidence.
- Affidavit is not defined under Section 3 of Evidence Act. It can be used as an evidence only. For sufficient reason, the court invokes the provisions of order 19 of the code.
- Rule 1 is an exception to this rule and empowers the court to make an order that any particular fact may be proved by affidavit, subject to the right of the opposite party to have the deponent procedure for cross – examination. Unless affidavit are properly verified, they will be rejected by the court. But instead of rejecting an affidavit the court may give an opportunity to a party to file a proper affidavit. Affidavit can be treated as evidence within the meaning of Section 3 of Evidence Act.
- But in case of **Khandesh Spinning and Weaving Mill Company Ltd. Vs. Rashriya Girni Kamgar Sangh AIR 571, 1960** it was held that an affidavit can be used as an evidence only if the court so orders for sufficient reasons namely, the right of the opposite party to have the deponent produced for cross – examination.

ORDER XXII – Death, Marriage and Insolvency of Parties

Rule 1: No abatement by party's death, if right to sue survives—

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Rule 2: Procedure where one of several plaintiffs or defendants dies and right to sue survives—

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Rule 3: Procedure in case of death of one of several plaintiffs or of sole plaintiff—

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Rule 4: Procedure in case of death of one of several defendants or of sole defendant—

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.

Rule 4-A: Procedure where there is no legal representative—

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate

of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court—

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

Rule 5: Determination of question as to legal representative—

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

Rule 6: No abatement by reason of death after hearing—

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Rule 7: Suit not abated by marriage of female party—

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree

may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

Rule 8: When plaintiff's insolvency bars suit—

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

(2) Procedure where assignee fails to continue suit, or give security—Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Rule 9: Effect of abatement or dismissal—

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal, and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement of dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Indian Limitation Act, 1877 (15 of 1877), shall apply to applications under sub-rule (2).

Explanation—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.

Rule 10: Procedure in case of assignment before final order in suit—

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Rule 10-A: Duty of pleader to communicate to Court death of a party—

Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

Rule 11: Application of Order to appeals—

In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Rule 12: Application of Order to proceedings—

Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ARBITRATION PROCEEDING

Relevant provisions of Arbitration and Conciliation Act, 1996 Act (hereinafter referred to as "the Act") in this context have been reproduced as follows, Section 19-

"Determination of rules of procedure.—

1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
2. Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
3. Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
4. The power of the arbitral tribunal under subsection (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

Section 5-

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"Extent of judicial intervention.—notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

From a combined reading of the provisions, it can be clearly inferred that the legislative intent was to curtail judicial interference of the civil courts which are infamous for their long, costly and delayed proceedings. Further, it also satisfies the primary objective of the Act which was to minimize the supervisory role of courts in the arbitral process and expeditious disposal of disputes.

So far as the application of Civil Procedure Code (herein after referred to as "the Code") in the arbitral proceedings is concerned, Section 19 of the Act exempts the arbitral tribunal from the shackles of the Code as also the rules of evidence contained in the Indian Evidence Act, 1872 and empowers it to formulate its own rules of procedure.[1] However, the Act itself in sections 36 and 37 of the Act provide for resorting to civil courts. The Delhi High Court, putting rest to the contradictory provisions, correctly said that the parties are required to proceed to the civil courts either for setting aside the award or its effective enforcement under section 36 or Section 37 of the Act only once the arbitral proceedings are complete and an arbitral award is made.[2] However, the question whether all the features and provisions of CPC will be applicable to an arbitration proceeding still remains unresolved. This issue has come up before the Apex Court and High Courts in a number of cases.

High Court of Bombay in the year 2002 held that

"In Sub-section (1) of Section 19, the Act has prescribed that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or by the Evidence Act, 1872. These are words of amplitude and not of restriction. These words do not prohibit the Arbitral Tribunal from drawing sustenance from the fundamental principles underlying the Civil Procedure Code or Evidence Act, but free the Tribunal from being bound, as would a Civil Court, by the requirement of observing the provisions of the Code and the law relating to evidence with all its rigour."[3]

The Supreme Court in its landmark judgment while examining the issue whether a revision petition under Section 115 of the Code lies to the High Court as against an order made by a civil court in an appeal preferred under Section 37 of the Act held that

"....there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided the CPC to be applicable, by inference it should be held that the Code is inapplicable."[4]

So what can be inferred is that unless the statute expressly or implicitly provides, the jurisdiction of a civil courts cannot be ousted.

Affirming the law laid down by the Apex Court in the case Municipal Corporation of Delhi v. International Security and Intelligence Agency[5] the High Court of Karnataka in the case of Syko Bag

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Industries, Proprietor, Mr. T.K. Yahoo and Mrs. K. Zubaida Vs. ICDS Limited rep. by its GPA Holder, K. Balakrishna Rao and Sri B.I. Sharma, Advocate and Arbitrator[6] took a similar view that

"The applicability of the provisions of the Code of Civil Procedure to the Arbitral proceedings under the Arbitration and Conciliation Act shall be subject to affecting any rights of a party under special law or local law in force in relation to the arbitration proceedings." and that "the provisions of Civil Procedure Code can be applied if they are not inconsistent with the provisions of Arbitration and Conciliation Act."

While all of the above judgments were regarding the application of CPC post arbitration award, the High Court of Bombay in the case Sahyadri Earthmovers Vs. L and T Finance Limited and Anr.examined the scope of applicability of CPC during the arbitration proceedings and held that although the Code and the Evidence Act are not applicable strictly, (Section 19), but their settled principles do apply. The court further took the view that,

The division bench of the Supreme Court in Mahanagar Telephone Nigam Ltd. Vs. Applied Electronics Ltd.[8] had raised doubt over the correctness of judgment in ITI Ltd. vs. Siemens Public Communications Network Ltd. wherein it was held that that the applicability of the Code is not prohibited in an arbitration appeal proceedings under Section 37 of the Act. The matter has now been referred to a larger bench for reconsideration. Until then, the Apex court judgment in the ITI Ltd. case will continue to be the binding precedent.

although an Arbitration proceedings does not have to strictly follow the provisions of CPC and Evidence Act, yet it should be conducted keeping in mind the basic principles of fair trial and evidence appreciation which in turn are rather derivative of the fundamental principle of natural justice. These principles are also the fundamental pillars of CPC and Evidence Act which cannot be overlooked in an Arbitration dispute as well. However, the pending case in the Apex court will bring the much needed clarity regarding the extent of applicability of CPC once it is resorted to under section 36 or section 37 of the Act.

SUIT BY / AGAINST PARTNERS

Suing of partners in name of firm

(1) Any two or more persons claiming or being liable as partners and carrying on business, in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

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ule 2 Order XXX of Code of Civil Procedure 1908 "Disclosure of partners' names"

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint :

ule 3 Order XXX of Code of Civil Procedure 1908 "Service"

Where persons are sued as partners in the name of their firm, the summons shall be served either-

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business, there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India :

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

ule 4 Order XXX of Code of Civil Procedure 1908 "Rights of suit on death of partner"

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have-

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Rule 9 Order XXX of Code of Civil Procedure 1908 "Suits between co-partners"

This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Rule 10 Order XXX of Code of Civil Procedure 1908 "Suit against person carrying on business in name other than his own"

Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.

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